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REVISED CODE OF WASHINGTON
1996 Edition

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CERTIFICATE

The 1996 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with RCW 1.08.037, certified to comply with the current specifications of the committee.



MARY F. GALLAGHER DILLEY, Chairman,
STATUTE LAW COMMITTEE

PREFACE

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

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

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

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

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

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

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

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

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

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

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

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

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Chapter 18.04 ACCOUNTANCY

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18.04.015 Purpose. (1) It is the policy of this state and the purpose of this chapter:

(a) To promote the dependability of information which is used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private or governmental; and

(b) To protect the public interest by requiring that:

(i) Persons who hold themselves out to the public as certified public accountants who offer to perform, or perform for clients, professional services, including but not limited to one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "audit reports," "review reports," or "compilation reports" on financial statements, or one or more kinds of management advisory, or consulting services, the preparation of tax returns, or the furnishing of advice on tax matters, perform such services in a competent and professional manner;

(ii) A public authority be established that is competent to prescribe and assess the qualifications of certified public accountants, including certificate holders who are not licensed for the practice of public accounting;

(iii) Persons other than certified public accountants refrain from using the words "audit," "review," and "compilation" when designating a report customarily prepared by someone knowledgeable in accounting; and

(iv) The use of accounting titles likely to confuse the public be prohibited.

(2) A purpose of chapter 103, Laws of 1992, revising provisions of chapter 234, Laws of 1983, is to clarify the authority of the board of accountancy with respect to the activities of persons holding certificates under this chapter. Furthermore, it is not the intent of chapter 103, Laws of 1992 to in any way restrict or limit the activities of persons not holding certificates under this chapter except as otherwise specifically restricted or limited by chapter 234, Laws of 1983. [1992 c 103 § 1; 1983 c 234 § 2.]

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

(1) "Board" means the board of accountancy created by RCW 18.04.035.

(2) "Certified public accountant" or "CPA" means a person holding a certified public accountant certificate.

(3) "State" includes the states of the United States, the District of Columbia, Puerto Rico, Guam, and the United States Virgin Islands.

(4) "Reports on financial statements" means any reports or opinions prepared by certified public accountants, based on services performed in accordance with generally accepted auditing standards, standards for attestation engagements, or standards for accounting and review services as to whether the presentation of information used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private, or governmental, conforms with generally accepted accounting principles or other comprehensive bases of accounting.

(5) The "practice of public accounting" means performing or offering to perform by a person or firm holding itself out to the public as a licensee, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "audit reports," "review reports," or "compilation reports" on financial statements, or one or more kinds of management advisory, or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters. The "practice of public accounting" shall not include practices

that are permitted under the provisions of RCW 18.04.350(6) by persons or firms not required to be licensed under this chapter.

(6) "Firm" means a sole proprietorship, a corporation, or a partnership. "Firm" also means a limited liability company formed under chapter 25.15 RCW.

(7) "CPE" means continuing professional education.

(8) "Certificate" means a certificate as a certified public accountant issued under this chapter, or a corresponding certificate issued by another state or foreign jurisdiction that is recognized in accordance with the reciprocity provisions of RCW 18.04.180 and 18.04.183.

(9) "Licensee" means the holder of a valid license issued under this chapter.

(10) "License" means a biennial license to practice public accountancy issued to an individual or firm under this chapter.

(11) "Quality assurance review" means a process established by and conducted at the direction of the board of study, appraisal, or review of one or more aspects of the professional work of a person or firm in the practice of public accountancy, by a person or persons who hold certificates and who are not affiliated with the person or firm being reviewed.

(12) "Quality review" means a study, appraisal, or review of one or more aspects of the professional work of a person or firm in the practice of public accountancy, by a person or persons who hold certificates and who are not affiliated with the person or firm being reviewed, including a peer review, or any internal review or inspection intended to comply with quality control policies and procedures, but not including the "quality assurance review" under subsection (11) of this section.

(13) "Review committee" means any person carrying out, administering or overseeing a quality review authorized by the reviewee.

(14) "Rule" means any rule adopted by the board under authority of this chapter.

(15) "Holding out" means any representation to the public by the use of restricted titles as set forth in RCW 18.04.345 by a person or firm that the person or firm is a certified public accountant and that the person or firm offers to perform any professional services to the public as a certified public accountant. "Holding out" shall not affect or limit a person not required to hold a certificate under this chapter or a person or firm not required to hold a license under this chapter from engaging in practices identified in RCW 18.04.350(6). [1994 c 211 § 1401; 1992 c 103 § 2; 1986 c 295 § 1; 1983 c 234 § 3.]

Effective date—Severability—1994 c 211: See RCW 25.15.900 and 25.15.902.

18.04.035 Board of accountancy—Members—Terms—Vacancies—Removal. (1) There is created a board of accountancy for the state of Washington to be known as the Washington state board of accountancy. The board shall consist of seven members appointed by the governor. Members of the board shall include four persons who hold valid certified public accountant certificates and have been in public practice as certified public accountants in this state continuously for the previous ten years and two persons who have held a valid certified public accountant's certificate in

this state for at least ten years. The seventh member shall be the public member and shall be a person who is qualified to judge whether the qualifications, activities, and professional practice of those regulated under this chapter conform with standards to protect the public interest.

(2) The members of the board of accountancy shall be appointed by the governor to a term of three years. Vacancies occurring during a term shall be filled by appointment for the unexpired term. Upon the expiration of a member's term of office, the member shall continue to serve until a successor has been appointed and has assumed office. The governor shall remove from the board any member whose certificate or license to practice has been revoked or suspended and may, after hearing, remove any member of the board for neglect of duty or other just cause. No person who has served two successive complete terms is eligible for reappointment. Appointment to fill an unexpired term is not considered a complete term. In order to stagger their terms, of the two new appointments made to the board upon June 11, 1992, the first appointed member shall serve a term of two years initially. [1992 c 103 § 3; 1986 c 295 § 2; 1983 c 234 § 4.]

18.04.045 Board—Officers and staff—Powers and duties. (1) The board shall annually elect a chair, a vice-chair, and a secretary from its members.

(2) A majority of the board constitutes a quorum for the transaction of business.

(3) The board shall have a seal which shall be judicially noticed.

(4) The board shall keep records of its proceedings, and of any proceeding in court arising from or founded upon this chapter. Copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of the records.

(5) The governor shall appoint an executive director of the board, who shall serve at the pleasure of the governor. The executive director may employ such personnel as is appropriate for carrying out the purposes of this chapter. The executive director shall hold a Washington CPA certificate. The board may arrange for such volunteer assistance as it requires to perform its duties. Individuals or committees assisting the board constitute volunteers for purposes of chapter 4.92 RCW.

(6) The board shall file an annual report of its activities with the governor. The report shall include, but not be limited to, a statement of all receipts and disbursements. Upon request, the board shall mail a copy of each annual report to any member of the public.

(7) In making investigations concerning alleged violations of the provisions of this chapter and in all proceedings under RCW 18.04.295 or chapter 34.05 RCW, the board chair, or a member of the board, or a board designee acting in the chair's place, may administer oaths or affirmations to witnesses appearing before the board, subpoena witnesses and compel their attendance, take testimony, and require that documentary evidence be submitted.

(8) The board may review the publicly available professional work of licensees on a general and random basis, without any requirement of a formal complaint or suspicion of impropriety on the part of any particular licensee.

If as a result of such review the board discovers reasonable grounds for a more specific investigation, the board may proceed under its investigative and disciplinary rules. [1992 c 103 § 4; 1986 c 295 § 3; 1983 c 234 § 5.]

18.04.055 Board—Rules. The board may adopt and amend rules under chapter 34.05 RCW for the orderly conduct of its affairs. The board shall prescribe rules consistent with this chapter as necessary to implement this chapter. Included may be:

(1) Rules of procedure to govern the conduct of matters before the board;

(2) Rules of professional conduct for all certificate and license holders, in order to establish and maintain high standards of competence and ethics of certified public accountants including rules dealing with independence, integrity, objectivity, and freedom from conflicts of interest;

(3) Rules specifying actions and circumstances deemed to constitute holding oneself out as a licensee in connection with the practice of public accountancy;

(4) Rules specifying the manner and circumstances of the use of the titles "certified public accountant" and "CPA," by holders of certificates who do not also hold licenses under this chapter;

(5) Educational requirements to take the certified public accountant examination or for the issuance of the certificate or license of certified public accountant;

(6) Rules designed to ensure that certified public accountants' "reports on financial statements" meet the definitional requirements for that term as specified in RCW 18.04.025;

(7) Requirements for continuing professional education to maintain or improve the professional competence of certificate and license holders as a condition to maintaining their certificate or license to practice under RCW 18.04.215;

(8) Rules governing sole proprietors, partnerships, and corporations practicing public accounting including, but not limited to, rules concerning their style, name, title, and affiliation with any other organization, and establishing reasonable practice standards to protect the public interest;

(9) The board may by rule implement a quality assurance review program as a means to monitor licensees' quality of practice and compliance with professional standards. The board may exempt from such program, licensees who undergo periodic quality reviews in programs of the American Institute of Certified Public Accountants, National Association of State Boards of Accountancy, or other programs recognized and approved by the board;

(10) The board may by rule require firms to obtain professional liability insurance if in the board's discretion such insurance provides additional and necessary protection for the public; and

(11) Any other rule which the board finds necessary or appropriate to implement this chapter. [1992 c 103 § 5; 1986 c 295 § 4; 1983 c 234 § 6.]

18.04.065 Board—Fees—Disposition. The board shall set its fees at a level adequate to pay the costs of administering this chapter. Beginning in the 1993-95 biennium, all fees for certified public accountants' licenses, certificates, renewals of licenses, renewals of certificates, and

delinquent filings received under the authority of this chapter shall be deposited in the certified public accountants' account created by RCW 18.04.105. Appropriation from such account shall be made only for the cost of administering the provisions of this chapter. [1992 c 103 § 6; 1983 c 234 § 24.]

18.04.080 Compensation and travel expenses of members. Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses incurred in the discharge of such duties in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 20; 1983 c 234 § 22; 1975-'76 2nd ex.s. c 34 § 25; 1949 c 226 § 7; Rem. Supp. 1949 § 8269-14.]

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

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

18.04.105 Issuance of certificate—Requirements—Examination—Fees—Certified public accountants' account—Prior licensees—Continuing professional education. (1) The certificate of "certified public accountant" shall be granted by the board to any person:

(a) Who is of good character. Good character, for purposes of this section, means lack of a history of dishonest or felonious acts. The board may refuse to grant a certificate on the ground of failure to satisfy this requirement only if there is a substantial connection between the lack of good character of the applicant and the professional responsibilities of a certified public accountant and if the finding by the board of lack of good character is supported by a preponderance of evidence. When an applicant is found to be unqualified for a certificate because of a lack of good character, the board shall furnish the applicant a statement containing the findings of the board and a notice of the applicant's right of appeal;

(b) Who has met the educational standards established by rule as the board determines to be appropriate;

The board may, in its discretion, waive the educational requirements for any person if it is satisfied through review of documentation of successful completion of an equivalency examination that the person's educational qualifications are an acceptable substitute for the requirements of (b) of this subsection; and

(c) Who has passed a written examination.

(2) The examination described in subsection (1)(c) of this section shall be in writing, shall be held twice a year, and shall test the applicant's knowledge of the subjects of accounting and auditing, and other related fields the board may specify by rule. The time for holding the examination is fixed by the board and may be changed from time to time. The board shall prescribe by rule the methods of applying for and taking the examination, including methods for grading papers and determining a passing grade required of an applicant for a certificate. The board shall to the extent possible see to it that the grading of the examination, and the passing grades, are uniform with those applicable to all other states. The board may make use of all or a part of the uniform certified public accountant examination and advisory grading service of the American Institute of Certified Public

Accountants and may contract with third parties to perform administrative services with respect to the examination as the board deems appropriate to assist it in performing its duties under this chapter.

(3) An applicant is required to pass all sections of the examination provided for in subsection (2) of this section in order to qualify for a certificate. If at a given sitting of the examination an applicant passes two or more but not all sections, then the applicant shall be given credit for those sections that he or she passed, and need not take those sections again: PROVIDED, That:

(a) The applicant took all sections of the examination at that sitting;

(b) The applicant attained a minimum grade of fifty on each section not passed at that sitting;

(c) The applicant passes the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were passed;

(d) At each subsequent sitting at which the applicant seeks to pass additional sections, the applicant takes all sections not yet passed; and

(e) In order to receive credit for passing additional sections in a subsequent sitting, the applicant attains a minimum grade of fifty on sections written but not passed on the sitting.

(4) The board may waive or defer any of the requirements of subsection (3) of this section for candidates transferring conditional CPA exam credits from other states or for qualifying reciprocity certification applicants who met the conditioning requirements of the state or foreign jurisdiction issuing their original certificate.

(5) The board shall charge each applicant an examination fee for the initial examination under subsection (1) of this section, or for reexamination under subsection (3) of this section for each subject in which the applicant is reexamined. The applicable fee shall be paid by the person at the time he or she applies for examination, reexamination, or evaluation of educational qualifications. Fees for examination, reexamination, or evaluation of educational qualifications shall be determined by the board under chapter 18.04 RCW. There is established in the state treasury an account to be known as the certified public accountants' account. All fees received from candidates to take any or all sections of the certified public accountant examination shall be used only for costs related to the examination.

(6) Persons who on June 30, 1986, held certified public accountant certificates previously issued under the laws of this state shall not be required to obtain additional certificates under this chapter, but shall otherwise be subject to this chapter. Certificates previously issued shall, for all purposes, be considered certificates issued under this chapter and subject to its provisions.

(7) A certificate of a "certified public accountant" under this chapter is issued on a biennial basis with renewal subject to requirements of continuing professional education and payment of fees, prescribed by the board.

(8) The board shall adopt rules providing for continuing professional education for certified public accountants. The rules shall:

(a) Provide that a certified public accountant shall verify to the board that he or she has completed at least an accumulation of eighty hours of continuing professional educa-

tion during the last two-year period to maintain the certificate;

(b) Establish continuing professional education requirements;

(c) Establish when newly certificated public accountants shall verify that they have completed the required continuing professional education; and

(d) Provide that failure to furnish verification of the completion of the continuing professional education requirement shall make the certificate invalid and subject to reinstatement, unless the board determines that the failure was due to retirement, reasonable cause, or excusable neglect. [1992 c 103 § 7; 1991 sp.s. c 13 § 20; 1986 c 295 § 6; 1985 c 57 § 3; 1983 c 234 § 7.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 57 § 91.]

18.04.180 Reciprocity. The board shall issue a certificate to a holder of a certificate issued by another state, or shall issue a certificate and license to a holder of a certificate/valid license issued by another state that entitles the holder to practice public accountancy, provided that:

(1) Such state makes similar provision to grant reciprocity to a holder of a certificate or certificate and valid license in this state; and

(2) The applicant meets the continuing professional education requirements of RCW 18.04.105(8); and

(3) If the application is for a certificate only:

(a) The applicant passed the examination required for issuance of his or her certificate with grades that would have been passing grades at that time in this state; and

(b) The applicant: Meets all current requirements in this state for issuance of a certificate at the time application is made; or at the time of the issuance of the applicant's certificate in the other state, met all the requirements then applicable in this state; or

(4) If the application is for a certificate and license:

(a) The applicant passed the examination required for issuance of his or her certificate with grades that would have been passing grades at that time in this state; and

(b) The applicant: Meets all current requirements in this state for issuance of a license at the time application is made; or at the time of the issuance of the applicant's license in the other state, met all the requirements then applicable in this state; or has had five years of experience within the ten years immediately preceding application in the practice of public accountancy that meets the requirements prescribed by the board. [1992 c 103 § 8; 1949 c 226 § 17; Rem. Supp. 1949 § 8269-24.]

18.04.183 Accountants from foreign countries. The board shall grant a certificate or license as a certified public accountant to a holder of a permit, license, or certificate issued by a foreign country's board, agency, or institute, provided that:

(1) The foreign country where the foreign permit, license, or certificate was issued is a party to an agreement on trade with the United States that encourages the mutual

recognition of licensing and certification requirements for the provision of covered services by the parties under the trade agreement; and

(2) Such foreign country's board, agency, or institute makes similar provision to allow a person who holds a valid certificate issued by this state to obtain such foreign country's comparable permit, license, or certificate; and

(3) The foreign permit, license, or certificate:

(a) Was duly issued by such foreign country's board, agency, or institute that regulates the practice of public accountancy; and

(b) Is in good standing at the time of the application; and

(c) Was issued upon the basis of educational, examination, and ethical requirements substantially equivalent currently or at the time of issuance of the foreign permit, license, or certificate to those in this state; and

(4) The applicant has within the twenty-four months prior to application completed an accumulation of eighty hours of continuing professional education as required under RCW 18.04.105(8); and

(5) If the application is for a certificate:

(a) The applicant's foreign permit, license, or certificate was the type of permit, license, or certificate requiring the most stringent qualifications if, in the foreign country, more than one type of permit, license, or certificate is issued. This state's board shall decide which are the most stringent qualifications; and

(b) The applicant has passed a written examination or its equivalent, approved by the board, that tests knowledge in the areas of United States accounting principles, auditing standards, commercial law, income tax law, and Washington state rules of professional ethics; or

(6) If the application is for a certificate and license:

(a) The requirements of subsections (1) through (5) of this section are satisfied; and

(b) The applicant has within the five years prior to applying for the certificate and license under this section, demonstrated, in accordance with the rules issued by the board, one year of public accounting experience, within the foreign country where the foreign permit, license, or certificate was issued, equivalent to the experience required under RCW 18.04.215(1)(a) or such other experience or employment which the board in its discretion regards as substantially equivalent. [1992 c 103 § 18.]

18.04.185 Nonresidents—Application for certification or biennial license—Secretary of state agent for service of process. (1) Application for certification as certified public accountants by persons who are not residents of this state constitutes appointment of the secretary of state as an agent for service of process in any action or proceeding against the applicants arising from any transaction, activity, or operation connected with or incidental to the practice of public accounting in this state by nonresident holders of certified public accountant certificates.

(2) Application for a biennial license to practice public accounting in this state by a certified public accountant or CPA firm who holds a license or permit to practice issued by another state constitutes the appointment of the secretary of state as an agent for service of process in any action or

proceeding against the applicant arising from any transaction or operation connected with or incidental to the practice of public accounting in this state by the holder of the biennial license to practice. [1986 c 295 § 7; 1983 c 234 § 8.]

18.04.195 Biennial license required—Requirements—Application—Fees. (1) A sole proprietorship engaged in this state in the practice of public accounting shall license biennially with the board as a firm.

(a) The principal purpose and business of the firm shall be to furnish services to the public which are consistent with this chapter and the rules of the board.

(b) The person shall be a certified public accountant holding a license to practice under RCW 18.04.215.

(c) Each resident licensee in charge of an office of the sole proprietorship engaged in this state in the practice of public accounting shall be a certified public accountant holding a license to practice under RCW 18.04.215.

(2) A partnership engaged in this state in the practice of public accounting shall license biennially with the board as a partnership of certified public accountants, and shall meet the following requirements:

(a) The principal purpose and business of the partnership shall be to furnish services to the public which are consistent with this chapter and the rules of the board;

(b) At least one general partner of the partnership shall be a certified public accountant holding a license to practice under RCW 18.04.215;

(c) Each resident licensee in charge of an office of the partnership in this state and each resident partner personally engaged within this state in the practice of public accounting shall be a certified public accountant holding a license to practice under RCW 18.04.215.

(3) A corporation organized for the practice of public accounting and engaged in this state in the practice of public accounting shall license biennially with the board as a corporation of certified public accountants and shall meet the following requirements:

(a) The principal purpose and business of the corporation shall be to furnish services to the public which are consistent with this chapter and the rules of the board; and

(b) Each shareholder of the corporation shall be a certified public accountant of some state holding a license to practice and shall be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal officer of the corporation and any officer or director having authority over the practice of public accounting by the corporation shall be a certified public accountant of some state holding a license to practice;

(c) At least one shareholder of the corporation shall be a certified public accountant holding a license to practice under RCW 18.04.215;

(d) Each resident licensee in charge of an office of the corporation in this state and each shareholder or director personally engaged within this state in the practice of public accounting shall be a certified public accountant holding a license to practice under RCW 18.04.215;

(e) A written agreement shall bind the corporation or its shareholders to purchase any shares offered for sale by, or not under the ownership or effective control of, a qualified

shareholder, and bind any holder not a qualified shareholder to sell the shares to the corporation or its qualified shareholders. The agreement shall be noted on each certificate of corporate stock. The corporation may purchase any amount of its stock for this purpose, notwithstanding any impairment of capital, as long as one share remains outstanding; and

(f) The corporation shall comply with any other rules pertaining to corporations practicing public accounting in this state as the board may prescribe.

(4) A limited liability company engaged in this state in the practice of public accounting shall license biennially with the board as a limited liability company of certified public accountants, and shall meet the following requirements:

(a) The principal purpose and business of the limited liability company shall be to furnish services to the public which are consistent with this chapter and the rules of the board;

(b) At least one manager of the limited liability company shall be a certified public accountant holding a license to practice under RCW 18.04.215;

(c) Each resident manager or member in charge of an office of the limited liability company in this state and each resident manager or member personally engaged within this state in the practice of public accounting shall be a certified public accountant holding a license to practice under RCW 18.04.215.

(5) Application for a license as a firm shall be made upon the affidavit of the proprietor or person designated as managing partner or shareholder for Washington. This person shall be a certified public accountant holding a license to practice under RCW 18.04.215. The board shall determine in each case whether the applicant is eligible for a license. A partnership or corporation which is licensed to practice under RCW 18.04.215 may use the designation "certified public accountants" or "CPAs" in connection with its partnership or corporate name. The board shall be given notification within ninety days after the admission or withdrawal of a partner or shareholder engaged in this state in the practice of public accounting from any partnership or corporation so licensed.

(6) Fees for the license as a firm and for notification of the board of the admission or withdrawal of a partner or shareholder shall be determined by the board. Fees shall be paid by the firm at the time the license application form or notice of admission or withdrawal of a partner or shareholder is filed with the board. [1994 c 211 § 1402; 1986 c 295 § 8; 1983 c 234 § 9.]

Effective date—Severability—1994 c 211: See RCW 25.15.900 and 25.15.902.

18.04.205 Registration of offices—Requirements—Rules—Fees. (1) Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant, or a partnership or corporation of certified public accountants, shall register with the board under this chapter biennially.

(2) Each office shall be under the direct supervision of a resident licensee holding a license under RCW 18.04.215 who may be a sole proprietor, partner, principal shareholder, or a staff employee.

(3) The board shall by rule prescribe the procedure to be followed to register and maintain offices established in this state for the practice of public accounting.

(4) Fees for the registration of offices shall be determined by the board. Fees shall be paid by the applicant at the time the registration form is filed with the board. [1992 c 103 § 9; 1986 c 295 § 9; 1983 c 234 § 10.]

18.04.215 Biennial license—Issuance—Renewal—Continuing professional education. (1) Biennial licenses shall be issued by the board:

(a) To holders of certificates as certified public accountants who have demonstrated, in accordance with rules issued by the board, one year of public accounting experience, or such other experience or employment which the board in its discretion regards as substantially equivalent and who, if their certificate was issued more than forty-eight months prior to application under this section, submit to the board satisfactory proof of having completed an accumulation of eighty hours of continuing professional education during the twenty-four months preceding the application;

(b) To firms under RCW 18.04.195, if all offices of the firm in this state are maintained and registered as required under RCW 18.04.205.

(2) The board shall, by rule, provide for a system of certificate and license renewal. Applicants for issuance or renewal of certificates or licenses shall, at the time of filing their applications, list with the board all states and foreign jurisdictions in which they hold or have applied for certificates, permits or licenses to practice.

(3) A certified public accountant who holds a permit or license issued by another state, and applies for a license in this state, may practice in this state from the date of filing a completed application with the board, until the board has acted upon the application provided the application is made prior to holding out as a certified public accountant in this state and no sanctions or investigations, deemed by the board to be pertinent to public accountancy, by other jurisdictions or agencies are in process.

(4) A certified public accountant shall submit to the board satisfactory proof of having completed an accumulation of eighty hours of continuing education recognized and approved by the board during the preceding two years. Failure to furnish this evidence as required shall make the certificate invalid and subject to reinstatement procedures, unless the board determines the failure to have been due to retirement, reasonable cause, or excusable neglect.

The board in its discretion may renew a certificate or license despite failure to furnish evidence of compliance with requirements of continuing professional education upon condition that the applicant follow a particular program of continuing professional education. In issuing rules and individual orders with respect to continuing professional education requirements, the board, among other considerations, may rely upon guidelines and pronouncements of recognized educational and professional associations, may prescribe course content, duration, and organization, and may take into account the accessibility of continuing education to applicants and instances of individual hardship.

(5) Fees for issuance or renewal of certificates and licenses in this state shall be determined by the board under

chapter 18.04 RCW. Fees shall be paid by the applicant at the time the application form is filed with the board. The board, by rule, may provide for proration of fees for certificates and licenses issued between normal renewal dates. [1992 c 103 § 10; 1986 c 295 § 10; 1983 c 234 § 11.]

18.04.295 Actions against CPA license. The board of accountancy shall have the power to revoke, suspend, [or] refuse to renew a certificate or license, and may impose a fine in an amount not to exceed one thousand dollars plus the board's investigative and legal costs in bringing charges against a certified public accountant, or impose conditions precedent to renewal of the certificate or license of any certified public accountant for any of the following causes:

(1) Fraud or deceit in obtaining a certificate as a certified public accountant, or in obtaining a license;

(2) Dishonesty, fraud, or negligence while representing oneself as a CPA;

(3) A violation of any provision of this chapter;

(4) A violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter;

(5) Conviction of a crime or an act constituting a crime under:

(a) The laws of this state;

(b) The laws of another state, and which, if committed within this state, would have constituted a crime under the laws of this state; or

(c) Federal law;

(6) Cancellation, revocation, suspension, or refusal to renew the authority to practice as a certified public accountant by any other state for any cause other than failure to pay a fee or to meet the requirements of continuing education in the other state;

(7) Suspension or revocation of the right to practice matters relating to public accounting before any state or federal agency;

For purposes of subsections (6) and (7) of this section, a certified copy of such revocation, suspension, or refusal to renew shall be prima facie evidence;

(8) Failure to maintain compliance with the requirements for issuance, renewal, or reinstatement of the certificate or license, or to report changes to the board;

(9) Failure to cooperate with the board by:

(a) Failure to furnish any papers or documents requested or ordered by the board;

(b) Failure to furnish in writing a full and complete explanation covering the matter contained in the complaint filed with the board or the inquiry of the board;

(c) Failure to respond to subpoenas issued by the board, whether or not the recipient of the subpoena is the accused in the proceeding. [1992 c 103 § 11; 1986 c 295 § 11; 1983 c 234 § 12.]

18.04.305 Actions against firm license. The board of accountancy may revoke, suspend, or refuse to renew the license issued to a firm if at any time the firm does not meet the requirements of this chapter for licensing, or for any of the causes enumerated in RCW 18.04.295, or for any of the following additional causes:

(1) The revocation or suspension of the certificate as a certified public accountant or the revocation or suspension or refusal to renew the certificate or license of any partner or shareholder; or

(2) The revocation, suspension, or refusal to renew the license or permit of the firm, or any partner or shareholder thereof, to practice public accounting in any other state or foreign jurisdiction for any cause other than failure to pay a fee or to meet the requirements of continuing professional education in the other state or foreign jurisdiction. [1992 c 103 § 12; 1986 c 295 § 12; 1983 c 234 § 13.]

18.04.320 Actions against license—Procedures. In the case of the refusal, revocation, or suspension of a certificate or a license by the board under the provisions of this chapter, such proceedings and any appeal therefrom shall be taken in accordance with the administrative procedure act, chapter 34.05 RCW. [1986 c 295 § 13; 1983 c 234 § 14; 1949 c 226 § 31; Rem. Supp. 1949 § 8269-38.]

18.04.335 Reissuance or modification of suspension of license or certificate. Upon application in writing and after hearing pursuant to notice, the board may:

(1) Modify the suspension of, or reissue a certificate or license to, an individual whose certificate has been revoked or suspended; or

(2) Modify the suspension of, or reissue a license to a firm whose license has been revoked, suspended, or which the board has refused to renew. [1992 c 103 § 13; 1986 c 295 § 14; 1983 c 234 § 15.]

18.04.345 Prohibited practices. (1) No person may assume or use the designation "certified public accountant" or "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the person is a certified public accountant or CPA unless the person holds a valid certificate as a certified public accountant.

(2) No person may hold himself or herself out to the public and assume or use the designation "certified public accountant" or "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or devise [device] tending to indicate that the person is a certified public accountant or CPA unless the person holds a valid certificate as a certified public accountant and holds a valid license to practice under RCW 18.04.215.

(3) No firm may hold itself out to the public, or assume or use the designation "certified public accountant" or "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants or CPAs, unless the firm is licensed under RCW 18.04.195, holds a valid license to practice under RCW 18.04.215, and all offices of the firm in this state for the practice of public accounting are maintained and registered under RCW 18.04.205.

(4) No person, partnership, or corporation may hold himself, herself, or itself out to the public, or assume or use along, or in connection with his, hers, or its name, or any other name the title or designation "certified accountant," "chartered accountant," "licensed accountant," "licensed public accountant," "public accountant," or any other title or

designation likely to be confused with "certified public accountant" or any of the abbreviations "CA," "LA," "LPA," or "PA," or similar abbreviations likely to be confused with "CPA." However, nothing in this chapter prohibits use of the title "accountant" by any person regardless of whether the person has been granted a certificate or holds a license under this chapter.

(5) No person may sign, affix, or associate his or her name or any trade or assumed name used by the person in his or her business to any report designated as an "audit," "review," or "compilation," unless the person holds a biennial license to practice under RCW 18.04.215 and all of the person's offices in this state for the practice of public accounting are maintained and licensed under RCW 18.04.205.

(6) No person may sign, affix, or associate a firm name to any report designated as an "audit," "review," or "compilation," unless the firm is licensed under RCW 18.04.195 and 18.04.215, and all of its offices in this state for the practice of public accounting are maintained and registered under RCW 18.04.205.

(7) No person, partnership, or corporation not holding a license to practice under RCW 18.04.215 may hold himself, herself, or itself out to the public as an "auditor" with or without any other description or designation by use of such word on any sign, card, letterhead, or in any advertisement or directory.

(8) No person may assume or use the designation "certified public accountant" or "CPA" in conjunction with names indicating or implying that there is a partnership or corporation, if there is in fact no bona fide partnership or corporation registered under RCW 18.04.195.

(9) No person, partnership, or corporation holding a license under RCW 18.04.215 may hold himself, herself, or itself out to the public in conjunction with the designation "and Associates" or "and Assoc." unless he or she has in fact a partner or employee who holds a license under RCW 18.04.215. [1992 c 103 § 14; 1986 c 295 § 15; 1983 c 234 § 16.]

18.04.350 Practices not prohibited. (1) Nothing in this chapter prohibits any person not a certified public accountant from serving as an employee of, or as assistant to, a certified public accountant or partnership composed of certified public accountants or corporation of certified public accountants holding a valid license under RCW 18.04.215. However, the employee or assistant shall not issue any accounting or financial statement over his or her name.

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

(3) Nothing in this chapter prohibits a certified public accountant, a partnership, or corporation of certified public accountants, or any of their employees from disclosing any data in confidence to other certified public accountants, quality or peer review teams, partnerships, or corporations of public accountants or to the board or any of its employees engaged in conducting quality, quality assurance, or peer

reviews, or any one of their employees in connection with quality or peer reviews of that accountant's accounting and auditing practice conducted under the auspices of recognized professional associations.

(4) Nothing in this chapter prohibits a certified public accountant, a partnership, or corporation of certified public accountants, or any of their employees from disclosing any data in confidence to any employee, representative, officer, or committee member of a recognized professional association, or to the board of accountancy, or any of its employees or committees in connection with a professional investigation held under the auspices of recognized professional associations or the board of accountancy.

(5) Nothing in this chapter prohibits any officer, employee, partner, or principal of any organization:

(a) From affixing his or her signature to any statement or report in reference to the affairs of the organization with any wording designating the position, title, or office which he or she holds in the organization; or

(b) From describing himself or herself by the position, title, or office he or she holds in such organization.

(6) Nothing in this chapter prohibits any person, or partnership or corporation composed of persons not holding a license under RCW 18.04.215 from offering or rendering to the public bookkeeping, accounting, tax services, the devising and installing of financial information systems, management advisory, or consulting services, the preparation of tax returns, or the furnishing of advice on tax matters, the preparation of financial statements, written statements describing how such financial statements were prepared, or similar services, provided that persons, partnerships, or corporations not holding a license under RCW 18.04.215 who offer or render these services do not designate any written statement as an "audit report," "review report," or "compilation report," do not issue any written statement which purports to express or disclaim an opinion on financial statements which have been audited, and do not issue any written statement which expresses assurance on financial statements which have been reviewed.

(7) Nothing in this chapter prohibits any act of or the use of any words by a public official or a public employee in the performance of his or her duties.

(8) Nothing contained in this chapter prohibits any person who holds only a valid certified public accountant certificate from assuming or using the designation "certified public accountant" or "CPA" or any other title, designation, words, letters, sign, card, or device tending to indicate the person is a certified public accountant, provided, that such person shall not hold himself or herself out to the public as engaged in the practice of public accounting unless that person holds a valid license in addition to the certificate under RCW 18.04.215. [1992 c 103 § 15; 1986 c 295 § 16; 1983 c 234 § 17; 1969 c 114 § 7; 1949 c 226 § 34; Rem. Supp. 1949 § 8269-41.]

18.04.360 Practices may be enjoined. If, in the judgment of the board any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of this chapter, the board may make application to the appropriate court for an order enjoining such acts or practices and upon a showing by the board that

such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate may be granted by such court. [1983 c 234 § 18; 1949 c 226 § 35; Rem. Supp. 1949 § 8269-42.]

Injunctions: Chapter 7.40 RCW.

18.04.370 Penalty. Any person who violates any provision of this chapter, shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than one thousand dollars, or to imprisonment for not more than six months, or to both such fine and imprisonment. Whenever the board has reason to believe that any person is violating the provisions of this chapter it shall certify the facts to the prosecuting attorney of the county in which such person resides or may be apprehended and the prosecuting attorney shall cause appropriate proceedings to be brought against such person. Nothing herein contained shall be held to in any way affect the power of the courts to grant injunctive or other relief as above provided. [1983 c 234 § 19; 1949 c 226 § 36; Rem. Supp. 1949 § 8269-43.]

18.04.380 Advertising falsely—Effect. The display or presentation by a person of a card, sign, advertisement, or other printed, engraved or written instrument or device, bearing a person's name in conjunction with the words "certified public accountant" or any abbreviation thereof, or "licensed public accountant" or any abbreviation thereof, or "public accountant" or any abbreviation thereof, shall be prima facie evidence in any action brought under this chapter that the person whose name is so displayed, caused or procured the display or presentation of the card, sign, advertisement, or other printed, engraved, or written instrument or device, and that the person is holding himself or herself out to be a certified public accountant or a public accountant holding a license to practice under this chapter. In any such action, evidence of the commission of a single act prohibited by this chapter is sufficient to justify an injunction or a conviction without evidence of a general course of conduct. [1986 c 295 § 17; 1983 c 234 § 20; 1949 c 226 § 37; Rem. Supp. 1949 § 8269-44.]

False advertising: Chapter 9.04 RCW.

18.04.390 Papers, records, schedules, etc., property of the accountant—Prohibited practices—Rights of client.

(1) In the absence of an express agreement between the certified public accountant and the client to the contrary, all statements, records, schedules, working papers, and memoranda made by a certified public accountant incident to or in the course of professional service to clients, except reports submitted by a certified public accountant to a client, are the property of the certified public accountant.

(2) No statement, record, schedule, working paper, or memorandum may be sold, transferred, or bequeathed without the consent of the client or his or her personal representative or assignee, to anyone other than one or more surviving partners, shareholders, or new partners or new shareholders of the accountant or corporation, or any combined or merged partnership or corporation, or successor in interest.

(3) A licensee shall furnish to the board or to his or her client or former client, upon request and reasonable notice:

(a) A copy of the licensee's working papers, to the extent that such working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client; and

(b) Any accounting or other records belonging to, or obtained from or on behalf of, the client that the licensee removed from the client's premises or received for the client's account; the licensee may make and retain copies of such documents of the client when they form the basis for work done by him or her.

(4) Nothing in this section shall require a licensee to keep any work paper beyond the period prescribed in any other applicable statute. [1992 c 103 § 16; 1986 c 295 § 18; 1983 c 234 § 21; 1949 c 226 § 38; Rem. Supp. 1949 § 8269-45.]

18.04.405 Confidential information—Disclosure, when—Subpoenas.

(1) A certified public accountant, a partnership or corporation of certified public accountants, or any of their employees shall not disclose any confidential information obtained in the course of a professional transaction except with the consent of the client or former client or as disclosure may be required by law, legal process, the standards of the profession, or as disclosure of confidential information is permitted by RCW 18.04.350 (3) and (4), 18.04.295(8), 18.04.390, and this section in connection with quality, quality assurance, or peer reviews, investigations, and any proceeding under chapter 34.05 RCW.

(2) This section shall not be construed as limiting the authority of this state or of the United States or an agency of this state, the board, or of the United States to subpoena and use such information in connection with any investigation, public hearing, or other proceeding, nor shall this section be construed as prohibiting a certified public accountant whose professional competence has been challenged in a court of law or before an administrative agency from disclosing confidential information as a part of a defense to the court action or administrative proceeding.

(3) The proceedings, records, and work papers of a review committee shall be privileged and shall not be subject to discovery, subpoena, or other means of legal process or introduction into evidence in any civil action, arbitration, administrative proceeding, or state accountancy board proceeding and no member of the review committee or person who was involved in the quality review process shall be permitted or required to testify in any such civil action, arbitration, administrative proceeding, or state accountancy board proceeding as to any matter produced, presented, disclosed, or discussed during or in connection with the quality review process, or as to any findings, recommendations, evaluations, opinions, or other actions of such committees, or any members thereof. Information, documents, or records that are publicly available are not to be construed as immune from discovery or use in any civil action, arbitration, administrative proceeding, or state accountancy board proceeding merely because they were presented or considered in connection with the quality review process. [1992 c 103 § 17; 1986 c 295 § 19; 1983 c 234 § 23.]

18.04.420 License or certificate suspension—Nonpayment or default on educational loan or scholarship. The board shall suspend the license or certificate of any person who has been certified by a lending agency and reported to the board for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license or certificate shall not be reissued until the person provides the board a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure or certification during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the board may impose. [1996 c 293 § 2.]

Severability—1996 c 293: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 293 § 28.]

18.04.901 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1986 c 295 § 20; 1983 c 234 § 34.]

18.04.910 Effective date—1983 c 234. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983. [1983 c 234 § 35.]

18.04.911 Effective date—1986 c 295. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1986, except as provided in this section. *Section 5 of this act shall not become effective if sections 90(1) and 4 of Engrossed Substitute House Bill No. 1758 become law. [1986 c 295 § 24.]

***Reviser's note:** Section 5 of this act was vetoed by the governor.

18.04.920 Short title. This chapter may be cited as the public accountancy act. [1986 c 295 § 22; 1983 c 234 § 1.]

Chapter 18.06 ACUPUNCTURE

Sections

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Performance of acupuncture by physician assistants and osteopathic physician assistants: RCW 18.57A.070.

18.06.010 Definitions. The following terms in this chapter shall have the meanings set forth in this section unless the context clearly indicates otherwise:

(1) "Acupuncture" means a health care service based on an Oriental system of medical theory utilizing Oriental diagnosis and treatment to promote health and treat organic or functional disorders by treating specific acupuncture points or meridians. Acupuncture includes the following techniques:

- (a) Use of acupuncture needles to stimulate acupuncture points and meridians;
- (b) Use of electrical, mechanical, or magnetic devices to stimulate acupuncture points and meridians;
- (c) Moxibustion;
- (d) Acupressure;
- (e) Cupping;
- (f) Dermal friction technique;
- (g) Infra-red;
- (h) Sonopuncture;
- (i) Laserpuncture;
- (j) Point injection therapy (aquapuncture); and
- (k) Dietary advice based on Oriental medical theory provided in conjunction with techniques under (a) through (j) of this subsection.

(2) "Acupuncturist" means a person licensed under this chapter.

(3) "Department" means the department of health.

(4) "Secretary" means the secretary of health or the secretary's designee. [1995 c 323 § 4; 1992 c 110 § 1; 1991 c 3 § 4; 1985 c 326 § 1.]

18.06.020 Practice without license unlawful. (1) No one may hold themselves out to the public as an acupuncturist or licensed acupuncturist or any derivative thereof which is intended to or is likely to lead the public to believe such a person is an acupuncturist or licensed acupuncturist unless licensed as provided for in this chapter.

(2) A person may not practice acupuncture if the person is not licensed under this chapter.

(3) No one may use any configuration of letters after their name (including Ac.) which indicates a degree or formal training in acupuncture unless licensed as provided for in this chapter.

(4) The secretary may by rule proscribe or regulate advertising and other forms of patient solicitation which are

likely to mislead or deceive the public as to whether someone is licensed under this chapter. [1995 c 323 § 5; 1991 c 3 § 5; 1985 c 326 § 2.]

18.06.045 Exemptions from chapter. Nothing in this chapter shall be construed to prohibit or restrict:

(1) The practice by an individual credentialed under the laws of this state and performing services within such individual's authorized scope of practice;

(2) The practice by an individual employed by the government of the United States while engaged in the performance of duties prescribed by the laws of the United States;

(3) The practice by a person who is a regular student in an educational program approved by the secretary, and whose performance of services is pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor;

(4) The practice of acupuncture by any person credentialed to perform acupuncture in any other jurisdiction where such person is doing so in the course of regular instruction of a school of acupuncture approved by the secretary or in an educational seminar by a professional organization of acupuncture, provided that in the latter case, the practice is supervised directly by a person licensed under this chapter or licensed under any other healing art whose scope of practice includes acupuncture. [1995 c 323 § 6; 1992 c 110 § 2.]

18.06.050 Applications for examination—Qualifications. Any person seeking to be examined shall present to the secretary at least forty-five days before the commencement of the examination:

(1) A written application on a form or forms provided by the secretary setting forth under affidavit such information as the secretary may require; and

(2) Proof that the candidate has:

(a) Successfully completed a course, approved by the secretary, of didactic training in basic sciences and acupuncture over a minimum period of two academic years. The training shall include such subjects as anatomy, physiology, bacteriology, biochemistry, pathology, hygiene, and a survey of western clinical sciences. The basic science classes must be equivalent to those offered at the collegiate level. However, if the applicant is a licensed chiropractor under chapter 18.25 RCW or a naturopath licensed under chapter 18.36A RCW, the requirements of this subsection relating to basic sciences may be reduced by up to one year depending upon the extent of the candidate's qualifications as determined under rules adopted by the secretary;

(b) Successfully completed a course, approved by the secretary, of clinical training in acupuncture over a minimum period of one academic year. The training shall include a minimum of: (i) Twenty-nine quarter credits of supervised practice, consisting of at least four hundred separate patient treatments involving a minimum of one hundred different patients, and (ii) one hundred hours or nine quarter credits of observation which shall include case presentation and discussion. [1991 c 3 § 7; 1987 c 447 § 15; 1985 c 326 § 5.]

Severability—1987 c 447: See RCW 18.36A.901.

18.06.060 Approval of educational programs. The department shall consider for approval any school, program, apprenticeship, or tutorial which meets the requirements outlined in this chapter and provides the training required under RCW 18.06.050. Clinical and didactic training may be approved as separate programs or as a joint program. The process for approval shall be established by the secretary by rule. [1991 c 3 § 8; 1985 c 326 § 6.]

18.06.070 Approval of applications—Examination fee. No applicant may be permitted to take an examination under this chapter until the secretary has approved his or her application and the applicant has paid an examination fee as prescribed under RCW 43.70.250. The examination fee shall accompany the application. [1991 c 3 § 9; 1985 c 326 § 7.]

18.06.080 Authority of secretary—Examination—Contents—Ad hoc committee—Immunity. (1) The secretary is hereby authorized and empowered to execute the provisions of this chapter and shall offer examinations in acupuncture at least twice a year at such times and places as the secretary may select. The examination shall be a written examination and may include a practical examination.

(2) The secretary shall develop or approve a licensure examination in the subjects that the secretary determines are within the scope of and commensurate with the work performed by licensed acupuncturists and shall include but not necessarily be limited to anatomy, physiology, microbiology, biochemistry, pathology, hygiene, and acupuncture. All application papers shall be deposited with the secretary and there retained for at least one year, when they may be destroyed.

(3) If the examination is successfully passed, the secretary shall confer on such candidate the title of Licensed Acupuncturist.

(4) The secretary may appoint members of the profession to serve in an ad hoc advisory capacity to the secretary in carrying out this chapter. The members will serve for designated times and provide advice on matters specifically identified and requested by the secretary. The members shall be compensated in accordance with RCW 43.03.220 and reimbursed for travel expenses under RCW 43.03.040 and 43.03.060.

(5) The secretary, ad hoc committee members, or individuals acting in their behalf are immune from suit in a civil action based on any certification or disciplinary proceedings or other official acts performed in the course of their duties. [1995 c 323 § 7; 1994 sp.s. c 9 § 502; 1992 c 110 § 3; 1991 c 3 § 10; 1985 c 326 § 8.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Health professions advisory committee: RCW 18.138.120.

18.06.090 Fluency in English required. Before licensure, each applicant shall demonstrate sufficient fluency in reading, speaking, and understanding the English language to enable the applicant to communicate with other health care providers and patients concerning health care problems and treatment. [1995 c 323 § 8; 1985 c 326 § 9.]

18.06.100 Investigation of applicant's background. Each applicant shall, as part of his or her application, furnish written consent to an investigation of his or her personal background, professional training, and experience by the department or any person acting on its behalf. [1985 c 326 § 10.]

18.06.110 Application of Uniform Disciplinary Act. The Uniform Disciplinary Act, chapter 18.130 RCW, governs uncertified practice, the issuance and denial of licenses, and the disciplining of license holders under this chapter. The secretary shall be the disciplining authority under this chapter. [1995 c 323 § 9; 1991 c 3 § 11; 1987 c 150 § 9; 1985 c 326 § 11.]

Severability—1987 c 150: See RCW 18.122.901.

18.06.120 Compliance with administrative procedures—Fees. (1) Every person licensed in acupuncture shall comply with the administrative procedures and administrative requirements for registration and renewal set by the secretary under RCW 43.70.250 and 43.70.280.

(2) All fees collected under this section and RCW 18.06.070 shall be credited to the health professions account as required under RCW 43.70.320. [1996 c 191 § 3; 1995 c 323 § 10; 1992 c 110 § 4; 1991 c 3 § 12; 1985 c 326 § 12.]

18.06.130 Patient information form. The secretary shall develop a form to be used by an acupuncturist to inform the patient of the acupuncturist's scope of practice and qualifications. All license holders shall bring the form to the attention of the patients in whatever manner the secretary, by rule, provides. [1995 c 323 § 11; 1991 c 3 § 13; 1985 c 326 § 13.]

18.06.140 Consultation and referral to other health care practitioners. Every licensed acupuncturist shall develop a written plan for consultation, emergency transfer, and referral to other health care practitioners operating within the scope of their authorized practices. The written plan shall be submitted with the initial application for licensure as well as annually thereafter with the license renewal fee to the department. The department may withhold licensure or renewal of licensure if the plan fails to meet the standards contained in rules adopted by the secretary.

When the acupuncturist sees patients with potentially serious disorders such as cardiac conditions, acute abdominal symptoms, and such other conditions, the acupuncturist shall immediately request a consultation or recent written diagnosis from a physician licensed under chapter 18.71 or 18.57 RCW. In the event that the patient with the disorder refuses to authorize such consultation or provide a recent diagnosis from such physician, acupuncture treatment shall not be continued. [1995 c 323 § 12; 1991 c 3 § 14; 1985 c 326 § 14.]

18.06.150 Violations of RCW 18.06.130 or 18.06.140—Penalty. Any person violating the provisions of RCW 18.06.130 or 18.06.140 shall be guilty of a misde-

meanor and shall be punished as provided in RCW 9.92.030. [1985 c 326 § 15.]

18.06.160 Adoption of rules. The secretary shall adopt rules in the manner provided by chapter 34.05 RCW as are necessary to carry out the purposes of this chapter. [1991 c 3 § 15; 1985 c 326 § 16.]

18.06.180 Application of chapter to previously registered acupuncture assistants. All persons registered as acupuncture assistants pursuant to chapter 18.71A or 18.57A RCW on July 28, 1985, shall be certified under this chapter by the secretary without examination if they otherwise would qualify for certification under this chapter and apply for certification within one hundred twenty days of July 28, 1985. [1991 c 3 § 17; 1985 c 326 § 18.]

18.06.190 Licensing by endorsement. The secretary may license a person without examination if such person is credentialed as an acupuncturist in another jurisdiction if, in the secretary's judgment, the requirements of that jurisdiction are equivalent to or greater than those of Washington state. [1995 c 323 § 13; 1991 c 3 § 18; 1985 c 326 § 19.]

18.06.200 Health care insurance benefits not mandatory. Nothing in this chapter may be construed to require that individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person licensed under this chapter. [1995 c 323 § 14; 1985 c 326 § 20.]

18.06.210 Prescription of drugs and practice of medicine not authorized. This chapter shall not be construed as permitting the administration or prescription of drugs or in any way infringing upon the practice of medicine and surgery as defined in chapter 18.71 or 18.57 RCW, except as authorized in this chapter. [1985 c 326 § 21.]

Chapter 18.08 ARCHITECTS

Sections

18.08.150	Application for examination—Fee.
18.08.190	Expiration of certificate—Renewal—Fee—Withdrawal of registrant.
18.08.220	Reinstatement of certificate—Replacement of lost or destroyed certificate, charge.
18.08.235	Legislative findings—1985 c 37.
18.08.240	Architects' license account.
18.08.310	Registration or authorization to practice required.
18.08.320	Definitions.
18.08.330	Board of registration—Appointment, terms, vacancies, removal—Officers—Travel expenses.
18.08.340	Board of registration—Rules—Executive secretary—Staff support—Investigations—Subpoenas.
18.08.350	Certificate of registration—Application—Qualifications.
18.08.360	Examinations.
18.08.370	Issuance of certificates of registration—Seal, use.
18.08.380	Reinstatement of revoked certificates of registration—Replacement of lost, destroyed, or mutilated certificates.
18.08.390	Registration of prior registrants.
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- 18.08.420 Organization as corporation or joint stock association—
Procedure—Requirements.
- 18.08.430 Renewal of certificates of registration—Withdrawal.
- 18.08.440 Actions against certificate—Grounds—Penalties.
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- 18.08.460 Violation of chapter—Penalties—Enforcement—
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- 18.08.470 Certificate or registration suspension—Nonpayment or de-
fault on educational loan or scholarship.
- 18.08.900 Severability—1985 c 37.

Public contracts for architectural services: Chapter 39.80 RCW.

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

18.08.150 Application for examination—Fee.

Reviser's note: RCW 18.08.150 was amended by 1985 c 7 § 5 without reference to its repeal by 1985 c 37 § 18. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.08.190 Expiration of certificate—Renewal— Fee—Withdrawal of registrant.

Reviser's note: RCW 18.08.190 was amended by 1985 c 7 § 6 without reference to its repeal by 1985 c 37 § 18. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.08.220 Reinstatement of certificate— Replacement of lost or destroyed certificate, charge.

Reviser's note: RCW 18.08.220 was amended by 1985 c 7 § 7 without reference to its repeal by 1985 c 37 § 18. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.08.235 Legislative findings—1985 c 37. The legislature finds that in order to safeguard life, health, and property and to promote the public welfare, it is necessary to regulate the practice of architecture. [1985 c 37 § 1.]

18.08.240 Architects' license account. There is established in the state treasury the architects' license account, into which all fees paid pursuant to this chapter shall be paid. [1991 sp.s. c 13 § 2; 1985 c 57 § 4; 1959 c 323 § 15.]

Effective dates—1991 sp.s. c 13: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions.

(1) On or before June 30, 1991, the balances remaining in the local jail improvement and construction account, the 1979 handicapped facilities construction account, the salmon enhancement construction account, the community college capital improvements accounts, and the fisheries capital projects account shall be transferred to the state building construction account and the balance remaining in the Washington State University construction account shall be transferred to the Washington State University building account.

(2) Except for subsection (1) of this section, sections 1 through 47, 49 through 64, 66 through 108, and 110 through 122 of this act shall take effect July 1, 1991, but shall not be effective for earnings on balances prior to July 1, 1991, regardless of when a distribution is made.

(3) Sections 48 and 109 of this act shall take effect September 1, 1991.

(4) Section 65 of this act shall take effect January 1, 1992.

(5) *Sections 123 through 139 of this act shall take effect July 1, 1993, and shall be effective for earnings on balances beginning July 1, 1993, regardless of when a distribution is made." [1991 sp.s. c 13 § 141.]

***Reviser's note:** "Sections 123 through 139 of this act" [1991 sp.s. c 13] were vetoed by the governor.

Severability—1991 sp.s. c 13: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of

the act or the application of the provision to other persons or circumstances is not affected." [1991 sp.s. c 13 § 140.]

Effective date—1985 c 57: See note following RCW 18.04.105.

18.08.310 Registration or authorization to practice required. It is unlawful for any person to practice or offer to practice in this state, architecture, or to use in connection with his or her name or otherwise assume, use, or advertise any title or description including the word "architect," "architecture," "architectural," or language tending to imply that he or she is an architect, unless the person is registered or authorized to practice in the state of Washington under this chapter. The provisions of this section shall not affect the use of the words "architect," "architecture," or "architectural" where a person does not practice or offer to practice architecture. [1985 c 37 § 2.]

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

(1) "Administration of the construction contract" means the periodic observation of materials and work to observe the general compliance with the construction contract documents, and does not include responsibility for supervising construction methods and processes, site conditions, equipment operations, personnel, or safety on the work site.

(2) "Architect" means an individual who is registered under this chapter to practice architecture.

(3) "Board" means the state board of registration for architects.

(4) "Certificate of authorization" means a certificate issued by the director to a corporation or partnership that authorizes the entity to practice architecture.

(5) "Certificate of registration" means the certificate issued by the director to newly registered architects.

(6) "Department" means the department of licensing.

(7) "Director" means the director of licensing.

(8) "Engineer" means an individual who is registered as an engineer under chapter 18.43 RCW.

(9) "Person" means any individual, partnership, professional service corporation, corporation, joint stock association, joint venture, or any other entity authorized to do business in the state.

(10) "Practice of architecture" means the rendering of services in connection with the art and science of building design for construction of any structure or grouping of structures and the use of space within and surrounding the structures or the design for construction of alterations or additions to the structures, including but not specifically limited to schematic design, design development, preparation of construction contract documents, and administration of the construction contract.

(11) "Registered" means holding a currently valid certificate of registration or certificate of authorization issued by the director authorizing the practice of architecture.

(12) "Structure" means any construction consisting of load-bearing members such as the foundation, roof, floors, walls, columns, girders, and beams or a combination of any number of these parts, with or without other parts or appurtenances. [1985 c 37 § 3.]

18.08.330 Board of registration—Appointment, terms, vacancies, removal—Officers—Travel expenses. There is hereby created a state board of registration for architects consisting of seven members who shall be appointed by the governor. Six members shall be registered architects who are residents of the state and have at least eight years' experience in the practice of architecture as registered architects in responsible charge of architectural work or responsible charge of architectural teaching. One member shall be a public member, who is not and has never been a registered architect and who does not employ and is not employed by or professionally or financially associated with an architect.

The terms of each newly appointed member shall be six years. The members of the board of registration for architects serving on July 28, 1985, shall serve out the remainders of their existing five-year terms. The term of the public member shall coincide with the term of an architect.

Every member of the board shall receive a certificate of appointment from the governor. On the expiration of the term of each member, the governor shall appoint a successor to serve for a term of six years or until the next successor has been appointed.

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

The board shall elect a chairman, a vice-chairman, and a secretary. The secretary may delegate his or her authority to the executive secretary.

Members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1985 c 37 § 4.]

18.08.340 Board of registration—Rules—Executive secretary—Staff support—Investigations—Subpoenas. (1) The board may adopt such rules under chapter 34.05 RCW as are necessary for the proper performance of its duties under this chapter.

(2) The director shall employ an executive secretary subject to approval by the board. The director shall provide such secretarial and administrative support as may be required to carry out the purposes of this chapter.

(3) The board or the director may conduct investigations concerning alleged violations of this chapter. In making such investigations and in all proceedings of the board under this chapter, the chairman or any member of the board acting in place of the chairman may administer oaths or affirmations to witnesses appearing before the board, subpoena witnesses and compel their attendance, and require the production of books, records, papers, and documents. If any person refuses to obey a subpoena so issued, or refuses to testify or produce any books, records, papers, or documents so required to be produced, the board may present its petition in the superior court of Thurston county or the county in which the person resides, setting forth the facts, and thereupon the court shall, in a proper case, enter a suitable order compelling compliance with this chapter and imposing such other terms and conditions as the court finds equitable. [1985 c 37 § 5.]

18.08.350 Certificate of registration—Application—Qualifications. (*Effective until July 29, 2001.*) (1) A certificate of registration shall be granted by the director to all qualified applicants who are certified by the board as having passed the required examination and as having given satisfactory proof of completion of the required experience.

(2) Applications for examination shall be filed as the board prescribes by rule. The application and examination fees shall be determined by the director under RCW 43.24.086.

(3) An applicant for registration as an architect shall be of a good moral character, at least eighteen years of age, and shall possess any of the following qualifications:

(a) Have an accredited architectural degree and three years' practical architectural work experience approved by the board, which may include designing buildings as a principal activity. At least two years' work experience must be supervised by an architect with detailed professional knowledge of the work of the applicant;

(b) Have eight years' practical architectural work experience approved by the board. Each year spent in an accredited architectural program approved by the board shall be considered one year of practical experience. At least four years' practical work experience shall be under the direct supervision of an architect; or

(c) Be a person who has been designing buildings as a principal activity for eight years, or has an equivalent combination of education and experience, but who was not registered under chapter 323, Laws of 1959, as amended, as it existed before July 28, 1992, provided that application is made within four years after July 28, 1992. Nothing in this chapter prevents such a person from designing buildings for four years after July 28, 1992, or the five-year period allowed for completion of the examination process, after that person has applied for registration. A person who has been designing buildings and is qualified under this subsection shall, upon application to the board of registration for architects, be allowed to take the examination for architect registration on an equal basis with other applicants. [1993 c 475 § 1; 1985 c 37 § 6.]

18.08.350 Certificate of registration—Application—Qualifications. (*Effective July 29, 2001.*) (1) A certificate of registration shall be granted by the director to all qualified applicants who are certified by the board as having passed the required examination and as having given satisfactory proof of completion of the required experience.

(2) Applications for examination shall be filed as the board prescribes by rule. The application and examination fees shall be determined by the director under RCW 43.24.086.

(3) An applicant for registration as an architect shall be of a good moral character, at least eighteen years of age, and shall possess any of the following qualifications:

(a) Have an accredited architectural degree and three years' practical architectural work experience approved by the board, which may include designing buildings as a principal activity. At least two years' work experience must be supervised by an architect with detailed professional knowledge of the work of the applicant; or

(b) Have eight years' practical architectural work experience approved by the board. Each year spent in an accredited architectural program approved by the board shall be considered one year of practical experience. At least four years' practical work experience shall be under the direct supervision of an architect. [1993 c 475 § 2; 1993 c 475 § 1; 1985 c 37 § 6.]

Effective date—1993 c 475 § 2: "Section 2 of this act shall take effect July 29, 2001." [1993 c 475 § 3.]

18.08.360 Examinations. (1) The examination for an architect's certificate of registration shall be held at least annually at such time and place as the board determines.

(2) The board shall determine the content, scope, and grading process of the examination. The board may adopt an appropriate national examination and grading procedure.

(3) Applicants who fail to pass any section of the examination shall be permitted to retake the parts failed as prescribed by the board. If the entire examination is not successfully completed within five years, a retake of the entire examination shall be required. [1985 c 37 § 7.]

18.08.370 Issuance of certificates of registration—Seal, use. (1) The director shall issue a certificate of registration to any applicant who has, to the satisfaction of the board, met all the requirements for registration upon payment of the registration fee as provided in this chapter. All certificates of registration shall show the full name of the registrant, have the registration number, and shall be signed by the chairman of the board and by the director. The issuance of a certificate of registration by the director is prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered architect.

(2) Each registrant shall obtain a seal of the design authorized by the board bearing the architect's name, registration number, the legend "Registered Architect," and the name of this state. Drawings prepared by the registrant shall be sealed and signed by the registrant when filed with public authorities. It is unlawful to seal and sign a document after a registrant's certificate of registration or authorization has expired, been revoked, or is suspended. [1985 c 37 § 8.]

18.08.380 Reinstatement of revoked certificates of registration—Replacement of lost, destroyed, or mutilated certificates. (1) The director may reinstate a certificate of registration to any person or a certificate of authorization to any corporation or joint stock association whose certificate has been revoked, if a majority of the board vote in favor of such reissuance, if the board finds that the circumstances or conditions that brought about the revocation are not likely to recur and that the person, corporation, or joint stockholders' association is then sufficiently trustworthy and reliable at the time reinstatement is sought, and that the best interests of the public will be served by reinstatement of the registration.

(2) A new certificate of registration or certificate of authorization to replace any certificate lost, destroyed, or mutilated may be issued by the director. A charge, determined as provided in RCW 43.24.086, shall be made for such issuance. [1985 c 37 § 9.]

18.08.390 Registration of prior registrants. All persons registered as architects under chapter 205, Laws of 1919, or registered as architects under chapter 323, Laws of 1959, as amended, before July 28, 1985, shall be registered as architects without examination. [1985 c 37 § 10.]

18.08.400 Registration of out-of-state registrants. The director may, upon receipt of the current registration fee, grant a certificate of registration to an applicant who is a registered architect in another state or territory of the United States, the District of Columbia, or another country, if that individual's qualifications and experience are determined by the board to be equivalent to the qualifications and experience required of a person registered under RCW 18.08.350. [1985 c 37 § 11.]

18.08.410 Application of chapter. This chapter shall not affect or prevent:

(1) The practice of naval architecture, landscape architecture, engineering, space planning, interior design, or any legally recognized profession or trade by persons not registered as architects;

(2) Drafters, clerks, project managers, superintendents, and other employees of architects, engineers, naval architects, or landscape architects from acting under the instructions, control, or supervision of their employers;

(3) The construction, alteration, or supervision of construction of buildings or structures by contractors or superintendents employed by contractors or the preparation of shop drawings in connection therewith;

(4) Owners or contractors from engaging persons who are not architects to observe and supervise construction of a project;

(5) Any person from doing design work including preparing construction contract documents and administration of the construction contract for the erection, enlargement, repair, or alteration of a structure or any appurtenance to a structure, if the structure is to be used for a residential building of up to and including four dwelling units or a farm building or is a structure used in connection with or auxiliary to such residential building or farm building such as a garage, barn, shed, or shelter for animals or machinery;

(6) Any person from doing design work including preparing construction contract documents and administering the contract for construction, erection, enlargement, alteration, or repairs of or to a building of any occupancy up to four thousand square feet of construction;

(7) Design-build construction by registered general contractors if the structural design services are performed by a registered engineer;

(8) Any person from designing buildings or doing other design work for any structure prior to the time of filing for a building permit; or

(9) Any person from designing buildings or doing other design work for structures larger than those exempted under subsections (5) and (6) of this section, if the plans, which may include such design work, are stamped by a registered engineer or architect. [1985 c 37 § 12.]

18.08.420 Organization as corporation or joint stock association—Procedure—Requirements. (1) An

architect or architects may organize a corporation formed either as a business corporation under the provisions of Title 23B RCW or as a professional corporation under the provisions of chapter 18.100 RCW. For an architect or architects to practice architecture through a corporation or joint stock association organized by any person under Title 23B RCW, the corporation or joint stock association shall file with the board:

(a) The application for certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether the corporation is qualified under this chapter to practice architecture in this state;

(b) Its notices of incorporation and bylaws and a certified copy of a resolution of the board of directors of the corporation that designates individuals registered under this chapter as responsible for the practice of architecture by the corporation in this state and that provides that full authority to make all final architectural decisions on behalf of the corporation with respect to work performed by the corporation in this state shall be granted and delegated by the board of directors to the individuals designated in the resolution. The filing of the resolution shall not relieve the corporation of any responsibility or liability imposed upon it by law or by contract; and

(c) A designation in writing setting forth the name or names of the person or persons registered under this chapter who are responsible for the architecture of the firm. If there is a change in the person or persons responsible for the architecture of the firm, the changes shall be designated in writing and filed with the board within thirty days after the effective date of the changes.

(2) Upon the filing with the board of the application for certificate of authorization, the certified copy of the resolution, and the information specified in subsection (1) of this section, the board shall authorize the director to issue to the corporation a certificate of authorization to practice architecture in this state upon a determination by the board that:

(a) The bylaws of the corporation contain provisions that all architectural decisions pertaining to any project or architectural activities in this state shall be made by the specified architects responsible for the project or architectural activities, or other responsible architects under the direction or supervision of the architects responsible for the project or architectural activities;

(b) The applicant corporation has the ability to provide, through qualified personnel, professional services or creative work requiring architectural experience, and with respect to the architectural services that the corporation undertakes or offers to undertake, the personnel have the ability to apply special knowledge to the professional services or creative work such as consultation, investigation, evaluation, planning, design, and administration of the construction contract in connection with any public or private structures, buildings, equipment, processes, works, or projects;

(c) The application for certificate of authorization contains the professional records of the designated person or persons who are responsible;

(d) The application for certificate of authorization states the experience of the corporation, if any, in furnishing architectural services during the preceding five-year period;

(e) The applicant corporation meets such other requirements related to professional competence in the furnishing of architectural services as may be established and promulgated by the board in furtherance of the purposes of this chapter; and

(f) The applicant corporation is possessed of the ability and competence to furnish architectural services in the public interest.

(3) Upon recommendation of the board, the director shall refuse to issue or may suspend or revoke a certificate of authorization to a corporation if the board finds that any of the officers, directors, incorporators, or the stockholders holding a majority of stock of the corporation have committed an act prohibited under RCW 18.08.440 or have been found personally responsible for misconduct under subsection (6) or (7) of this section.

(4) In the event a corporation, organized solely by a group of architects each registered under this chapter, applies for a certificate of authorization, the board may, in its discretion, grant a certificate of authorization to that corporation based on a review of the professional records of such incorporators, in lieu of the required qualifications set forth in subsections (1) and (2) of this section. In the event the ownership of such corporation is altered, the corporation shall apply for a revised certificate of authorization, based upon the professional records of the owners if exclusively architects, under the qualifications required by subsections (1) and (2) of this section.

(5) Any corporation authorized to practice architecture under this chapter, together with its directors and officers for their own individual acts, are responsible to the same degree as an individual registered architect and shall conduct their business without misconduct or malpractice in the practice of architecture as defined in this chapter.

(6) Any corporation that has been certified under this chapter and has engaged in the practice of architecture shall have its certificate of authorization either suspended or revoked by the board if, after a proper hearing, the board finds that the corporation has committed misconduct or malpractice under RCW 18.08.440. In such a case, any individual architect registered under this chapter who is involved in such misconduct is also subject to disciplinary measures provided in this chapter.

(7) All plans, specifications, designs, and reports when issued in connection with work performed by a corporation under its certificate of authorization shall be prepared by or under the direction of the designated architects and shall be signed by and stamped with the official seal of the designated architects in the corporation authorized under this chapter.

(8) For each certificate of authorization issued under this section there shall be paid a certification fee and an annual certification renewal fee as prescribed by the director under RCW 43.24.086.

(9) This chapter shall not affect the practice of architecture as a professional service corporation under chapter 18.100 RCW. [1991 c 72 § 2; 1985 c 37 § 13.]

18.08.430 Renewal of certificates of registration—Withdrawal. (1) The renewal date for certificates of registration shall be set by the director in accordance with RCW 43.24.086. Registrants who fail to pay the renewal fee

within thirty days of the due date shall pay all delinquent fees plus a penalty fee equal to one-third of the renewal fee. A registrant who fails to pay a renewal fee for a period of five years may be reinstated under such circumstances as the board determines. The renewal and penalty fees and the frequency of renewal assessment shall be authorized under this chapter. Renewal date for certificates of authorization shall be the anniversary of the date of authorization.

(2) Any registrant in good standing may withdraw from the practice of architecture by giving written notice to the director, and may within five years thereafter resume active practice upon payment of the then-current renewal fee. A registrant may be reinstated after a withdrawal of more than five years under such circumstances as the board determines. [1985 c 37 § 14.]

18.08.440 Actions against certificate—Grounds—Penalties. The board shall have the power to impose fines on any person practicing architecture in an amount not to exceed one thousand dollars for each offense and may reprimand a registrant and may suspend, revoke, or refuse to issue or renew a certificate of registration or authorization to practice architecture in this state upon the following grounds:

(1) Offering to pay, paying, or accepting, either directly or indirectly, any substantial gift, bribe, or other consideration to influence the award of professional work;

(2) Being wilfully untruthful or deceptive in any professional report, statement, or testimony;

(3) Having conviction in any court of any offense involving moral turpitude or fraud;

(4) Having a financial interest in the bidding for or the performance of a contract to supply labor or materials for or to construct a project for which employed or retained as an architect except with the consent of the client or employer after disclosure of such facts; or allowing an interest in any business to affect a decision regarding architectural work for which retained, employed, or called upon to perform;

(5) Signing or permitting a seal to be affixed to any drawings or specifications that were not prepared or reviewed by the architect or under the architect's personal supervision by persons subject to the architect's direction and control;

(6) Aiding or abetting any person not authorized to practice architecture under this chapter;

(7) Wilfully evading or trying to evade any law, ordinance, code, or regulation governing construction of buildings; or

(8) Violating any provision of this chapter or any regulation adopted under it. [1985 c 37 § 15.]

18.08.450 Actions against certificate—Discipline—Board's authority—Procedure. (1) The board may revoke or suspend a certificate of registration or a certificate of authorization to practice architecture in this state, or otherwise discipline a registrant or person authorized to practice architecture, as provided in this chapter.

(2) Proceedings for the revocation, suspension, refusal to issue, or imposition of a monetary fine may be initiated by the board on its own motion based on the complaint of any person. A copy of the charge or charges, along with a notice of the time and place of the hearing before the board

shall be served on the registrant as provided for in chapter 34.05 RCW.

(3) All procedures related to hearings on such charges shall be in accordance with provisions relating to adjudicative proceedings in chapter 34.05 RCW, the Administrative Procedure Act.

(4) If, after such hearing, the majority of the board vote in favor of finding the registrant guilty, the board shall take such disciplinary action as it deems appropriate under this chapter.

(5) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law. [1989 c 175 § 59; 1985 c 37 § 16.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.08.460 Violation of chapter—Penalties—Enforcement—Injunctions—Persons who may initiate proceedings. Any person who violates any provision of this chapter or any rule promulgated under it is guilty of a misdemeanor and may also be subject to a civil penalty in an amount not to exceed one thousand dollars for each offense.

(1) It shall be the duty of all officers in the state or any political subdivision thereof to enforce this chapter. Any public officer may initiate an action before the board to enforce the provisions of this chapter.

(2) The board may apply for relief by injunction without bond to restrain a person from committing any act that is prohibited by this chapter. In such proceedings, it is not necessary to allege or prove either that an adequate remedy at law does not exist or that substantial irreparable damage would result from the continued violation thereof. The members of the board shall not be personally liable for their actions in any such proceeding or in any other proceeding instituted by the board under this chapter. The board in any proper case shall cause prosecution to be instituted in any county or counties where any violation of this chapter occurs, and shall aid the prosecution of the violator.

(3) No person practicing architecture is entitled to maintain a proceeding in any court of this state relating to services in the practice of architecture unless it is alleged and proved that the person was registered or authorized under this chapter to practice or offer to practice architecture at the time the architecture services were offered or provided. [1985 c 37 § 17.]

18.08.470 Certificate or registration suspension—Nonpayment or default on educational loan or scholarship. The board shall suspend the certificate or registration of any person who has been certified by a lending agency and reported to the board for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's certificate or registration shall not be reissued until the person provides the board a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If

the person has continued to meet all other requirements for certification or registration during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the board may impose. [1996 c 293 § 3.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.08.900 Severability—1985 c 37. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 37 § 20.]

Chapter 18.09 ATTORNEYS AT LAW

See chapter 2.44 RCW, attorneys at law.

Chapter 18.11 AUCTIONEERS

Sections

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- 18.11.270 License, certificate, or registration suspension—Nonpayment or default on educational loan or scholarship.
- 18.11.901 Short title.
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- 18.11.903 Effective date—1986 c 324.
- 18.11.920 Severability—1982 c 205.

Limitations on power of

cities and towns to regulate auctioneers: RCW 35.21.690.
counties to regulate auctioneers: RCW 36.71.070.

Mock auctions: RCW 9.45.070.

Motor vehicle auction companies, place of business: RCW 46.70.023.

Pawnbrokers and second-hand dealers: Chapter 19.60 RCW.

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

(1) "Auctioneer" means an individual who calls bids at an auction.

(2) "Auction" means a transaction conducted by means of exchanges between an auctioneer and the members of his or her audience, constituting a series of invitations for offers for the purchase of goods or real property made by the auctioneer, offers by members of the audience, and the acceptance of the highest or most favorable offer.

(3) "Auction mart" means any fixed or established place designed, intended, or used for the conduct of auctions.

(4) "Auction company" means a sole proprietorship, partnership, corporation, or other legal or commercial entity that sells or offers to sell goods or real estate at auction or arranges, sponsors, or manages auctions. The term "auction company" shall exclude any sole proprietorship owned by an auctioneer licensed under this chapter whose gross annual sales do not exceed twenty-five thousand dollars.

(5) "Department" means the department of licensing.

(6) "Director" means the director of licensing.

(7) "Person" means an individual, partnership, association, corporation, or any other form of business enterprise.

(8) "Goods" mean wares, chattels, merchandise, or personal property owned or consigned, which may be lawfully kept or offered for sale.

(9) "License" means state authority to operate as an auctioneer or auction company, which authority is conferred by issuance of a certificate of registration subject to annual renewal.

(10) "Licensee" means an auctioneer or auction company registered under this chapter. [1986 c 324 § 2; 1982 c 205 § 5.]

18.11.060 Administration of chapter—Fees. This chapter shall be administered under chapter 43.24 RCW. The director shall set registration and renewal fees in accordance with RCW 43.24.086. If an auctioneer or auction company does not renew a license before it expires, the renewal shall be subject to payment of a penalty fee. [1986 c 324 § 3; 1982 c 205 § 2.]

18.11.070 License required—Exceptions. (1) It is unlawful for any person to act as an auctioneer or for an auction company to engage in any business in this state without a license.

(2) This chapter does not apply to:

(a) An auction of goods conducted by an individual who personally owns those goods and who did not acquire those goods for resale;

(b) An auction conducted by or under the direction of a public authority;

(c) An auction held under judicial order in the settlement of a decedent's estate;

(d) An auction which is required by law to be at auction;

(e) An auction conducted by or on behalf of a political organization or a charitable corporation or association if the person conducting the sale receives no compensation;

(f) An auction of livestock or agricultural products which is conducted under chapter 16.65 or 20.01 RCW. Auctions not regulated under chapter 16.65 or 20.01 RCW shall be fully subject to the provisions of this chapter;

(g) An auction held under chapter 19.150 RCW; or

(h) An auction of fur pelts conducted by any cooperative association organized under chapter 23.86 RCW or its wholly owned subsidiary. In order to qualify for this exemption, the fur pelts must be from members of the association. However, the association, without loss of the exemption, may auction pelts that it purchased from non-members for the purpose of completing lots or orders, so long as the purchased pelts do not exceed fifteen percent of the total pelts auctioned. [1989 c 307 § 43; 1988 c 240 § 19; 1986 c 324 § 4; 1982 c 205 § 6.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Application—1989 c 307: See RCW 23.86.900.

Severability—1988 c 240: See RCW 19.150.904.

18.11.075 Second-hand property, when exempt.

The department of licensing may exempt, by rule, second-hand property bought or received on consignment or sold at an auction conducted by a licensed auctioneer or auction company from RCW 19.60.050 or 19.60.055. [1993 c 348 § 1.]

18.11.085 Auctioneer certificate of registration—Requirements. Every individual, before acting as an auctioneer, shall obtain an auctioneer certificate of registration. To be licensed as an auctioneer, an individual shall meet all of the following requirements:

(1) Be at least eighteen years of age or sponsored by a licensed auctioneer.

(2) File with the department a completed application on a form prescribed by the director.

(3) Show that the proper tax registration certificate required by RCW 82.32.030 has been obtained from the department of revenue.

(4) Pay the auctioneer registration fee required under the agency rules adopted pursuant to this chapter.

(5) Except as otherwise provided under RCW 18.11.121, file with the department an auctioneer surety bond in the amount and form required by RCW 18.11.121 and the agency rules adopted pursuant to this chapter.

(6) Have no disqualifications under RCW 18.11.160. [1987 c 336 § 1; 1986 c 324 § 5.]

18.11.095 Auction company certificate of registration—Requirements. Every person, before operating an auction company as defined in RCW 18.11.050, shall obtain an auction company certificate of registration.

(1) Except as provided in subsection (2) of this section, to be licensed as an auction company, a person shall meet all of the following requirements:

(a) File with the department a completed application on a form prescribed by the director.

(b) Sign a notarized statement included on the application form that all auctioneers hired by the auction company to do business in the state shall be properly registered under this chapter.

(c) Show that the proper tax registration certificate required by RCW 82.32.030 has been obtained from the department of revenue.

(d) Pay the auction company registration fee required under the agency rules adopted pursuant to this chapter.

(e) File with the department an auction company surety bond in the amount and form required by RCW 18.11.121 and the agency rules adopted pursuant to this chapter.

(f) Have no disqualifications under RCW 18.11.160.

(2) An auction company shall not be charged a license fee if it is a sole proprietorship or a partnership owned by an auctioneer or auctioneers, each of whom is licensed under this chapter, and if it has in effect a surety bond or bonds or other security approved by the director in the amount that would otherwise be required for an auction company to be granted or to retain a license under RCW 18.11.121. [1987 c 336 § 5; 1986 c 324 § 6.]

18.11.100 Nonresident auctioneers and auction companies.

(1) Nonresident auctioneers and auction companies are required to comply with the provisions of this chapter and the rules of the department as a condition of conducting business in the state.

(2) The application of a nonresident under this chapter shall constitute the appointment of the secretary of state as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of a transaction or operation connected with or incidental to the business of an auctioneer or an auction company. [1986 c 324 § 7; 1985 c 7 § 9; 1982 c 205 § 8.]

18.11.121 Surety bond or security required. (1) Except as provided in this section, each auctioneer and each auction company shall as a condition to the granting and retention of a license have on file with the department an approved surety bond or other security in lieu of a bond. However, if an auction company is a sole proprietorship or a partnership and has on file with the department a surety bond or other security approved by the director in the amount that would otherwise be required for an auction company to be granted or to retain a license under this section, then no separate bond or bonds shall be required for the sole proprietor or any individual partner to act as an auctioneer for the sole proprietorship or partnership. The bond or other security of an auctioneer shall be in the amount of five thousand dollars.

(2) The bond or other security of an auction company shall be in an amount not less than five thousand dollars and not more than twenty-five thousand dollars. The amount shall be based on the value of the goods and real estate sold at auctions conducted, supervised, arranged, sponsored, or managed by the auction company during the previous calendar year or, for a new auction company, the estimated value of the goods and real estate to be sold at auction during the current calendar year. The director shall establish by rule the procedures to be used for determining the amount of auction company bonds or other security.

(3) In lieu of a surety bond, an auctioneer or auction company may deposit with the department any of the following:

(a) Savings accounts assigned to the director;

(b) Certificates of deposit payable to the director;

(c) Investment certificates or share accounts assigned to the director; or

(d) Any other security acceptable to the director.

All obligations and remedies relating to surety bonds authorized by this section shall apply to deposits filed with the director.

(4) Each bond shall comply with all of the following:

(a) Be executed by the person seeking the license as principal and by a corporate surety licensed to do business in the state;

(b) Be payable to the state;

(c) Be conditioned on compliance with all provisions of this chapter and the agency rules adopted pursuant to this chapter, including payment of any administrative fines assessed against the licensee; and

(d) Remain in effect for one year after expiration, revocation, or suspension of the license.

(5) If any licensee fails or is alleged to have failed to comply with the provisions of this chapter or the agency rules adopted pursuant to this chapter, the director may hold a hearing in accordance with chapter 34.05 RCW, determine those persons who are proven claimants under the bond, and, if appropriate, distribute the bond proceeds to the proven claimants. The state or an injured person may also bring an action against the bond in superior court. The liability of the surety shall be only for actual damages and shall not exceed the amount of the bond.

(6) Damages that exceed the amount of the bond may be remedied by actions against the auctioneer or the auction company under RCW 18.11.260 or other available remedies at law. [1987 c 336 § 2; 1986 c 324 § 8.]

18.11.130 Written contract required—Penalty. No goods or real estate shall be sold at auction until the auctioneer or auction company has entered into a written contract or agreement with the owner or consignor in duplicate which contains the terms and conditions upon which the licensee receives or accepts the property for sale at auction.

A person who violates this section shall be subject to an administrative fine in a sum not exceeding five hundred dollars for each violation. [1986 c 324 § 9; 1982 c 205 § 11.]

18.11.140 Written records required—Penalty. Every person engaged in the business of selling goods or real estate at auction shall keep written records for a period of three years available for inspection which indicate clearly the name and address of the owner or consignor of the goods or real estate, the terms of acceptance and sale, and a copy of the signed written contract required by RCW 18.11.130. A person who violates this section shall be subject to an administrative fine in a sum not exceeding five hundred dollars for each violation. [1986 c 324 § 10; 1982 c 205 § 12.]

18.11.150 Display of certificate of registration or renewal card required—Penalty. All auctioneers and auction companies shall have their certificates of registration prominently displayed in their offices and the current renewal card or a facsimile available on demand at all auctions conducted or supervised by the licensee.

A person who violates this section shall be subject to an administrative fine in a sum not exceeding one hundred

dollars for each violation. [1986 c 324 § 11; 1982 c 205 § 13.]

18.11.160 Actions against license—Grounds. (1) No license shall be issued by the department to any person who has been convicted of forgery, embezzlement, obtaining money under false pretenses, extortion, criminal conspiracy, fraud, theft, receiving stolen goods, unlawful issuance of checks or drafts, or other similar offense, or to any partnership of which the person is a member, or to any association or corporation of which the person is an officer or in which as a stockholder the person has or exercises a controlling interest either directly or indirectly.

(2) The following shall be grounds for denial, suspension, or revocation of a license, or imposition of an administrative fine by the department:

(a) Misrepresentation or concealment of material facts in obtaining a license;

(b) Underreporting to the department of sales figures so that the auctioneer or auction company surety bond is in a lower amount than required by law;

(c) Revocation of a license by another state;

(d) Misleading or false advertising;

(e) A pattern of substantial misrepresentations related to auctioneering or auction company business;

(f) Failure to cooperate with the department in any investigation or disciplinary action;

(g) Nonpayment of an administrative fine prior to renewal of a license;

(h) Aiding an unlicensed person to practice as an auctioneer or as an auction company; and

(i) Any other violations of this chapter. [1986 c 324 § 12; 1982 c 205 § 14.]

18.11.170 Unauthorized practice—Penalties. Any auctioneer and any auction company that conducts business within this state without a license or after the suspension or revocation of his or her license shall be fined by the department five hundred dollars for the first offense and one thousand dollars for the second or subsequent offense. [1986 c 324 § 13; 1982 c 205 § 15.]

18.11.180 Compensation of nonlicensed person—Penalties. It shall be unlawful for a licensed auctioneer or licensed auction company to pay compensation in money or otherwise to anyone not licensed under this chapter to render any service or to do any act forbidden under this chapter to be rendered or performed except by licensees. The department shall fine any person who violates this section five hundred dollars for the first offense and one thousand dollars for the second or subsequent offense. Furthermore, the violation of this section by any licensee shall be, in the discretion of the department, sufficient cause for license suspension or revocation. [1986 c 324 § 14; 1982 c 205 § 16.]

18.11.190 Actions for compensation for services. No action or suit may be instituted in any court of this state by any person, partnership, association, or corporation not licensed as an auctioneer and as an auction company to recover compensation for an act done or service rendered

which is prohibited under this chapter. [1986 c 324 § 15; 1982 c 205 § 17.]

18.11.200 Director—Authority to adopt rules. The director shall adopt rules for the purpose of carrying out and developing this chapter, including rules governing the conduct of investigations and inspections and the imposition of administrative penalties. [1986 c 324 § 16; 1982 c 205 § 18.]

18.11.205 Director—Authority to impose administrative fines. The director shall impose and collect the administrative fines authorized by this chapter. Any administrative fine imposed under this chapter or the agency rules adopted pursuant to this chapter may be appealed under chapter 34.05 RCW, the administrative procedure act. Assessment of an administrative fine shall not preclude the initiation of any disciplinary, civil, or criminal action for the same or similar violations. [1986 c 324 § 17.]

18.11.210 Newspaper advertisements—Name and license number required—Penalty. All newspaper advertising regarding auctions that is purchased by an auctioneer or an auction company licensed under this chapter shall include the auctioneer's or auction company's name and license number. Any auctioneer or auction company that violates this section is subject to an administrative fine of one hundred dollars per violation. [1986 c 324 § 19; 1984 c 189 § 1.]

18.11.220 Rights of clients. The client of an auctioneer or auction company has a right to (1) an accounting for any money that the auctioneer or auction company receives from the sale of the client's goods, (2) payment of all money due to the client within twenty-one calendar days unless the parties have mutually agreed in writing to another time of payment, and (3) bring an action against the surety bond or other security filed in lieu of the surety bond for any violation of this chapter or the rules adopted pursuant to this chapter. [1987 c 336 § 3; 1986 c 324 § 20.]

18.11.230 Trust account required for client funds. Auction proceeds due to a client that are received by the auctioneer or auction company and not paid to the client within twenty-four hours of the sale shall be deposited no later than the next business day by the auctioneer or auction company in a trust account for clients in a bank, savings and loan association, mutual savings bank, or licensed escrow agent located in the state. The auctioneer or auction company shall draw on the trust account only to pay proceeds to clients, or such other persons who are legally entitled to such proceeds, and to obtain the sums due to the auctioneer or auction company for services as set out in the written contract required under RCW 18.11.130. Funds in the trust account shall not be subject to the debt of the auctioneer or auction company and shall not be used for personal reasons or other business reasons. [1987 c 336 § 4; 1986 c 324 § 21.]

18.11.240 Bidding—Prohibited practices—Penalty. The following requirements shall apply to bidding at auctions:

(1) An auctioneer conducting an auction and an auction company where an auction is being held shall not bid on or offer to buy any goods or real property at the auction unless the auctioneer or the auction company discloses the name of the person on whose behalf the bid or offer is being made.

(2) An auctioneer and an auction company shall not use any method of bidding at an auction that will allow goods or real property to be purchased in an undisclosed manner on behalf of the auctioneer or auction company.

(3) At a public auction conducted or supervised by an auctioneer or auction company, the auctioneer or auction company shall not fictitiously raise any bid, knowingly permit any person to make a fictitious bid, or employ or use another person to act as a bidder or buyer.

(4) All goods or real property offered for sale at an auction shall be subject to a reserve or a confirmation from the owner or consignor unless otherwise indicated by the auctioneer or auction company. Except as provided in this subsection, an auctioneer or auction company shall not use any method of bidding at an auction that allows the auctioneer or auction company to avoid selling any property offered for sale at auction.

(5) A licensee who violates any provision of this section shall be subject to an administrative fine in a sum not exceeding five hundred dollars for each violation. [1986 c 324 § 22.]

18.11.250 Limitation on real estate auctions. Auctioneers and auction companies may call for bids on real estate but only persons licensed under chapter 18.85 RCW may perform activities regulated under that chapter. [1986 c 324 § 23.]

18.11.260 Application of Consumer Protection Act. A violation of this chapter is hereby declared to affect the public interest and to offend public policy. Any violation, act, or practice by an auctioneer or auction company which is unfair or deceptive, shall constitute an unfair or deceptive act or practice in violation of RCW 19.86.020. The remedies and sanctions provided in this section shall not preclude application of other available remedies and sanctions. [1986 c 324 § 25.]

18.11.270 License, certificate, or registration suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the license, certificate, or registration of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license, certificate, or registration shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making pay-

ments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure, certification, or registration during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 4.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.11.901 Short title. This chapter may be known and cited as the "auctioneer registration act." [1986 c 324 § 1.]

18.11.902 Severability—1986 c 324. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1986 c 324 § 27.]

18.11.903 Effective date—1986 c 324. This act shall take effect on July 1, 1986. [1986 c 324 § 29.]

18.11.920 Severability—1982 c 205. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 205 § 20.]

Chapter 18.16 COSMETOLOGISTS, BARBERS, AND MANICURISTS

Sections

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18.16.010 Intent. The legislature recognizes that the practice of cosmetology involves the use of tools and chemicals which may be dangerous when mixed or applied improperly, and therefore finds it necessary in the interest of the public health, safety, and welfare to regulate the practice of cosmetology in this state. [1984 c 208 § 1.]

18.16.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Board" means the cosmetology, barbering, esthetics, and manicuring advisory board.

(2) "Director" means the director of the department of licensing or the director's designee.

(3) "The practice of cosmetology" means the practice of cutting, trimming, styling, shampooing, permanent waving, chemical relaxing or straightening, bleaching, or coloring of the hair of the face, neck, and scalp and manicuring and esthetics.

(4) "Cosmetologist" means a person licensed under this chapter to engage in the practice of cosmetology and who has completed sixteen hundred hours of instruction at a school licensed under this chapter.

(5) "The practice of barbering" means the cutting, trimming, arranging, dressing, curling, waving and shampooing hair of the face, neck and scalp.

(6) "Barber" means a person licensed under this chapter to engage in the practice of barbering.

(7) "Practice of manicuring" means the cleaning, shaping, or polishing of the nails of the hands or feet, and the application and removal of artificial nails.

(8) "Manicurist" means a person licensed under this chapter to engage in the practice of manicuring.

(9) "Practice of esthetics" means skin care of the face, neck, and hands involving hot compresses, massage, or the use of approved electrical appliances or nonabrasive chemical compounds formulated for professional application only, and the temporary removal of superfluous hair by means of appliance on another person.

(10) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

(11) "Instructor-trainee" means a person who is currently licensed in this state as a cosmetologist, barber, manicurist, or esthetician, and is enrolled in an approved instructor-trainee program in a school licensed under this chapter.

(12) "School" means any establishment offering instruction in the practice of cosmetology, or barbering, or esthetics, or manicuring, or instructor-trainee to students and licensed under this chapter.

(13) "Student" means a person sixteen years of age or older who is enrolled in a school licensed under this chapter and receives any phase of cosmetology, barbering, esthetics or manicuring instruction with or without tuition, fee, or cost, and who does not receive any wage or commission.

(14) "Instructor-operator-cosmetology" means a person who gives instruction in the practice of cosmetology and instructor-training in a school and who has the same qualifications as a cosmetologist, has completed at least five hundred hours of instruction in teaching techniques and lesson planning in a school, and has passed an examination

prepared or selected by the board and administered by the director. An applicant who holds a degree in education from an accredited postsecondary institution and who is otherwise qualified shall upon application be licensed as an instructor-operator with a cosmetology endorsement.

(15) "Instructor-operator-barber" means a person who gives instruction in the practice of barbering and instructor training in a school, has the same qualifications as a barber, has completed at least five hundred hours of instruction in teaching techniques and lesson planning in a school, and has passed an examination prepared or selected by the board and administered by the director. An applicant who holds a degree in education from an accredited postsecondary institution and who is otherwise qualified shall upon application be licensed as an instructor-operator with a barber endorsement.

(16) "Instructor-operator-manicure" means a person who gives instruction in the practice of manicuring and instructor training in a school, has the same qualifications as a manicurist, has completed at least five hundred hours of instruction in teaching techniques and lesson planning in a school, and has passed an examination prepared or selected by the board and administered by the director. An applicant who holds a degree in education from an accredited postsecondary institution and who is otherwise qualified shall upon application be licensed as an instructor-operator with a manicurist endorsement.

(17) "Instructor-operator-esthetics" means a person who gives instruction in the practice of esthetics and instructor training in a school, has the same qualifications as an esthetician, has completed at least five hundred hours of instruction in teaching techniques and lesson planning in a school, and has passed an examination prepared or selected by the board and administered by the director. An applicant who holds a degree in education from an accredited postsecondary institution and who is otherwise qualified shall upon application be licensed as an instructor-operator with an esthetics endorsement.

(18) "Vocational student" is a person who in cooperation with any senior high, vocational technical institute, community college, or prep school, attends a cosmetology school and participates in its student course of instruction and has the same rights and duties as a student as defined in this chapter. The person must have academically completed the eleventh grade of high school. Every such vocational student shall receive credit for all creditable hours of the approved course of instruction received in the school of cosmetology upon graduation from high school. Hours shall be credited to a vocational student if the student graduates from an accredited high school or receives a certificate of educational competence.

(19) "Booth renter" means a person who performs cosmetology, barbering, esthetics, or manicuring services where the use of the salon/shop facilities is contingent upon compensation to the owner of the salon/shop facilities and the person receives no compensation or other consideration from the owner for the services performed.

(20) "Person" means any individual, partnership, professional service corporation, joint stock association, joint venture, or any other entity authorized to do business in this state.

(21) "Salon/shop" means any building, structure, or motor home or any part thereof, other than a school, where the commercial practice of cosmetology, barbering, esthetics, or manicuring is conducted.

(22) "Crossover training" means training approved by the director as training hours that may be credited to current licensees for similar training received in another profession licensed under this chapter.

(23) "Approved security" means surety bond, savings assignment, or irrevocable letter of credit.

(24) "Mobile operator" means any person possessing a valid cosmetology, barbering, manicuring, or esthetician's license that provides services in a mobile salon/shop.

(25) "Personal service operator" means any person possessing a valid cosmetology, barbering, manicuring, or esthetician's license that provides services for clients in the client's home, office, or other location that is convenient for the client. [1991 c 324 § 1; 1984 c 208 § 2.]

18.16.030 Director—Powers and duties. In addition to any other duties imposed by law, the director shall have the following powers and duties:

(1) To set all license, examination, and renewal fees in accordance with RCW 43.24.086;

(2) To adopt rules necessary to implement this chapter;

(3) To investigate alleged violations of this chapter and consumer complaints involving the practice of cosmetology, barbering, esthetics, or manicuring, schools offering training in these areas, and salons/shops and booth renters offering these services;

(4) To issue subpoenas, statements of charges, statements of intent, final orders, stipulated agreements, and any other legal remedies necessary to enforce this chapter;

(5) To issue cease and desist letters and letters of warning for infractions of this chapter;

(6) To conduct all disciplinary proceedings, impose sanctions, and assess fines for violations of this chapter or any rules adopted under it;

(7) To prepare and administer or approve the preparation and administration of licensing examinations;

(8) To establish minimum safety and sanitation standards for schools, cosmetologists, barbers, manicurists, estheticians, and salons/shops;

(9) To establish minimum instruction guidelines for the training of students;

(10) To maintain the official department record of applicants and licensees;

(11) To delegate in writing to a designee the authority to issue subpoenas, statements of charges, and any other documents necessary to enforce this chapter;

(12) To establish by rule the procedures for an appeal of an examination failure;

(13) To employ such administrative, investigative, and clerical staff as needed to implement this chapter;

(14) To set license expiration dates and renewal periods for all licenses consistent with this chapter; and

(15) To make information available to the department of revenue to assist in collecting taxes from persons required to be licensed under this chapter. [1991 c 324 § 2; 1984 c 208 § 7.]

18.16.050 Advisory board—Members—Compensation. (1) There is created a state cosmetology, barbering, esthetics, and manicuring advisory board consisting of seven members appointed by the director. These seven members of the board shall include a representative of a private cosmetology school and a representative of a public vocational technical school involved in cosmetology training, with the balance made up of currently practicing licensees who have been engaged in the practice of manicuring, esthetics, barbering, or cosmetology for at least three years. One member of the board shall be a consumer who is unaffiliated with the cosmetology, barbering, esthetics, or manicuring industry. The term of office for all board members serving as of July 1, 1995, expires June 30, 1995. On June 30, 1995, the director shall appoint seven new members to the board. These new members shall serve a term of two years, at the conclusion of which the board shall cease to exist. Any members serving on the advisory board as of July 1, 1995, are eligible to be reappointed. Any board member may be removed for just cause. The director may appoint a new member to fill any vacancy on the board for the remainder of the unexpired term.

(2) The board appointed on June 30, 1995, together with the director or the director's designee, shall conduct a thorough review of educational requirements, licensing requirements, and enforcement and health standards for persons engaged in cosmetology, barbering, esthetics, or manicuring and shall prepare a report to be delivered to the governor, the director, and the chairpersons of the governmental operations committees of the house of representatives and the senate. The report must summarize their findings and make recommendations, including, if appropriate, recommendations for legislation reforming and restructuring the regulation of cosmetology, barbering, esthetics, and manicuring.

(3) Board members shall be entitled to compensation pursuant to RCW 43.03.240 for each day spent conducting official business and to reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. [1995 c 269 § 402; 1991 c 324 § 3; 1984 c 208 § 9.]

Findings—1995 c 269: "The legislature finds that the economic opportunities for cosmetologists, barbers, estheticians, and manicurists have deteriorated in this state as a result of the lack of skilled practitioners, inadequate licensing controls, and inadequate enforcement of health standards. To increase the opportunities for individuals to earn viable incomes in these professions and to protect the general health of the public, the state cosmetology, barbering, esthetics, and manicuring advisory board should be reconstituted and given a new charge to develop appropriate responses to this situation, including legislative proposals." [1995 c 269 § 401.]

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

18.16.060 Licenses required—Penalty—Exemptions.

(1) The director shall impose a fine of one thousand dollars on any person who does any of the following without first obtaining the license required by this chapter:

- (a) Except as provided in subsection (2) of this section, commercial practice of cosmetology, barbering, esthetics, manicuring, or instructing;
- (b) Instructs in a school;
- (c) Operates a school; or

(d) Operates a salon/shop. Each booth renter shall be considered to be operating an independent salon/shop and shall obtain a separate salon/shop license.

(2) A person licensed as a cosmetology instructor-operator may engage in the commercial practice of cosmetology without maintaining a cosmetologist license. A person licensed as a barbering instructor-operator may engage in the commercial practice of barbering without maintaining a barber license. A person licensed as a manicuring instructor-operator may engage in the commercial practice of manicuring without maintaining a manicurist license. A person licensed as an esthetician instructor-operator may engage in the commercial practice of esthetics without maintaining an esthetician license. [1991 c 324 § 4; 1984 c 208 § 3.]

18.16.070 Licensing—Persons to whom chapter inapplicable. This chapter shall not apply to persons licensed under other laws of this state who are performing services within their authorized scope of practice and shall not be construed to require a license for students enrolled in a school. [1984 c 208 § 4.]

18.16.080 Licensing—Other persons to whom chapter inapplicable. Nothing in this chapter prohibits any person authorized under the laws of this state from performing any service for which the person may be licensed, nor prohibits any person from performing services as an electrologist if that person has been otherwise certified, registered, or trained as an electrologist.

This chapter does not apply to persons employed in the care or treatment of patients in hospitals or employed in the care of residents of nursing homes and similar residential care facilities. [1984 c 208 § 19.]

18.16.090 Examinations. Examinations for licensure under this chapter shall be conducted monthly at such times and places as the director determines appropriate. Examinations shall consist of tests designed to reasonably measure the applicant's knowledge of safe and sanitary practice. The director shall establish by rule the minimum passing score for all examinations and the requirements for reexamination of applicants who fail the examination or examinations.

The director shall take steps to ensure that after completion of the required course, applicants may promptly take the examination and receive the results of the examination. [1991 c 324 § 5; 1984 c 208 § 10.]

18.16.100 Issuance of licenses—Requirements. (1) Upon payment of the proper fee, the director shall issue the appropriate license to any person who:

- (a) Is at least seventeen years of age or older;
- (b) Has completed and graduated from a course approved by the director of sixteen hundred hours of training in cosmetology, one thousand hours of training in barbering, five hundred hours of training in manicuring, five hundred hours of training in esthetics, and/or five hundred hours of training as an instructor-trainee; and
- (c) Has received a passing grade on the appropriate licensing examination approved or administered by the director.

(2) A person currently licensed under this chapter may qualify for examination and licensure, after the required examination is passed, in another category if he or she has completed the crossover training course approved by the director.

(3) Upon payment of the proper fee, the director shall issue a salon/shop license to the operator of a salon/shop if the salon/shop meets the other requirements of this chapter as demonstrated by information submitted by the operator.

(4) The director may consult with the state board of health and the department of labor and industries in establishing training and examination requirements. [1991 c 324 § 6; 1984 c 208 § 5.]

18.16.110 Issuance of licenses—Renewals—Duplicates. (1) The director shall issue the appropriate license to any applicant who meets the requirements as outlined in this chapter. Failure to renew a license before its expiration date subjects the holder to a penalty fee and payment of each year's renewal fee, at the current rate, up to a maximum of four years as established by the director in accordance with RCW 43.24.086. A person whose license has not been renewed for four years shall be required to submit an application, fee, meet current licensing requirements, and pass the applicable examination or examinations before the license may be reinstated: PROVIDED, That the director may waive this requirement for good cause shown. To renew a salon/shop license, the licensee shall provide proof of insurance as required by RCW 18.16.175(1)(h).

(2) Upon request and payment of an additional fee to be established by the director, the director shall issue a duplicate license to an applicant. [1991 c 324 § 7; 1984 c 208 § 12.]

18.16.130 Issuance of licenses—Persons licensed in other jurisdictions. Any person who is properly licensed in any state, territory, or possession of the United States, or foreign country shall be eligible for examination if the applicant submits the approved application and fee and provides proof to the director that he or she is currently licensed in good standing as a cosmetologist, barber, manicurist, esthetician, instructor, or the equivalent in that jurisdiction. Upon passage of the required examinations the appropriate license will be issued. [1991 c 324 § 10; 1984 c 208 § 11.]

18.16.140 School licenses—Application—Approved security—Issuance—Changes in application information—Changes in controlling interest. (1) Any person wishing to operate a school shall, before opening such a school, file with the director for approval a license application and fee containing the following information:

(a) The names and addresses of all owners, managers, and instructors;

(b) A copy of the school's curriculum satisfying the training guidelines established by the director;

(c) A sample copy of the school's catalog, brochure, enrollment contract, and cancellation and refund policies that will be used or distributed by the school to students and the public;

(d) A description and floor plan of the school's physical equipment and facilities;

(e) A surety bond, irrevocable letter of credit, or savings assignment in an amount not less than ten thousand dollars, or ten percent of the annual gross tuition collected by the school, whichever is greater. The approved security shall not exceed fifty thousand dollars and shall run to the state of Washington for the protection of unearned prepaid student tuition. The school shall attest to its gross tuition at least annually on forms provided by the department. When a new school license is being applied for, the applicant will estimate its annual gross tuition to establish a bond amount. This subsection shall not apply to community colleges and vocational technical schools.

Upon approval of the application and documents, the director shall issue a license to operate a school with the appropriate certification or certifications.

(2) Changes to the information provided by schools shall be submitted to the department within fifteen days of the implementation date.

(3) A change involving the controlling interest of the school requires a new license application and fee. The new application shall include all required documentation, proof of ownership change, and be approved prior to a license being issued. [1991 c 324 § 11; 1987 c 445 § 1; 1984 c 208 § 6.]

18.16.150 Schools—Compliance with chapter. From time to time as deemed necessary by the director, schools may be audited for compliance with this chapter. If the director determines that a licensed school is not maintaining the standards required according to this chapter, written notice thereof shall be given to the school. A school which fails to correct these conditions to the satisfaction of the director within a reasonable time shall be subject to penalties imposed under RCW 18.16.210. [1991 c 324 § 12; 1984 c 208 § 8.]

18.16.160 Schools—Claims against—Procedure. In addition to any other legal remedy, any student or instructor-trainee having a claim against a school may bring suit upon the approved security required in RCW 18.16.140(1)(e) in the superior or district court of Thurston county or the county in which the educational services were offered by the school. Action upon the approved security shall be commenced by filing the complaint with the clerk of the appropriate superior or district court within one year from the date of the cancellation of the approved security: PROVIDED, That no action shall be maintained upon the approved security for any claim which has been barred by any nonclaim statute or statute of limitations of this state. Service of process in an action upon the approved security shall be exclusively by service upon the director. Two copies of the complaint shall be served by registered or certified mail upon the director at the time the suit is started. Such service shall constitute service on the approved security and the school. The director shall transmit the complaint or a copy thereof to the school at the address listed in the director's records and to the surety within forty-eight hours after it has been received. The approved security shall not be liable in an aggregate amount in excess of the amount named in the approved security. In any action on an

approved security, the prevailing party is entitled to reasonable attorney's fees and costs.

The director shall maintain a record, available for public inspection, of all suits commenced under this chapter upon approved security. [1991 c 324 § 13; 1984 c 208 § 16.]

18.16.165 Licenses issued, students enrolled before January 1, 1992—Curricula updates. (1) All licenses issued prior to January 1, 1992, shall remain in effect until renewal or January 1, 1993, whichever is earlier.

(a) On or before renewal of each individual's license the licensee will be allowed to designate the license to be issued. A licensed cosmetologist may request licenses in cosmetology, barbering, manicuring, and esthetics. A manicurist may request licenses in manicuring and esthetics. An instructor may request endorsements in cosmetology, barbering, manicuring, and esthetics.

(b) A renewal fee is required for each license type requested. A licensed cosmetologist requesting all four licenses shall pay four renewal fees. An instructor shall be issued one license with endorsements for the multiple areas that they teach with only one renewal fee required.

(c) After January 1, 1993, any licensee wishing to obtain additional licenses or endorsements to their licenses shall meet the training and examination requirements of this chapter.

(2) Students currently enrolled in a licensed school in an approved course as of January 1, 1992, may apply for the examination or examinations in any type or any combination of types of licenses when they complete the appropriate course.

(3) Schools must update their curricula to comply with this chapter by July 1, 1992. No students may be enrolled in the programs under the previous law if they cannot complete their training prior to January 1, 1993, to allow them to apply for examination under subsection (2) of this section. [1991 c 324 § 8.]

18.16.170 Expiration of licenses. (1) Subject to subsection (2) of this section, licenses issued under this chapter expire as follows:

(a) A salon/shop license expires one year from issuance or when the insurance required by RCW 18.16.175(1)(h) expires, whichever occurs first;

(b) A school license expires one year from issuance; and

(c) Cosmetologist, barber, manicurist, and instructor licenses expire two years from issuance.

(2) The director may provide for expiration dates other than those set forth in subsection (1) of this section for the purpose of establishing staggered renewal periods. [1991 c 324 § 9.]

18.16.175 Salon/shop requirements—Complaints—Registration—Use of motor homes. (1) A salon/shop shall meet the following minimum requirements:

(a) Maintain an outside entrance separate from any rooms used for sleeping or residential purposes;

(b) Provide and maintain for the use of its customers adequate toilet facilities located within or adjacent to the salon/shop;

(c) Be operated under the direct supervision of a licensed cosmetologist except that a salon/shop that is limited to barbering may be directly supervised by a barber, a salon/shop that is limited to manicuring may be directly supervised by a manicurist, and a salon/shop that is limited to esthetics may be directly supervised by an esthetician;

(d) Any room used wholly or in part as a salon/shop shall not be used for residential purposes, except that toilet facilities may be used jointly for residential and business purposes;

(e) Meet the zoning requirements of the county, city, or town, as appropriate;

(f) Provide for safe storage and labeling of chemicals used in the practice of cosmetology;

(g) Meet all applicable local and state fire codes;

(h) Provide proof that the salon/shop is covered by a public liability insurance policy in an amount not less than one hundred thousand dollars for combined bodily injury and property damage liability; and

(i) Other requirements which the director determines are necessary for safety and sanitation of salons/shops. The director may consult with the state board of health and the department of labor and industries in establishing minimum salon/shop safety requirements.

(2) A salon/shop shall post the notice to customers described in RCW 18.16.180.

(3) Upon receipt of a written complaint that a salon/shop has violated any provisions of this chapter or the rules adopted under this chapter, the director shall inspect the salon/shop. If the director determines that any salon/shop is not in compliance with this chapter, the director shall send written notice to the salon/shop. A salon/shop which fails to correct the conditions to the satisfaction of the director within a reasonable time shall, upon due notice, be subject to the penalties imposed by the director under RCW 18.16.210. The director may enter any salon/shop during business hours for the purpose of inspection. The director may contract with health authorities of local governments to conduct the inspections under this subsection.

(4) A salon/shop, including a salon/shop operated by a booth renter, shall obtain a certificate of registration from the department of revenue.

(5) This section does not prohibit the use of motor homes as mobile salons/shops if the motor home meets the health and safety standards of this section. [1991 c 324 § 15.]

18.16.180 Salon/shop—Notice required. The director shall prepare and provide to all licensed salons/shops a notice to consumers. At a minimum, the notice shall state that cosmetology, barber, esthetics, and manicure salons/shops are required to be licensed, that salons/shops are required to maintain minimum safety and sanitation standards, that customer complaints regarding salons/shops may be reported to the department, and a telephone number and address where complaints may be made. [1991 c 324 § 16.]

18.16.190 Location of practice—Penalty—Placebound clients. It is a violation of this chapter for any person to engage in the commercial practice of cosmetology, barbering, esthetics, or manicuring, except in a licensed

salon/shop or the home, office, or other location selected by the client for obtaining the services of a personal service operator, or with the appropriate individual license when delivering services to placebound clients. Placebound clients are defined as persons who are ill, disabled, or otherwise unable to travel to a salon/shop. [1991 c 324 § 20.]

18.16.200 Disciplinary action—Grounds. Any applicant or licensee under this chapter may be subject to disciplinary action by the director if the licensee or applicant:

- (1) Has been found guilty of a crime related to the practice of cosmetology, barbering, esthetics, manicuring, or instructing;
- (2) Has made a material misstatement or omission in connection with an original application or renewal;
- (3) Has engaged in false or misleading advertising;
- (4) Has performed services in an unsafe or unsanitary manner;
- (5) Has aided and abetted unlicensed activity;
- (6) Has engaged in the commercial practice of cosmetology, barbering, manicuring, esthetics, or instructed in or operated a school without first obtaining the license required by this chapter;
- (7) Has engaged in the commercial practice of cosmetology in a school;
- (8) Has not provided a safe, sanitary, and good moral environment for students and public;
- (9) Has not provided records as required by this chapter;
- (10) Has not cooperated with the department in supplying records or assisting in an investigation or disciplinary procedure; or
- (11) Has violated any provision of this chapter or any rule adopted under it. [1991 c 324 § 14; 1984 c 208 § 13.]

18.16.210 Violations—Penalties. If, following a hearing, the director finds that an applicant or licensee has violated any provision of this chapter or any rule adopted under it, the director may impose one or more of the following penalties:

- (1) Denial of a license or renewal;
- (2) Revocation or suspension of a license;
- (3) A fine of not more than five hundred dollars per violation;
- (4) Issuance of a reprimand or letter of censure;
- (5) Placement of the licensee on probation for a fixed period of time;
- (6) Restriction of the licensee's authorized scope of practice;
- (7) Requiring the licensee to make restitution or a refund as determined by the director to any individual injured by the violation; or
- (8) Requiring the licensee to obtain additional training or instruction. [1984 c 208 § 14.]

18.16.220 Appeal—Procedure. Any person aggrieved by the refusal of the director to issue any license provided for in this chapter, or to renew the same, or by the revocation or suspension of any license issued under this chapter or by the application of any penalty under RCW 18.16.210, shall have the right to appeal the decision of the director to

the superior court of the county in which the person maintains his or her place of business. Such appeal shall be filed within thirty days of the director's decision. [1984 c 208 § 15.]

18.16.230 License suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the license of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 5.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.16.900 Short title—1984 c 208. This act shall be known and may be cited as the "Washington cosmetologists, barbers, and manicurists act". [1984 c 208 § 20.]

18.16.905 Severability—1984 c 208. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 208 § 22.]

18.16.907 Effective date—1984 c 208. This act shall take effect July 1, 1984. [1984 c 208 § 23.]

18.16.910 Severability—1991 c 324. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 324 § 22.]

Chapter 18.19 COUNSELORS

Sections

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18.19.010 Legislative findings—Insurance benefits not mandated. The qualifications and practices of counselors in this state are virtually unknown to potential clients. Beyond the regulated practices of psychiatry and psychology, there are a considerable variety of disciplines, theories, and techniques employed by other counselors under a number of differing titles. The legislature recognizes the right of all counselors to practice their skills freely, consistent with the requirements of the public health and safety, as well as the right of individuals to choose which counselors best suit their needs and purposes. This chapter shall not be construed to require or prohibit that individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person registered or certified under this chapter. [1987 c 512 § 1.]

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

(1) "Certified marriage and family therapist" means a person certified to practice marriage and family therapy pursuant to RCW 18.19.130.

(2) "Certified mental health counselor" means a person certified to practice mental health counseling pursuant to RCW 18.19.120.

(3) "Certified social worker" means a person certified to practice social work pursuant to RCW 18.19.110.

(4) "Client" means an individual who receives or participates in counseling or group counseling.

(5) "Counseling" means employing any therapeutic techniques, including but not limited to social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee that offer, assist or attempt to assist an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential. For the purposes of this chapter, nothing may be construed to imply that the practice of hypnotherapy is necessarily limited to counseling.

(6) "Counselor" means an individual, practitioner, therapist, or analyst who engages in the practice of counseling to the public for a fee, including for the purposes of this chapter, hypnotherapists.

(7) "Department" means the department of health.

(8) "Secretary" means the secretary of the department or the secretary's designee. [1991 c 3 § 19; 1987 c 512 § 3.]

18.19.030 Registration or certification required. No person may, for a fee or as a part of his or her position as an employee of a state agency, practice counseling without being registered to practice by the department under this chapter unless exempt under RCW 18.19.040. No person may represent himself or herself as a certified social worker, certified mental health counselor, or certified marriage and family therapist without being so certified by the department under this chapter. [1991 c 3 § 20; 1987 c 512 § 2.]

18.19.040 Exemptions. Nothing in this chapter may be construed to prohibit or restrict:

(1) The practice of a profession by a person who is either registered, certified, licensed, or similarly regulated under the laws of this state and who is performing services within the person's authorized scope of practice, including any attorney admitted to practice law in this state when providing counseling incidental to and in the course of providing legal counsel;

(2) The practice of counseling by an employee or trainee of any federal agency, or the practice of counseling by a student of a college or university, if the employee, trainee, or student is practicing solely under the supervision of and accountable to the agency, college, or university, through which he or she performs such functions as part of his or her position for no additional fee other than ordinary compensation;

(3) The practice of counseling by a person without a mandatory charge;

(4) The practice of counseling by persons offering services for public and private nonprofit organizations or charities not primarily engaged in counseling for a fee when approved by the organizations or agencies for whom they render their services;

(5) Evaluation, consultation, planning, policy-making, research, or related services conducted by social scientists for private corporations or public agencies;

(6) The practice of counseling by a person under the auspices of a religious denomination, church, or organization, or the practice of religion itself;

(7) Counselors whose residency is not Washington state from providing up to ten days per quarter of training or workshops in the state, as long as they don't hold themselves out to be registered or certified in Washington state. [1987 c 512 § 4.]

18.19.050 Powers of secretary—Application of uniform disciplinary act—Public education program. (1) In addition to any other authority provided by law, the secretary has the following authority:

(a) To adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;

(b) To set all certification, registration, and renewal fees in accordance with RCW 43.70.250 and to collect and deposit all such fees in the health professions account established under RCW 43.70.320;

(c) To establish forms and procedures necessary to administer this chapter;

(d) To hire clerical, administrative, and investigative staff as needed to implement this chapter;

(e) To issue a registration to any applicant who has met the requirements for registration;

(f) To set educational, ethical, and professional standards of practice for certification;

(g) To prepare and administer or cause to be prepared and administered an examination for all qualified applicants for certification;

(h) To establish criteria for evaluating the ability and qualifications of persons applying for a certificate, including standards for passing the examination and standards of qualification for certification to practice;

(i) To evaluate and designate those schools from which graduation will be accepted as proof of an applicant's eligibility to receive a certificate and to establish standards and procedures for accepting alternative training in lieu of such graduation;

(j) To issue a certificate to any applicant who has met the education, training, and conduct requirements for certification;

(k) To set competence requirements for maintaining certification; and

(l) To develop a dictionary of recognized professions and occupations providing counseling services to the public included under this chapter.

(2) The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of certifications and registrations and the discipline of certified practitioners and registrants under this chapter. The secretary shall be the disciplining authority under this chapter. The absence of educational or training requirements for counselors registered under this chapter or the counselor's use of nontraditional nonabusive therapeutic techniques shall not, in and of itself, give the secretary authority to unilaterally determine the training and competence or to define or restrict the scope of practice of such individuals.

(3) The department shall publish and disseminate information in order to educate the public about the responsibilities of counselors and the rights and responsibilities of clients established under this chapter. Solely for the purposes of administering this education requirement, the secretary shall assess an additional fee for each registration and certification application and renewal, equal to five percent of the fee. The revenue collected from the assessment fee may be appropriated by the legislature for the department's use in educating consumers pursuant to this section. The authority to charge the assessment fee shall terminate on June 30, 1994. [1991 c 3 § 21; 1987 c 512 § 5.]

18.19.060 Information disclosure to clients. Persons registered or certified under this chapter shall provide clients at the commencement of any program of treatment with accurate disclosure information concerning their practice, in accordance with guidelines developed by the department, that will inform clients of the purposes of and resources available under this chapter, including the right of clients to refuse treatment, the responsibility of clients for choosing the provider and treatment modality which best suits their needs, and the extent of confidentiality provided by this chapter. The disclosure information provided by the counselor, the

receipt of which shall be acknowledged in writing by the counselor and client, shall include any relevant education and training, the therapeutic orientation of the practice, the proposed course of treatment where known, any financial requirements, and such other information as the department may require by rule. The disclosure information shall also include a statement that registration of an individual under this chapter does not include a recognition of any practice standards, nor necessarily imply the effectiveness of any treatment. [1987 c 512 § 6.]

18.19.070 Council established—Membership—Qualifications—Removal—Vacancy—Duties and powers—Compensation. (1) The Washington state mental health quality assurance council is created, consisting of seven members appointed by the secretary. All appointments shall be for a term of four years. No person may serve as a member of the council for more than two consecutive full terms.

Voting members of the council must include one social worker certified under RCW 18.19.110, one mental health counselor certified under RCW 18.19.120, one marriage and family therapist certified under RCW 18.19.130, one counselor registered under RCW 18.19.090, one hypnotherapist registered under RCW 18.19.090, and two public members. Each member of the council must be a citizen of the United States and a resident of this state. Public members of the council may not be a member of any other health care licensing board or commission, or have a fiduciary obligation to a facility rendering health services regulated by the council, or have a material or financial interest in the rendering of health services regulated by the council.

The secretary may appoint the initial members of the council to staggered terms of from one to four years. Thereafter, all members shall be appointed to full four-year terms. Members of the council hold office until their successors are appointed.

The secretary may remove any member of the council for cause as specified by rule. In the case of a vacancy, the secretary shall appoint a person to serve for the remainder of the unexpired term.

(2) The council shall meet at the times and places designated by the secretary and shall hold meetings during the year as necessary to provide advice to the secretary.

Each member of the council shall be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060. In addition, members of the council shall be compensated in accordance with RCW 43.03.240 when engaged in the authorized business of the council. The members of the council are immune from suit in an action, civil or criminal, based on their official acts performed in good faith as members of the council. [1996 c 191 § 4; 1994 sp.s. c 9 § 501; 1991 c 3 § 22; 1987 c 512 § 7.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.19.080 Official records. The secretary shall keep an official record of all proceedings, a part of which record shall consist of a register of all applicants for registration or

certification under this chapter, with the result of each application. [1991 c 3 § 23; 1987 c 512 § 8.]

18.19.090 Registration of counselors and hypnotherapists. The secretary shall issue a registration to any applicant who submits, on forms provided by the secretary, the applicant's name, address, occupational title, name and location of business, and other information as determined by the secretary, including information necessary to determine whether there are grounds for denial of registration or issuance of a conditional registration under this chapter or chapter 18.130 RCW. Applicants for registration shall register as counselors or may register as hypnotherapists if employing hypnosis as a modality. Applicants shall, in addition, provide in their titles a description of their therapeutic orientation, discipline, theory, or technique. Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250, which shall accompany the application. [1991 c 3 § 24; 1987 c 512 § 9.]

18.19.100 Registration renewal. The secretary shall establish administrative procedures, administrative requirements, and fees for renewal of registrations as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 5; 1991 c 3 § 25; 1987 c 512 § 10.]

18.19.110 Certification of social workers. (1) The department shall issue a certified social worker certificate to any applicant meeting the following requirements:

(a) A minimum of a master's degree from an accredited graduate school of social work approved by the secretary;

(b) A minimum of two years of post-master's degree social work practice under the supervision of a social worker certified under this chapter or a person deemed acceptable to the secretary, such experience consisting of at least thirty hours per week for two years or at least twenty hours per week for three years; and

(c) Successful completion of the examination in RCW 18.19.150, unless the applicant qualified under an exemption pursuant to subsection (2) of this section or RCW 18.19.160.

Applicants shall be subject to the grounds for denial or issuance of a conditional certificate in chapter 18.130 RCW.

(2) Except as provided in RCW 18.19.160, an applicant is exempt from the examination provisions of this chapter under the following conditions if application for exemption is made within twelve months after July 26, 1987:

(a) The applicant shall establish to the satisfaction of the secretary that he or she has been engaged in the practice of social work as defined in this chapter for two of the previous four years; and

(b) The applicant has the following academic qualifications: (i) A doctorate or master's degree in social work from an accredited graduate school of social work or comparable and equivalent educational attainment as determined by the secretary in consultation with the advisory committee; and (ii) two years of postgraduate social work experience under the supervision of a social worker who qualifies for certification under this chapter or under the supervision of any other professional deemed appropriate by the secretary.

(3) Certified social work practice is that aspect of counseling that involves the professional application of social work values, principles, and methods by individuals trained in accredited social work graduate programs and requires knowledge of human development and behavior, knowledge of social systems and social resources, an adherence to the social work code of ethics, and knowledge of and sensitivity to ethnic minority populations. It includes, but is not limited to, evaluation, assessment, treatment of psychopathology, consultation, psychotherapy and counseling, prevention and educational services, administration, policy-making, research, and education directed toward client services. [1991 c 3 § 26; 1987 c 512 § 12.]

18.19.120 Certification of mental health counselors—Practice defined—Continuing education. (1) The department shall issue a certified mental health counselor certificate to any applicant meeting the following requirements:

(a) A master's or doctoral degree in mental health counseling or a behavioral science master's or doctoral degree in a related field with the program equivalency as determined by rule by the department based on nationally recognized standards; and

(b) Two years of postgraduate practice of counseling under the supervision of a qualified mental health counselor-supervisor or other mental health professional deemed appropriate by the secretary that may be accumulated concurrently with completion of the required program equivalency; and

(c) Qualification by an examination, submission of all necessary documents, and payment of required fees.

(2) Certified mental health counseling practice is that aspect of counseling that involves the provision of professional mental health counseling services to individuals, couples, and families, singly or in groups, whether the services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise. "Certified mental health counseling" means the application of principles of human development, learning theory, group dynamics, and etiology of mental illness and dysfunctional behavior to individuals, couples, families, groups, and organizations, for the purpose of treating mental disorders and promoting optimal mental health and functionality. Certified mental health counseling also includes, but is not limited to, the assessment, diagnosis, and treatment of mental and emotional disorders, educational techniques developed to prevent such disorders, as well as the application of a wellness model of mental health.

(3) Nothing in this definition shall be construed as permitting the administration or prescribing of drugs or in any way infringing upon the practice of medicine and surgery as defined in chapter 18.71 RCW.

(4) The secretary may establish rules governing mandatory continuing education requirements for a certified mental health counselor applying for renewal. [1995 c 183 § 1; 1991 c 3 § 27; 1987 c 512 § 13.]

18.19.130 Certification of marriage and family therapists—Practice defined. (1) The department shall

issue a certified marriage and family therapist certificate to any applicant meeting the following requirements:

(a) A master's or doctoral degree in marriage and family therapy, or a behavioral science master's or doctoral degree and the program equivalency as determined by rule by the department based on nationally recognized standards;

(b)(i) After receiving a master's or doctoral degree in marriage and family therapy, two years of postgraduate practice of marriage and family therapy, under the supervision of a qualified marriage and family therapy supervisor;

(ii) After receiving a master's or doctoral degree in a behavioral science, two years of postgraduate practice in marriage and family therapy under supervision of a qualified marriage and family supervisor, which may be accumulated concurrently with completion of the program equivalency as adopted by the department by rule; and

(c) A passing score on a written examination that includes a section on Washington's statutes and rules, including provisions of the uniform disciplinary act, approved by the department for certified marriage and family therapists.

(2) The practice of marriage and family therapy is that aspect of counseling that involves the rendering of professional marriage and family therapy services to individuals, couples, and families, singly or in groups, whether such services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise. "Marriage and family therapy" means the diagnosis and treatment of mental and emotional disorders, whether cognitive, affective, or behavioral, within the context of marriage and family systems. Marriage and family therapy involves the professional application of family systems theories and techniques in the delivery of services to individuals, couples, and families for the purpose of treating such disorders. [1993 c 259 § 1; 1991 c 3 § 28; 1987 c 512 § 14.]

18.19.140 Applications for certification. Applications for certification shall be submitted on forms provided by the secretary. The secretary may require any information and documentation which reasonably relates to the need to determine whether the applicant meets the criteria for certification provided for in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250, which shall accompany the application. The department shall not knowingly permit access to or use of its mailing list of certificate holders for commercial purposes. [1991 c 3 § 29; 1987 c 512 § 17.]

18.19.150 Examination of applicants for certification. (1) The date and location of the examinations required under this chapter shall be established by the secretary. Applicants who have been found by the secretary to meet the other requirements for certification will be scheduled for the next examination following the filing of the application. However, the applicant will not be scheduled for any examination taking place sooner than sixty days after the application is filed.

(2) The secretary shall examine each applicant, by means determined most effective, on subjects appropriate to

the scope of practice. The examinations shall be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(3) The examination papers, all grading thereon, and the grading of any practical work shall be preserved for a period of not less than one year after the secretary has published the results. All examinations shall be conducted by the secretary by means of fair and wholly impartial methods.

(4) Any applicant who fails to make the required grade in the first examination is entitled to take up to three subsequent examinations as the applicant desires upon the prepayment of a fee determined by the secretary as provided in RCW 43.70.250 for each subsequent examination. Upon failure of four examinations, the secretary may invalidate the original application and require remedial education prior to admittance to future examinations.

(5) The secretary may approve an examination prepared or administered, or both, by a private testing agency or association of licensing agencies for use by an applicant in meeting the licensing requirement. [1991 c 3 § 30; 1987 c 512 § 16.]

18.19.160 Certification of persons credentialed out-of-state—Temporary retirement of certified persons. (1) Upon receiving a written application, evidence of qualification and the required fee, the department shall issue a certificate for certification without examination to an applicant who is currently credentialed under the laws of another jurisdiction, if the requirements of the other jurisdiction are substantially equal to the requirements of this chapter.

(2) A person certified under this chapter who is or desires to be temporarily retired from practice in this state shall send written notice to the secretary. Upon receipt of the notice, the person shall be placed upon the nonpracticing list. While on the list, the person is not required to pay the renewal fees and shall not engage in any such practice. In order to resume practice, application for renewal shall be made in the ordinary course with the renewal fee for the current period. Persons in a nonpracticing status for a period exceeding five years shall provide evidence of current knowledge or skill, by examination, as the secretary may require. [1991 c 3 § 31; 1987 c 512 § 19.]

18.19.170 Renewal of certificates. A certificate issued under this chapter shall be renewed as provided in RCW 43.70.250 and 43.70.280. The secretary may establish continuing competence requirements. [1996 c 191 § 6; 1991 c 3 § 32; 1987 c 512 § 15.]

18.19.180 Confidential communications. An individual registered or certified under this chapter shall not disclose the written acknowledgment of the disclosure statement pursuant to RCW 18.19.060 nor any information acquired from persons consulting the individual in a professional capacity when that information was necessary to enable the individual to render professional services to those persons except:

(1) With the written consent of that person or, in the case of death or disability, the person's personal representative, other person authorized to sue, or the beneficiary of an

insurance policy on the person's life, health, or physical condition;

(2) That a person registered or certified under this chapter is not required to treat as confidential a communication that reveals the contemplation or commission of a crime or harmful act;

(3) If the person is a minor, and the information acquired by the person registered or certified under this chapter indicates that the minor was the victim or subject of a crime, the person registered or certified may testify fully upon any examination, trial, or other proceeding in which the commission of the crime is the subject of the inquiry;

(4) If the person waives the privilege by bringing charges against the person registered or certified under this chapter;

(5) In response to a subpoena from a court of law or the secretary. The secretary may subpoena only records related to a complaint or report under chapter 18.130 RCW; or

(6) As required under chapter 26.44 RCW. [1991 c 3 § 33; 1987 c 512 § 11.]

18.19.190 Other professions not affected. This chapter shall not be construed as permitting the administration or prescription of drugs or in any way infringing upon the practice of medicine and surgery as defined in chapter 18.71 RCW, or in any way infringing upon the practice of psychology as defined in chapter 18.83 RCW, or restricting the scope of the practice of counseling for those registered or certified under this chapter. [1987 c 512 § 18.]

18.19.900 Short title. This chapter shall be known as the omnibus credentialing act for counselors. [1987 c 512 § 20.]

18.19.901 Severability—1987 c 512. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 512 § 28.]

Chapter 18.20 BOARDING HOMES

Sections

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18.20.200	License suspension—Nonpayment or default on educational loan or scholarship.
18.20.900	Severability—1957 c 253.

18.20.010 Purpose. The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of boarding homes, which, in the light of advancing knowledge, will promote safe and adequate care of the individuals therein. It is further the intent of the legislature that boarding homes be available to meet the needs of those for whom they care by recognizing the capabilities of individuals to direct their self-medication or to use supervised self-medication techniques when ordered and approved by a physician licensed under chapter 18.57 or 18.71 RCW or a *podiatrist licensed under chapter 18.22 RCW. [1985 c 297 § 1; 1957 c 253 § 1.]

***Reviser's note:** The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

18.20.020 Definitions. As used in this chapter:

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

(2) "Boarding home" means any home or other institution, however named, which is advertised, announced or maintained for the express or implied purpose of providing board and domiciliary care to three or more aged persons not related by blood or marriage to the operator. It shall not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the department of housing and urban development.

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

(4) "Secretary" means the secretary of health.

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

(6) "Authorized department" means any city, county, city-county health department or health district authorized by the secretary of health to carry out the provisions of this chapter. [1991 c 3 § 34; 1989 c 329 § 1; 1985 c 213 § 4; 1979 c 141 § 25; 1957 c 253 § 2.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

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

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

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

18.20.050 Licenses—Issuance—Renewal—Provisional licenses—Fees—Display. Upon receipt of an application for license, if the applicant and the boarding home facilities meet the requirements established under this chapter, the department or the department and the authorized health department jointly, shall issue a license. If there is a failure to comply with the provisions of this chapter or the standards, rules, and regulations promulgated pursuant thereto, the department, or the department and authorized health department, may in its discretion issue to an applicant for a license, or for the renewal of a license, a provisional license which will permit the operation of the boarding home for a period to be determined by the department, or the department and authorized health department, but not to exceed twelve months, which provisional license shall not be subject to renewal. At the time of the application for or renewal of a license or provisional license the licensee shall pay a license fee as established by the department under RCW 43.20B.110. When the license or provisional license is issued jointly by the department and authorized health department, the license fee shall be paid to the authorized health department. All licenses issued under the provisions of this chapter shall expire on a date to be set by the department, but no license issued pursuant to this chapter shall exceed twelve months in duration: PROVIDED, That when the annual license renewal date of a previously licensed boarding home is set by the department on a date less than twelve months prior to the expiration date of a license in effect at the time of reissuance, the license fee shall be prorated on a monthly basis and a credit be allowed at the first renewal of a license for any period of one month or more covered by the previous license. All applications for renewal of license shall be made not later than thirty days prior to the date of expiration of the license. Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises. [1987 c 75 § 3; 1982 c 201 § 4; 1971 ex.s. c 247 § 1; 1957 c 253 § 5.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

18.20.060 Actions against license. The department or the department and authorized department jointly, as the case may be, may deny, suspend, or revoke a license in any case in which it finds there has been a failure or refusal to comply with the requirements established under this chapter or the rules adopted under it. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1991 c 3 § 35; 1989 c 175 § 60; 1985 c 213 § 5; 1957 c 253 § 6.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

18.20.090 Rules, regulations, and standards. The department shall adopt, amend, and promulgate such rules,

regulations, and standards with respect to all boarding homes and operators thereof to be licensed hereunder as may be designed to further the accomplishment of the purposes of this chapter in promoting safe and adequate care of individuals in boarding homes and the sanitary, hygienic and safe conditions of the boarding home in the interest of public health, safety, and welfare. [1985 c 213 § 6; 1971 ex.s. c 189 § 3; 1957 c 253 § 9.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

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

Any such authorization may be withdrawn by the secretary after thirty days' notice in writing to the authorized department should the secretary determine that the authorized department is unwilling or unable to carry out the duties and responsibilities hereunder. [1979 c 141 § 26; 1957 c 253 § 10.]

18.20.110 Inspection of boarding homes—Approval of changes or new facilities. The department or authorized health department shall make or cause to be made at least a yearly inspection and investigation of all boarding homes. Every inspection may include an inspection of every part of the premises and an examination of all records (other than financial records), methods of administration, the general and special dietary and the stores and methods of supply. Following such inspection or inspections, written notice of any violation of this law or the rules and regulations promulgated hereunder, shall be given the applicant or licensee and the department. The department may prescribe by regulations that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, submit plans and specifications therefor to the department or to the authorized department for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. [1985 c 213 § 7; 1957 c 253 § 11.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

18.20.120 Information disclosure. All information received by the department or authorized health department through filed reports, inspections, or as otherwise authorized under this chapter, shall not be disclosed publicly in any manner as to identify individuals or boarding homes, except at the specific request of a member of the public and disclosure is consistent with RCW 42.17.260(1). [1994 c 214 § 25; 1957 c 253 § 12.]

Severability—Conflict with federal requirements—Captions not law—1994 c 214: See RCW 70.129.900 through 70.129.902.

18.20.130 Fire protection—Duties of chief of the Washington state patrol. Standards for fire protection and the enforcement thereof, with respect to all boarding homes to be licensed hereunder, shall be the responsibility of the chief of the Washington state patrol, through the director of fire protection, who shall adopt such recognized standards as may be applicable to boarding homes for the protection of life against the cause and spread of fire and fire hazards. The department upon receipt of an application for a license, shall submit to the chief of the Washington state patrol, through the director of fire protection, in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make an inspection of the boarding home to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the chief of the Washington state patrol, through the director of fire protection, he or she shall promptly make a written report to the boarding home and the department or authorized department as to the manner and time allowed in which the premises must qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department, authorized department, applicant or licensee shall notify the chief of the Washington state patrol, through the director of fire protection, upon completion of any requirements made by him or her, and the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make a reinspection of such premises. Whenever the boarding home to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, he or she shall submit to the department or authorized department, a written report approving same with respect to fire protection before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall make or cause to be made inspections of such homes at least annually.

In cities which have in force a comprehensive building code, the provisions of which are determined by the chief of the Washington state patrol, through the director of fire protection, to be equal to the minimum standards of the code for boarding homes adopted by the chief of the Washington state patrol, through the director of fire protection, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the chief of the Washington state patrol, through the director of fire protection, or his or her deputy and they shall jointly approve the premises before a full license can be issued. [1995 c 369 § 4; 1986 c 266 § 81; 1957 c 253 § 13.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

State fire protection: Chapter 48.48 RCW.

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

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

18.20.160 Persons requiring medical or nursing care. No person operating a boarding home licensed under this chapter shall admit to or retain in the boarding home any aged person requiring nursing or medical care of a type provided by institutions licensed under chapters 18.51, 70.41 or 71.12 RCW, except that when registered nurses are available, and upon a doctor's order that a supervised medication service is needed, it may be provided. Supervised medication services, as defined by the department, may include an approved program of self-medication or self-directed medication. Such medication service shall be provided only to boarders who otherwise meet all requirements for residency in a boarding home. [1985 c 297 § 2; 1975 1st ex.s. c 43 § 1; 1957 c 253 § 16.]

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

18.20.180 Resident rights. RCW 70.129.005 through 70.129.030, 70.129.040(1), and 70.129.050 through 70.129.170 apply to this chapter and persons regulated under this chapter. [1994 c 214 § 21.]

Severability—Conflict with federal requirements—Captions not law—1994 c 214: See RCW 70.129.900 through 70.129.902.

18.20.190 Department response to noncompliance or violations. (1) The department of health is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that a boarding home provider has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated a boarding home without a license or under a revoked license;

(c) Knowingly, or with reason to know, made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a license;

(b) Impose reasonable conditions on a license, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(c) Impose civil penalties of not more than one hundred dollars per day per violation;

(d) Suspend, revoke, or refuse to renew a license; or

(e) Suspend admissions to the boarding home by imposing stop placement.

(3) When the department orders stop placement, the facility shall not admit any new resident until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain adequate care and service.

(4) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing license suspension, stop placement, or conditions for continuation of a license are effective immediately upon notice and shall continue pending any hearing. [1995 1st sp.s. c 18 § 18.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

18.20.200 License suspension—Nonpayment or default on educational loan or scholarship. The secretary shall suspend the license of any person who has been certified by a lending agency and reported to the secretary for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license shall not be reissued until the person provides the secretary a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the secretary may impose. [1996 c 293 § 6.]

Severability—1996 c 293: See note following RCW 18.04.420.

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

Chapter 18.22

PODIATRIC MEDICINE AND SURGERY

(Formerly: Podiatry)

Sections

18.22.003	Regulation of health care professions—Criteria.
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18.22.900	Severability—1917 c 38.
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Actions for negligence against, evidence and proof required to prevail: RCW 4.24.290.

Health care assistants: Chapter 18.135 RCW.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

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

18.22.003 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.22.005 Legislative finding—Purpose. The legislature finds that the conduct of podiatric physicians and surgeons licensed to practice in this state plays a vital role in preserving the public health and well-being. The purpose of this chapter is to establish an effective public agency to regulate the practice of podiatric medicine and surgery for the protection and promotion of the public health, safety, and welfare and to act as a disciplinary body for the licensed podiatric physicians and surgeons of this state and to ensure that only individuals who meet and maintain minimum standards of competence and conduct may obtain a license to provide podiatric services to the public. [1990 c 147 § 1; 1982 c 21 § 1.]

18.22.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Podiatric physician and surgeon" means an individual licensed under this chapter.

(2) "Board" means the Washington state podiatric medical board.

(3) "Department" means the department of health.

(4) "Secretary" means the secretary of health or the secretary's designee.

(5) "Approved school of podiatric medicine and surgery" means a school approved by the board, which may consider official recognition of the Council of Education of the American Podiatric Medical Association in determining the approval of schools of podiatric medicine and surgery. [1990 c 147 § 2; 1982 c 21 § 2; 1973 c 77 § 1; 1955 c 149 § 1; 1941 c 31 § 1; 1921 c 120 § 1; 1917 c 38 § 1; Rem. Supp. 1941 § 10074.]

18.22.013 Podiatric medical board—Membership.

There is created the Washington state podiatric medical board consisting of five members to be appointed by the governor. All members shall be residents of the state. One member shall be a consumer whose occupation does not include the administration of health activities or the providing of health services and who has no material financial interest in providing health care services. Four members shall be podiatric physicians and surgeons who at the time of appointment have been licensed under the laws of this state for at least five consecutive years immediately preceding appointment and shall at all times during their terms remain licensed podiatric physicians and surgeons.

Board members shall serve five-year terms. No person may serve more than two consecutive terms on the board. Each member shall take the usual oath of a state officer, which shall be filed with the secretary of state, and each member shall hold office for the term of appointment and until a successor is appointed and sworn.

Each member is subject to removal at the pleasure of the governor. If a vacancy on the board occurs from any cause, the governor shall appoint a successor for the unexpired term. [1990 c 147 § 3; 1982 c 21 § 8.]

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.22.014 Board—Officers—Members' compensation and travel expenses. The board shall meet at the places and times it determines and as often as necessary to discharge its duties. The board shall elect a chairperson, vice-chairperson, and secretary from among its members. Members shall be compensated in accordance with RCW 43.03.240 in addition to travel expenses provided by RCW 43.03.050 and 43.03.060. A simple majority of the board members currently serving constitutes a quorum of the board. [1990 c 147 § 4; 1984 c 287 § 26; 1982 c 21 § 9.]

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

18.22.015 Board—Duties—Rules.

The board shall:

- (1) Administer all laws placed under its jurisdiction;
- (2) Prepare, grade, and administer or determine the nature, grading, and administration of examinations for applicants for podiatric physician and surgeon licenses;
- (3) Examine and investigate all applicants for podiatric physician and surgeon licenses and certify to the secretary all applicants it judges to be properly qualified;
- (4) Adopt any rules which it considers necessary or proper to carry out the purposes of this chapter;

(5) Determine which schools of podiatric medicine and surgery will be approved. [1990 c 147 § 5; 1986 c 259 § 18; 1982 c 21 § 10.]

Severability—1986 c 259: See note following RCW 18.130.010.

Director of licensing or director's designee ex officio member of health professional licensure and disciplinary boards: RCW 43.24.015.

18.22.018 Application of uniform disciplinary act.

The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 10; 1986 c 259 § 17.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.22.021 License required. It is a violation of RCW 18.130.190 for any person to practice podiatry in this state unless the person first has obtained a license therefor. [1987 c 150 § 11.]

Severability—1987 c 150: See RCW 18.122.901.

18.22.025 License required to practice podiatric medicine and surgery. No person may practice or represent himself or herself as a podiatric physician and surgeon without first applying for and receiving a license under this chapter to practice podiatric medicine and surgery. [1990 c 147 § 7.]

18.22.035 Practice of podiatric medicine and surgery—Quality—Definition—Prescriptions—Limitations. (1) A podiatric physician and surgeon is responsible for the quality of podiatric care.

(2) The practice of podiatric medicine and surgery is the diagnosis and the medical, surgical, mechanical, manipulative, and electrical treatments of ailments of the human foot.

(3) Podiatric physicians and surgeons may issue prescriptions valid at any pharmacy for any drug, including narcotics, necessary in the practice of podiatry.

(4) Podiatrists shall not:

- (a) Amputate the foot;
- (b) Administer spinal anesthetic or any anesthetic that renders the patient unconscious; or
- (c) Treat systemic conditions. [1990 c 147 § 6.]

18.22.040 Applicants—Fee—Eligibility. Before any person may take an examination for the issuance of a podiatric physician and surgeon license, the applicant shall submit a completed application and a fee determined by the secretary as provided in RCW 43.70.250. The applicant shall also furnish the secretary and the board with satisfactory proof that:

(1) The applicant has not engaged in unprofessional conduct as defined in chapter 18.130 RCW and is not unable to practice with reasonable skill and safety as a result of a physical or mental impairment;

(2) The applicant has satisfactorily completed a course in an approved school of podiatric medicine and surgery;

(3) The applicant has completed one year [of] postgraduate podiatric medical training in a program approved by the board, provided that applicants graduating before July 1,

1993, shall be exempt from the postgraduate training requirement. [1993 c 29 § 2; 1990 c 147 § 8; 1982 c 21 § 5; 1979 c 158 § 18; 1973 c 77 § 4; 1971 ex.s. c 292 § 19; 1955 c 149 § 2; 1935 c 48 § 3; 1921 c 120 § 3; 1917 c 38 § 6; RRS § 10079.]

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

18.22.045 Postgraduate training license. The board may grant approval to issue a license without examination to a podiatric physician and surgeon in a board-approved postgraduate training program in this state if the applicant files an application and meets all the requirements for licensure set forth in RCW 18.22.040 except for completion of one year of postgraduate training. The secretary shall issue a postgraduate podiatric medicine and surgery license that permits the physician to practice podiatric medicine and surgery only in connection with his or her duties in the postgraduate training program. The postgraduate training license does not authorize the podiatric physician to engage in any other form of practice. Each podiatric physician and surgeon in postgraduate training shall practice podiatric medicine and surgery under the supervision of a physician licensed in this state under this chapter, or chapter 18.71 or 18.57 RCW, but such supervision shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered.

All persons licensed under this section shall be subject to the jurisdiction of the podiatric medical board as set forth in this chapter and chapter 18.130 RCW.

Persons applying for licensure pursuant to this section shall pay an application and renewal fee determined by the secretary as provided in RCW 43.70.250. Postgraduate training licenses may be renewed annually. Any person who obtains a license pursuant to this section may apply for licensure under this chapter but shall submit a new application form and comply with all other licensing requirements of this chapter. [1993 c 29 § 1.]

18.22.060 Examination—Date, location, and application—Reexamination. (1) The date and location of the examination shall be established by the board. Applicants who have met the requirements for examination under RCW 18.22.040 will be scheduled for the next examination after the filing of the complete application. The board shall establish by rule the examination application deadline.

(2) An applicant who fails to pass an examination satisfactorily is entitled to reexamination upon the payment of a fee for each reexamination determined by the secretary as provided in RCW 43.70.250. [1990 c 147 § 9; 1985 c 7 § 11; 1982 c 21 § 7; 1975 1st ex.s. c 30 § 16; 1973 c 77 § 6; 1965 c 97 § 1; 1957 c 52 § 14. Prior: (i) 1921 c 120 § 5; 1917 c 38 § 9; RRS § 10082. (ii) 1921 c 120 § 4; 1917 c 38 § 7; RRS § 10080.]

18.22.082 License—Reciprocity. An applicant holding a license to practice podiatric medicine and surgery in another state may be licensed without examination if the secretary determines that the other state's licensing standards are substantively equivalent to the standards in this state. [1990 c 147 § 10.]

18.22.083 License—Examination to determine professional qualifications. Before being issued a license to practice podiatric medicine and surgery, applicants must successfully pass the examinations administered by the national board of podiatry examiners and an examination administered or approved by the board to determine their professional qualifications. The examination administered by the board shall include the subject areas as the board may require by rule.

The board may approve an examination prepared or administered, or both, by a private testing agency, other licensing authority, or association of licensing authorities.

The board may by rule establish the passing grade for the examination. [1990 c 147 § 11; 1982 c 21 § 13.]

18.22.110 License—Display. Every holder of a podiatric physician and surgeon license shall keep the license on exhibition in a conspicuous place in the holder's office or place of business. [1990 c 147 § 12; 1973 c 77 § 9; 1957 c 52 § 15. Prior: 1917 c 38 § 2, part; RRS § 10075, part.]

18.22.120 License renewal. The board shall establish by rule the requirements for renewal of licenses and relicensing. Administrative procedures, administrative requirements, and fees shall be established as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 7; 1990 c 147 § 13; 1985 c 7 § 13; 1982 c 21 § 14; 1975 1st ex.s. c 30 § 18; 1973 c 77 § 10; 1971 ex.s. c 266 § 4; 1965 c 97 § 2; 1955 c 149 § 6. Prior: (i) 1921 c 120 § 5, part; 1917 c 38 § 9, part; RRS § 10082, part. (ii) 1921 c 120 § 9; RRS § 10096.]

18.22.125 License—Inactive status. (1) An individual may place his or her license on inactive status. The holder of an inactive license shall not practice podiatric medicine and surgery in this state without first activating the license.

(2) The inactive renewal fee shall be established by the secretary under RCW 43.70.250, but may not exceed twenty-five percent of the active license renewal fee. Failure to renew an inactive license results in cancellation in the same manner as an active license.

(3) An inactive license may be placed in an active status upon compliance with the rules established by the board.

(4) The provisions of this chapter relating to the denial, suspension, and revocation of a license are applicable to an inactive license, except that when proceedings to suspend or revoke an inactive license have been initiated, the license remains inactive until the proceedings have been completed. [1990 c 147 § 14.]

18.22.191 Rules and regulations. The secretary shall have the power and duty to formulate and prescribe such rules and regulations as may be reasonable in the proper administration of this chapter. In addition to any other authority provided by law, the secretary may:

(1) Set all fees required in this chapter in accordance with RCW 43.70.250;

(2) Establish forms necessary to administer this chapter;

(3) Maintain the official department record of all applicants and licensees. [1990 c 147 § 15; 1955 c 149 § 13.]

18.22.210 Unlawful practice—Evidence of. It is prima facie evidence of the practice of podiatric medicine and surgery or of holding oneself out as a practitioner of podiatric medicine and surgery within the meaning of this chapter for any person to treat in any manner ailments of the human foot by medical, surgical, or mechanical means or appliances, or to use the title "podiatrist," "podiatric physician and surgeon," or any other words or letters which designate or tend to designate to the public that the person so treating or holding himself or herself out to treat, is a podiatric physician and surgeon. [1990 c 147 § 16; 1982 c 21 § 17; 1973 c 77 § 17; 1935 c 48 § 4; 1921 c 120 § 6; 1917 c 38 § 10; RRS § 10083.]

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

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

(1) The practice of podiatric medicine and surgery by an individual employed by the government of the United States while the individual is engaged in the performance of duties prescribed by the laws and regulations of the United States;

(2) The practice of podiatric medicine and surgery by students enrolled in a school approved by the board. The performance of services must be pursuant to a course of instruction or assignments from an instructor and under the supervision of the instructor;

(3) The practice of podiatric medicine and surgery by licensed podiatric physicians and surgeons of other states or countries while appearing at educational seminars;

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

(5) The practice of podiatric medicine and surgery by externs, interns, and residents in training programs approved by the American Podiatric Medical Association;

(6) The performing of podiatric services by persons not licensed under this chapter when performed under the supervision of a licensed podiatrist if those services are authorized by board rule or other law to be so performed;

(7) The treatment of ailments of the feet by physicians licensed under chapter 18.57 or 18.71 RCW, or other licensed health professionals practicing within the scope of their licenses;

(8) The domestic administration of family remedies or treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denomination. [1990 c 147 § 17; 1982 c 21 § 19; 1973 c 77 § 19; 1955 c 149 § 12.]

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

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

18.22.911 Severability—1982 c 21. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c.21 § 20.]

18.22.950 Short title. This chapter shall be known as the Podiatric Physician and Surgeon Practice Act. [1990 c 147 § 19.]

Chapter 18.25 CHIROPRACTIC

Sections

18.25.002	Purpose.
18.25.003	Regulation of health care professions—Criteria.
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18.25.180	Employment of x-ray technicians—Rules.
18.25.190	Exemptions—Jurisdiction of commission.
18.25.200	Service and fee limitations by health care purchasers—Pilot projects.
18.25.900	Severability—Headings and captions not law—Effective date—1994 sp.s. c 9.

Actions against, limitation of: RCW 4.16.350.

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

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Lien of doctors: Chapter 60.44 RCW.

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

18.25.002 Purpose. This chapter is enacted:

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

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

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

(4) Because practicing other healing arts while licensed to practice chiropractic and while holding one's self out to the public as a chiropractor affects the health and welfare of the people of the state.

It is the purpose of the commission established under RCW 18.25.0151 to regulate the competency and quality of professional health care providers under its jurisdiction by establishing, monitoring, and enforcing qualifications for licensing, consistent standards of practice, continuing competency mechanisms, and discipline. Rules, policies, and procedures developed by the commission must promote the delivery of quality health care to the residents of the state. [1994 sp.s. c 9 § 101.]

18.25.003 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.25.005 "Chiropractic" defined. (1) Chiropractic is the practice of health care that deals with the diagnosis or analysis and care or treatment of the vertebral subluxation complex and its effects, articular dysfunction, and musculoskeletal disorders, all for the restoration and maintenance of health and recognizing the recuperative powers of the body.

(2) Chiropractic treatment or care includes the use of procedures involving spinal adjustments, and extremity manipulation insofar as any such procedure is complementary or preparatory to a chiropractic spinal adjustment. Chiropractic treatment also includes the use of heat, cold, water, exercise, massage, trigger point therapy, dietary advice and recommendation of nutritional supplementation except for medicines of herbal, animal, or botanical origin, the normal regimen and rehabilitation of the patient, first aid, and counseling on hygiene, sanitation, and preventive measures. Chiropractic care also includes such physiological therapeutic procedures as traction and light, but does not include procedures involving the application of sound, diathermy, or electricity.

(3) As part of a chiropractic differential diagnosis, a chiropractor shall perform a physical examination, which may include diagnostic x-rays, to determine the appropriateness of chiropractic care or the need for referral to other health care providers. The chiropractic quality assurance commission shall provide by rule for the type and use of diagnostic and analytical devices and procedures consistent with this chapter.

(4) Chiropractic care shall not include the prescription or dispensing of any medicine or drug, the practice of

obstetrics or surgery, the use of x-rays or any other form of radiation for therapeutic purposes, colonic irrigation, or any form of venipuncture.

(5) Nothing in this chapter prohibits or restricts any other practitioner of a "health profession" defined in RCW 18.120.020(4) from performing any functions or procedures the practitioner is licensed or permitted to perform, and the term "chiropractic" as defined in this chapter shall not prohibit a practitioner licensed under chapter 18.71 RCW from performing medical procedures, except such procedures shall not include the adjustment by hand of any articulation of the spine. [1994 sp.s. c 9 § 102; 1992 c 241 § 2; 1974 ex.s. c 97 § 7.]

Intent—1992 c 241: "This act is intended to expand the scope of practice of chiropractic only with regard to adjustment of extremities in connection with a spinal adjustment." [1992 c 241 § 1.]

Severability—1974 ex.s. c 97: See note following RCW 18.25.0192.

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

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of the department of health or the secretary's designee.

(3) "Chiropractor" means an individual licensed under this chapter.

(4) "Commission" means the Washington state chiropractic quality assurance commission.

(5) "Vertebral subluxation complex" means a functional defect or alteration of the biomechanical and physiological dynamics in a joint that may cause neuronal disturbances, with or without displacement detectable by x-ray. The effects of the vertebral subluxation complex may include, but are not limited to, any of the following: Fixation, hypomobility, hypermobility, periarticular muscle spasm, edema, or inflammation.

(6) "Articular dysfunction" means an alteration of the biomechanical and physiological dynamics of a joint of the axial or appendicular skeleton.

(7) "Musculoskeletal disorders" means abnormalities of the muscles, bones, and connective tissue.

(8) "Chiropractic differential diagnosis" means a diagnosis to determine the existence of a vertebral subluxation complex, articular dysfunction, or musculoskeletal disorder, and the appropriateness of chiropractic care or the need for referral to other health care providers.

(9) "Chiropractic adjustment" means chiropractic care of a vertebral subluxation complex, articular dysfunction, or musculoskeletal disorder. Such care includes manual or mechanical adjustment of any vertebral articulation and contiguous articulations beyond the normal passive physiological range of motion.

(10) "Extremity manipulation" means a corrective thrust or maneuver applied to a joint of the appendicular skeleton. The use of extremity manipulation shall be complementary and preparatory to a chiropractic spinal adjustment to support correction of a vertebral subluxation complex and is considered a part of a spinal adjustment and shall not be billed separately from or in addition to a spinal adjustment. [1994 sp.s. c 9 § 103; 1992 c 241 § 3; 1991 c 3 § 36; 1989 c 258 § 12.]

Intent—1992 c 241: See note following RCW 18.25.005.

18.25.011 License required. It is a violation of RCW 18.130.190 for any person to practice chiropractic in this state unless the person has obtained a license as provided in this chapter. [1987 c 150 § 14.]

Severability—1987 c 150: See RCW 18.122.901.

18.25.0151 Commission established—Membership.

The Washington state chiropractic quality assurance commission is established, consisting of fourteen members appointed by the governor to four-year terms, and including eleven practicing chiropractors and three public members. No member may serve more than two consecutive full terms. In appointing the initial members of the commission, it is the intent of the legislature that, to the extent possible, the governor appoint members of the previous boards and committees regulating this profession to the commission. Members of the commission hold office until their successors are appointed. The governor may appoint the members of the initial commissions [commission] to staggered terms of from one to four years. Thereafter, all members shall be appointed to full four-year terms. The governor may consider persons who are recommended for appointment by chiropractic associations of this state. [1994 sp.s. c 9 § 104.]

18.25.0161 Commission—Removal of member—Order of removal—Vacancy. The governor may remove a member of the commission for neglect of duty, misconduct, or malfeasance or misfeasance in office. Whenever the governor is satisfied that a member of the commission has been guilty of neglect of duty, misconduct, or malfeasance or misfeasance in office, the governor shall file with the secretary of state a statement of the causes for and the order of removal from office, and the secretary shall forthwith send a certified copy of the order of removal and statement of causes by certified mail to the last known post office address of the member. If a vacancy occurs on the commission, the governor shall appoint a replacement to fill the remainder of the unexpired term. [1994 sp.s. c 9 § 105.]

18.25.0165 Commission—Qualifications of members. Members must be citizens of the United States and residents of this state. Members must be licensed chiropractors for a period of five years before appointment. Public members of the commission may not be a member of any other health care licensing board or commission, or have a fiduciary obligation to a facility rendering health services regulated by the commission, or have a material or financial interest in the rendering of health services regulated by the commission. [1994 sp.s. c 9 § 106.]

18.25.0171 Commission—Duties and powers—Compensation—Rules. The commission shall elect officers each year. Meetings of the commission are open to the public, except that the commission may hold executive sessions to the extent permitted by chapter 42.30 RCW. The secretary of health shall furnish such secretarial, clerical, and other assistance as the commission may require.

Each member of the commission shall be compensated in accordance with RCW 43.03.240. Members shall be reimbursed for travel expenses incurred in the actual perfor-

mance of their duties, as provided in RCW 43.03.050 and 43.03.060.

A majority of the commission members appointed and serving constitutes a quorum for the transaction of commission business. The affirmative vote of a majority of a quorum of the commission is required to carry a motion or resolution, to adopt a rule, or to pass a measure.

The commission may appoint members of panels of at least three members. A quorum for transaction of any business by a panel is a minimum of three members. A majority vote of a quorum of the panel is required to transact business delegated to it by the commission.

The members of the commission are immune from suit in an action, civil or criminal, based upon its disciplinary proceedings or other official acts performed in good faith as members of the commission.

The commission may, whenever the workload of the commission requires, request that the secretary appoint pro tempore members. While serving as members pro tempore persons have all the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses, of the commission.

The commission shall prepare or determine the nature of the examinations for applicants to practice chiropractic.

The commission may adopt such rules as are consistent with this chapter as may be deemed necessary and proper to carry out the purposes of this chapter. [1994 sp.s. c 9 § 107.]

18.25.0172 Commission successor to other boards, committee. The commission is the successor in interest of the board of chiropractic examiners, the chiropractic disciplinary board, and the chiropractic peer review committee. All contracts, undertakings, agreements, rules, regulations, and policies of those bodies continue in full force and effect on July 1, 1994, unless otherwise repealed or rejected by chapter 9, Laws of 1994 sp. sess. or by the commission. [1994 sp.s. c 9 § 119.]

18.25.019 Application of Uniform Disciplinary Act. The Uniform Disciplinary Act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1994 sp.s. c 9 § 108; 1987 c 150 § 12; 1986 c 259 § 21.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.25.0192 Discrimination—Legislative finding and declaration. The legislature finds and declares that the costs of health care to the people are rising disproportionately to other costs and that there is a paramount concern that the right of the people to obtain access to health care in all its facets is being impaired thereby. For this reason, the reliance on the mechanism of health care service contractors, whether profit or nonprofit, is the only effective manner in which the large majority of the people can attain access to quality health care, and it is therefore declared to be in the public interest that health care service contractors be regulated to assure that all the people have access to health care to the greatest extent possible. *This 1974 amendatory act, prohibiting discrimination against the legally recognized and

licensed profession of chiropractic, is necessary in the interest of the public health, welfare, and safety. [1974 ex.s. c 97 § 1. Formerly RCW 18.25.120.]

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

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

18.25.0193 Discrimination—Acceptance of services required. Notwithstanding any other provision of law, the state and its political subdivisions shall accept the services of licensed chiropractors for any service covered by their licenses with relation to any person receiving benefits, salaries, wages, or any other type of compensation from the state, its agencies or subdivisions. [1974 ex.s. c 97 § 2. Formerly RCW 18.25.130.]

Severability—1974 ex.s. c 97: See note following RCW 18.25.0192.

18.25.0194 Discrimination by governments prohibited. The state and its political subdivisions, and all officials, agents, employees, or representatives thereof, are prohibited from in any way discriminating against licensed chiropractors in performing and receiving compensation for services covered by their licenses. [1974 ex.s. c 97 § 3. Formerly RCW 18.25.140.]

Severability—1974 ex.s. c 97: See note following RCW 18.25.0192.

18.25.0195 Discriminatory government contracts prohibited. Notwithstanding any other provision of law, the state and its political subdivisions, and all officials, agents, employees, or representatives thereof, are prohibited from entering into any agreement or contract with any individual, group, association, or corporation which in any way, directly or indirectly, discriminates against licensed chiropractors in performing and receiving compensation for services covered by their licenses. [1974 ex.s. c 97 § 4. Formerly RCW 18.25.150.]

Severability—1974 ex.s. c 97: See note following RCW 18.25.0192.

18.25.0196 Discrimination—Policy costs as additional compensation. Notwithstanding any other provision of law, for the purpose of *RCW 18.25.120 through 18.25.150 and 18.25.170 it is immaterial whether the cost of any policy, plan, agreement, or contract be deemed additional compensation for services, or otherwise. [1974 ex.s. c 97 § 5. Formerly RCW 18.25.160.]

***Reviser's note:** RCW 18.25.120 through 18.25.150 and 18.25.170 were recodified as RCW 18.25.0192 through 18.25.0195 and 18.25.0197 by 1994 sp.s. c 9 § 120, effective July 1, 1994.

Severability—1974 ex.s. c 97: See note following RCW 18.25.0192.

18.25.0197 Discrimination—Application of *RCW 18.25.120 through 18.25.160. *RCW 18.25.120 through 18.25.160 shall apply to all agreements, renewals, or contracts issued on or after July 24, 1974. [1974 ex.s. c 97 § 6. Formerly RCW 18.25.170.]

***Reviser's note:** RCW 18.25.120 through 18.25.160 were recodified as RCW 18.25.0192 through 18.25.0196 by 1994 sp.s. c 9 § 120, effective July 1, 1994.

Severability—1974 ex.s. c 97: See note following RCW 18.25.0192.

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

(2) Applicants shall follow administrative procedures and administrative requirements and pay fees as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 8; 1994 sp.s. c 9 § 109; 1991 c 3 § 38; 1989 c 258 § 3; 1985 c 7 § 14; 1975 1st ex.s. c 30 § 19; 1974 ex.s. c 97 § 9; 1959 c 53 § 3; 1919 c 5 § 5; RRS § 10100.]

Severability—1974 ex.s. c 97: See note following RCW 18.25.0192.

18.25.025 Accreditation of schools and colleges—Standards—Assistants for examinations authorized. The commission shall have authority to grant accreditation to chiropractic schools and colleges.

The commission shall have authority to adopt educational standards which may include standards of any accreditation agency recognized by the office of education of the department of health and human services or its successor agency, or any portion of such standards, as the commission's standards: PROVIDED, That such standards, so adopted, shall contain, as a minimum of on-campus instruction in chiropractic, the following: Principles of chiropractic, two hundred hours; adjustive technique, four hundred hours; spinal roentgenology, one hundred seventy-five hours; symptomatology and diagnosis, four hundred twenty-five hours; clinic, six hundred twenty-five hours: PROVIDED FURTHER, That such standards shall not mandate, as a requirement for either graduation or accreditation, or include in the computation of hours of chiropractic instruction required by this section, instruction in the following: Mechanotherapy, physiotherapy, acupuncture, acupressure, or any other therapy.

The commission shall approve and accredit chiropractic colleges and schools which apply for commission accreditation and approval and which meet to the commission's satisfaction the educational standards adopted by the commission. It shall be the responsibility of the college to apply for accreditation and approval, and of a student to ascertain whether a college or school has been accredited or approved by the commission.

The commission shall have authority to engage assistants in the giving of examinations called for under this chapter. [1994 sp.s. c 9 § 110; 1980 c 51 § 3.]

Severability—1980 c 51: "If any provision of this 1980 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 51 § 6.]

18.25.030 Examinations—Subjects—Grades. Examinations for license to practice chiropractic shall be developed and administered, or approved, or both, by the commission according to the method deemed by it to be the most practicable and expeditious to test the applicant's qualifications. The commission may approve an examination prepared or administered by a private testing agency or association of licensing authorities. The applicant shall be designated by a number instead of his or her name, so that the identity shall not be discovered or disclosed to the members of the commission until after the examination papers are graded.

Examination subjects may include the following: Anatomy, physiology, spinal anatomy, microbiology-public health, general diagnosis, neuromuscularskeletal diagnosis, X-ray, principles of chiropractic and adjusting, as taught by chiropractic schools and colleges, and any other subject areas consistent with chapter 18.25 RCW. The commission shall set the standards for passing the examination. The commission may enact additional requirements for testing administered by the national board of chiropractic examiners. [1995 c 198 § 1; 1994 sp.s. c 9 § 111; 1989 c 258 § 4; 1974 ex.s. c 97 § 10; 1959 c 53 § 4; 1919 c 5 § 6; RRS § 10101.]

Severability—1974 ex.s. c 97: See note following RCW 18.25.0192.
Hiring assistants for examinations: RCW 18.25.025.

18.25.035 Waiver of examination. The commission may, in its discretion, waive any examination required by this chapter of persons applying for a license to practice chiropractic if, in its opinion, the applicant has successfully passed an examination conducted by the national board of chiropractic examiners of the United States that is of equal or greater difficulty than the examination being waived by the commission. [1994 sp.s. c 9 § 112; 1971 ex.s. c 227 § 5.]

18.25.040 Licensure by endorsement. Persons licensed to practice chiropractic under the laws of any other state, territory of the United States, the District of Columbia, Puerto Rico, or province of Canada, having qualifications substantially equivalent to those required by this chapter, may, in the discretion of the commission, and after such examination as may be required by rule of the commission, be issued a license to practice in this state without further examination, upon payment of a fee determined by the secre-

tary as provided in RCW 43.70.250. [1994 sp.s. c 9 § 113; 1991 c 320 § 8; 1991 c 3 § 39; 1985 c 7 § 15; 1975 1st ex.s. c 30 § 20; 1971 ex.s. c 227 § 6; 1919 c 5 § 14; RRS § 10108.]

18.25.050 Revocation or refusal of licenses—Hearing—Restoration.

Reviser's note: RCW 18.25.050 was amended by 1985 c 7 § 16 without reference to its repeal by 1986 c 259 § 27. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.25.070 License renewal—Continuing education—Rules. Every person practicing chiropractic shall, as a prerequisite to renewal of license, submit to the secretary at the time of application therefor, satisfactory proof showing attendance of at least twenty-five hours per year during the preceding credential period, at one or more chiropractic symposiums which are recognized and approved by the commission. The commission may, for good cause shown, waive said attendance. The following guidelines for such symposiums shall apply:

(1) The commission shall set criteria for the course content of educational symposia concerning matters which are recognized by the state of Washington chiropractic licensing laws; it shall be the licensee's responsibility to determine whether the course content meets these criteria;

(2) The commission shall adopt standards for distribution of annual continuing education credit requirements;

(3) Rules shall be adopted by the commission for licensees practicing and residing outside the state who shall meet all requirements established by rule of the commission. [1996 c 191 § 9; 1994 sp.s. c 9 § 114; 1991 c 3 § 40; 1989 c 258 § 5; 1985 c 7 § 17; 1980 c 51 § 2; 1975 1st ex.s. c 30 § 22; 1974 ex.s. c 97 § 11; 1971 ex.s. c 266 § 5; 1959 c 53 § 5; 1919 c 5 § 10; RRS § 10105.]

Severability—1980 c 51: See note following RCW 18.25.025.

Severability—1974 ex.s. c 97: See note following RCW 18.25.0192.

18.25.075 Inactive status. (1) An individual may place his or her license on inactive status. The holder of an inactive license shall not practice chiropractic in this state without first activating the license.

(2) The inactive renewal fee shall be established by the secretary pursuant to RCW 43.70.250. Failure to renew an inactive license shall result in cancellation in the same manner as an active license.

(3) An inactive license may be placed in an active status upon compliance with the rules established by the commission.

(4) The provisions relating to the denial, suspension, and revocation of a license shall be applicable to an inactive license, except that when proceedings to suspend or revoke an inactive license have been initiated, the license shall remain inactive until the proceedings have been completed. [1994 sp.s. c 9 § 115; 1991 c 3 § 41; 1989 c 258 § 14.]

18.25.080 Health regulations. Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death certificates and any and all matters pertaining to public health, reporting to the proper health

officers the same as other practitioners. [1919 c 5 § 12; RRS § 10107.]

18.25.090 Use of credentials in written materials—Treatment by prayer not regulated. On all cards, books, papers, signs or other written or printed means of giving information to the public, used by those licensed by this chapter to practice chiropractic, the practitioner shall use after or below his or her name the term chiropractor, chiropractic physician, D.C., or D.C.Ph.C., designating his or her line of drugless practice, and shall not use the letters M.D. or D.O.: PROVIDED, That the word doctor or "Dr." or physician may be used only in conjunction with the word "chiropractic" or "chiropractor". Nothing in this chapter shall be held to apply to or to regulate any kind of treatment by prayer. [1991 c 320 § 9; 1989 c 258 § 6; 1986 c 259 § 24; 1981 c 277 § 3; 1971 ex.s. c 227 § 7; 1919 c 5 § 15; RRS § 10109.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.25.100 Prosecutions for violations. It shall be the duty of the several prosecuting attorneys of this state to prosecute all persons charged with the violation of any of the provisions of this chapter. It shall be the duty of the secretary to aid said attorneys of this state in the enforcement of this chapter. [1991 c 3 § 42; 1919 c 5 § 16; RRS § 10110.]

18.25.112 "Unprofessional conduct"—Additional definition—Prosecution. (1) In addition to those acts defined in chapter 18.130 RCW, the term "unprofessional conduct" as used in this chapter includes failing to differentiate chiropractic care from any and all other methods of healing at all times.

(2) Proceedings involving alleged unprofessional conduct shall be prosecuted by the attorney general upon the direction of the commission. [1994 sp.s. c 9 § 116.]

18.25.180 Employment of x-ray technicians—Rules. (1) A chiropractor may employ a technician to operate x-ray equipment after the technician has registered with the commission.

(2) The commission may adopt rules necessary and appropriate to carry out the purposes of this section. [1994 sp.s. c 9 § 117; 1991 c 222 § 9.]

Effective date—1991 c 222: See RCW 18.84.903.

18.25.190 Exemptions—Jurisdiction of commission. Nothing in this chapter shall be construed to prohibit:

(1) The temporary practice in this state of chiropractic by any chiropractor licensed by another state, territory, or country in which he or she resides. However, the chiropractor shall not establish a practice open to the general public and shall not engage in temporary practice under this section for a period longer than thirty days. The chiropractor shall register his or her intention to engage in the temporary practice of chiropractic in this state with the commission before engaging in the practice of chiropractic, and shall agree to be bound by such conditions as may be prescribed by rule by the commission.

(2) The practice of chiropractic, except the administration of a chiropractic adjustment, by a person who is a regular senior student in an accredited school of chiropractic approved by the commission if the practice is part of a regular course of instruction offered by the school and the student is under the direct supervision and control of a chiropractor duly licensed pursuant to this chapter and approved by the commission.

(3) The practice of chiropractic by a person serving a period of postgraduate chiropractic training in a program of clinical chiropractic training sponsored by a school of chiropractic accredited in this state if the practice is part of his or her duties as a clinical postgraduate trainee and the trainee is under the direct supervision and control of a chiropractor duly licensed pursuant to this chapter and approved by the commission.

(4) The practice of chiropractic by a person who is eligible and has applied to take the next available examination for licensing offered by the commission, except that the unlicensed chiropractor must provide all services under the direct control and supervision of a licensed chiropractor approved by the commission. The unlicensed chiropractor may continue to practice as provided by this subsection until the results of the next available examination are published, but in no case for a period longer than six months. The commission shall adopt rules necessary to effectuate the intent of this subsection.

Any provision of chiropractic services by any individual under subsection (1), (2), (3), or (4) of this section shall be subject to the jurisdiction of the commission as provided in chapters *18.26 and 18.130 RCW. [1994 sp.s. c 9 § 118; 1991 c 320 § 10.]

*Reviser's note: Chapter 18.26 RCW was repealed by 1994 sp.s. c 9 § 121, effective July 1, 1994.

18.25.200 Service and fee limitations by health care purchasers—Pilot projects. All state health care purchasers shall have the authority to set service and fee limitations on chiropractic costs. The health care authority shall establish pilot projects in defined geographic regions of the state to contract with organizations of chiropractors for a prepaid capitated amount. [1992 c 241 § 4.]

Intent—1992 c 241: See note following RCW 18.25.005.

18.25.900 Severability—Headings and captions not law—Effective date—1994 sp.s. c 9. See RCW 18.79.900 through 18.79.902.

Chapter 18.27

REGISTRATION OF CONTRACTORS

Sections

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

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

(1) "Contractor" means any person, firm or corporation who or which, in the pursuit of an independent business undertakes to, or offers to undertake, or submits a bid to, construct, alter, repair, add to, subtract from, improve, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development, or improvement attached to real estate or to do any part thereof including the installation of carpeting or other floor covering, the erection of scaffolding or other structures or works in connection therewith or who installs or repairs roofing or siding; or, who, to do similar work upon his own property, employs members of more than one trade upon a single job or project or under a single building permit except as otherwise provided herein.

(2) "General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts whose work the contractor shall superintend or do in whole or in part. "General contractor" shall not include an individual who does all work personally without employees or other "specialty contractors" as defined herein. The terms "general contractor" and "builder" are synonymous.

(3) "Specialty contractor" means a contractor whose operations as such do not fall within the foregoing definition of "general contractor".

(4) "Department" means the department of labor and industries.

(5) "Director" means the director of the department of labor and industries.

(6) "Verification" means the receipt and duplication by the city, town, or county of a contractor registration card that is current on its face. [1993 c 454 § 2; 1973 1st ex.s. c 153 § 1; 1972 ex.s. c 118 § 1; 1967 c 126 § 5; 1963 c 77 § 1.]

Finding—1993 c 454: "The legislature finds that unregistered contractors are a serious threat to the general public and are costing the state millions of dollars each year in lost revenue. To assist in solving this problem, the department of labor and industries and the department of revenue should coordinate and communicate with each other to identify unregistered contractors." [1993 c 454 § 1.]

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

18.27.020 Registration required—Prohibited acts—Criminal penalty. (1) Every contractor shall register with the department.

(2) It is a misdemeanor for any contractor to:

(a) Advertise, offer to do work, submit a bid, or perform any work as a contractor without being registered as required by this chapter;

(b) Advertise, offer to do work, submit a bid, or perform any work as a contractor when the contractor's registration is suspended;

(c) Use a false or expired registration number in purchasing or offering to purchase an advertisement for which a contractor registration number is required; or

(d) Transfer a valid registration to an unregistered contractor or allow an unregistered contractor to work under a registration issued to another contractor.

(3) All misdemeanor actions under this chapter shall be prosecuted in the county where the infraction occurs. [1993 c 454 § 6; 1987 c 362 § 1; 1986 c 197 § 1; 1983 1st ex.s. c 2 § 17; 1973 1st ex.s. c 153 § 2; 1963 c 77 § 2.]

Finding—1993 c 454: See note following RCW 18.27.010.

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

Violations as infractions: RCW 18.27.200.

18.27.030 Application for registration—Grounds for denial. (1) An applicant for registration as a contractor shall submit an application under oath upon a form to be prescribed by the director and which shall include the following information pertaining to the applicant:

(a) Employer social security number.

(b) As applicable: (i) The industrial insurance account number covering employees domiciled in Washington; and (ii) evidence of workers' compensation coverage in the applicant's state of domicile for the applicant's employees working in Washington who are not domiciled in Washington.

(c) Employment security department number.

(d) State excise tax registration number.

(e) Unified business identifier (UBI) account number may be substituted for the information required by (b), (c), and (d) of this subsection.

(f) Type of contracting activity, whether a general or a specialty contractor and if the latter, the type of specialty.

(g) The name and address of each partner if the applicant be a firm or partnership, or the name and address of the owner if the applicant be an individual proprietorship, or the name and address of the corporate officers and statutory agent, if any, if the applicant be a corporation. The information contained in such application shall be a matter of public record and open to public inspection.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)(b) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3) Registration shall be denied if the applicant has been previously registered as a sole proprietor, partnership, or corporation, and was a principal or officer of the corporation, and if the applicant has an unsatisfied final judgment based on this chapter that was incurred during a previous registration under this chapter. [1996 c 147 § 1; 1992 c 217 § 1; 1988 c 285 § 1. Prior: 1987 c 362 § 2; 1987 c 111 § 9; 1973 1st ex.s. c 153 § 3; 1963 c 77 § 3.]

Conflict with federal requirements—Severability—Effective date—1987 c 111: See notes following RCW 50.12.220.

18.27.040 Bond or other security required—Actions against—Suspension of registration upon impairment.

(1) Each applicant shall, at the time of applying for or renewing a certificate of registration, file with the department a surety bond issued by a surety insurer who meets the requirements of chapter 48.28 RCW in a form acceptable to the department running to the state of Washington if a general contractor, in the sum of six thousand dollars; if a specialty contractor, in the sum of four thousand dollars, conditioned that the applicant will pay all persons performing labor, including employee benefits, for the contractor, will pay all taxes and contributions due to the state of Washington, and will pay all persons furnishing labor or material or renting or supplying equipment to the contractor and will pay all amounts that may be adjudged against the contractor by reason of negligent or improper work or breach of contract in the conduct of the contracting business. A change in the name of a business or a change in the type of business entity shall not impair a bond for the purposes of this section so long as one of the original applicants for such bond maintains partial ownership in the business covered by the bond.

(2) Any contractor registered as of *the effective date of this 1983 act who maintains such registration in accordance with this chapter shall be in compliance with this chapter until the next annual renewal of the contractor's certificate of registration. At that time, the contractor shall provide a bond, cash deposit, or other security deposit as required by this chapter and comply with all of the other provisions of this chapter before the department shall renew the contractor's certificate of registration.

(3) Any person, firm, or corporation having a claim against the contractor for any of the items referred to in this section may bring suit upon such bond or deposit in the

superior court of the county in which the work was done or of any county in which jurisdiction of the contractor may be had. The surety issuing the bond shall be named as a party to any suit upon the bond. Action upon such bond or deposit shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within one year from the date of expiration of the certificate of registration in force at the time the claimed labor was performed and benefits accrued, taxes and contributions owing the state of Washington became due, materials and equipment were furnished, or the claimed contract work was completed. Service of process in an action against the contractor, the contractor's bond, or the deposit shall be exclusively by service upon the department. Three copies of the summons and complaint and a fee of ten dollars to cover the handling costs shall be served by registered or certified mail upon the department at the time suit is started and the department shall maintain a record, available for public inspection, of all suits so commenced. Service is not complete until the department receives the ten-dollar fee and three copies of the summons and complaint. Such service shall constitute service on the registrant and the surety for suit upon the bond or deposit and the department shall transmit the summons and complaint or a copy thereof to the registrant at the address listed in his application and to the surety within forty-eight hours after it shall have been received.

(4) The surety upon the bond shall not be liable in an aggregate amount in excess of the amount named in the bond nor for any monetary penalty assessed pursuant to this chapter for an infraction. The liability of the surety shall not cumulate where the bond has been renewed, continued, reinstated, reissued or otherwise extended. The surety upon the bond may, upon notice to the department and the parties, tender to the clerk of the court having jurisdiction of the action an amount equal to the claims thereunder or the amount of the bond less the amount of judgments, if any, previously satisfied therefrom and to the extent of such tender the surety upon the bond shall be exonerated but if the actions commenced and pending at any one time exceed the amount of the bond then unimpaired, claims shall be satisfied from the bond in the following order:

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

(5) In the event that any final judgment shall impair the liability of the surety upon the bond so furnished that there shall not be in effect a bond undertaking in the full amount prescribed in this section, the department shall suspend the registration of such contractor until the bond liability in the required amount unimpaired by unsatisfied judgment claims shall have been furnished. If such bond becomes fully impaired, a new bond must be furnished at the increased rates prescribed by this section as now or hereafter amended.

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

(7) Any person having filed and served a summons and complaint as required by this section having an unsatisfied final judgment against the registrant for any items referred to in this section may execute upon the security held by the department by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the department within one year of the date of entry of such judgment. Upon the receipt of service of such certified copy the department shall pay or order paid from the deposit, through the registry of the superior court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the department shall be the order of receipt by the department, but the department shall have no liability for payment in excess of the amount of the deposit.

(8) The director may promulgate rules necessary for the proper administration of the security. [1988 c 139 § 1; 1987 c 362 § 6; 1983 1st ex.s. c 2 § 18; 1977 ex.s. c 11 § 1; 1973 1st ex.s. c 153 § 4; 1972 ex.s. c 118 § 2; 1967 c 126 § 1; 1963 c 77 § 4.]

***Reviser's note:** 1983 1st ex.s. c 2 generally took effect August 23, 1983, except for §§ 1 through 17 which took effect January 1, 1984; see note following RCW 18.27.200.

Unpaid wages by public works contractor constitute lien against bond:
RCW 39.12.050.

18.27.050 Insurance or financial responsibility required—Suspension of registration upon impairment.

(1) At the time of registration and subsequent reregistration, the applicant shall furnish insurance or financial responsibility in the form of an assigned account in the amount of twenty thousand dollars for injury or damages to property, and fifty thousand dollars for injury or damage including death to any one person, and one hundred thousand dollars for injury or damage including death to more than one person or financial responsibility to satisfy these amounts.

(2) Failure to maintain insurance or financial responsibility relative to the contractor's activities shall be cause to suspend or deny the contractor his or her or their registration.

(3)(a) Proof of financial responsibility authorized in this section may be given by providing, in the amount required by subsection (1) of this section, an assigned account acceptable to the department. The assigned account shall be held by the department to satisfy any execution on a judgment issued against the contractor for damage to property or injury or death to any person occurring in the contractor's contracting operations, according to the provisions of the assigned account agreement. The department shall have no liability for payment in excess of the amount of the assigned account.

(b) The assigned account filed with the director as proof of financial responsibility shall be canceled at the expiration of three years after:

(i) The contractor's registration has expired or been revoked; or

(ii) The contractor has furnished proof of insurance as required by subsection (1) of this section; if, in either case, no legal action has been instituted against the contractor or on the account at the expiration of the three-year period.

(c) If a contractor chooses to file an assigned account as authorized in this section, the contractor shall, on any contracting project, notify each person with whom the contractor enters into a contract or to whom the contractor submits a bid that the contractor has filed an assigned account in lieu of insurance and that recovery from the account for any claim against the contractor for property damage or personal injury or death occurring in the project requires the claimant to obtain a court judgment. [1987 c 303 § 1; 1963 c 77 § 5.]

18.27.060 Certificate of registration—Issuance, duration, renewal—Suspension. (1) A certificate of registration shall be valid for one year and shall be renewed on or before the expiration date. The department shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter.

(2) If the department approves an application, it shall issue a certificate of registration to the applicant. The certificate shall be valid for:

(a) One year;

(b) Until the bond expires; or

(c) Until the insurance expires, whichever comes first.

The department shall place the expiration date on the certificate.

(3) A contractor may supply a short-term bond or insurance policy to bring its registration period to the full one year.

(4) If a contractor's surety bond or other security has an unsatisfied judgment against it or is canceled, or if the contractor's insurance policy is canceled, the contractor's registration shall be automatically suspended on the effective date of the impairment or cancellation. The department shall give notice of the suspension to the contractor. [1983 1st ex.s. c 2 § 19; 1977 ex.s. c 61 § 1; 1963 c 77 § 6.]

18.27.065 Partnership or joint venture deemed registered, when. A partnership or joint venture shall be deemed registered under this chapter if any one of the general partners or venturers whose name appears in the name under which the partnership or venture does business is registered. [1983 1st ex.s. c 2 § 16.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.070 Fees. The department shall charge fees for issuance, renewal, and reinstatement of certificates of registration; and changes of name, address, or business structure. The department shall set the fees by rule.

The fees shall cover the full cost of issuing certificates, filing papers and notices, and administering and enforcing this chapter. The costs shall include reproduction, travel, per diem, and administrative and legal support costs. [1983 c 74 § 1; 1977 ex.s. c 66 § 1; 1973 1st ex.s. c 153 § 5; 1967 c 126 § 2; 1963 c 77 § 7.]

Effective date—1977 ex.s. c 66: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977." [1977 ex.s. c 66 § 2.]

18.27.075 Limit on fees for issuing or renewing certificate of registration. The department may not set a fee higher than fifty dollars for issuing or renewing a certificate of registration. [1983 c 74 § 2.]

18.27.080 Registration prerequisite to suit. No person engaged in the business or acting in the capacity of a contractor may bring or maintain any action in any court of this state for the collection of compensation for the performance of any work or for breach of any contract for which registration is required under this chapter without alleging and proving that he was a duly registered contractor and held a current and valid certificate of registration at the time he contracted for the performance of such work or entered into such contract. For the purposes of this section, the court shall not find a contractor in substantial compliance with the registration requirements of this chapter unless: (1) The department has on file the information required by RCW 18.27.030; (2) the contractor has a current bond or other security as required by RCW 18.27.040; and (3) the contractor has current insurance as required by RCW 18.27.050. In determining under this section whether a contractor is in substantial compliance with the registration requirements of this chapter, the court shall take into consideration the length of time during which the contractor did not hold a valid certificate of registration. [1988 c 285 § 2; 1972 ex.s. c 118 § 3; 1963 c 77 § 8.]

18.27.090 Exemptions. This chapter shall not apply to:

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

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

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

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

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

(6) Any construction, alteration, improvement, or repair of personal property, except this chapter shall apply to all mobile/manufactured housing. A mobile/manufactured home may be installed, set up, or repaired by the registered or legal owner, by a contractor licensed under this chapter, or by a mobile/manufactured home retail dealer or manufacturer licensed under chapter 46.70 RCW who shall warranty service and repairs under chapter 46.70 RCW;

(7) Any construction, alteration, improvement, or repair carried on within the limits and boundaries of any site or

reservation under the legal jurisdiction of the federal government;

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

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

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

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

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

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

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

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

(16) Contractors on highway projects who have been prequalified as required by chapter 13 of the Laws of 1961, RCW 47.28.070, with the department of transportation to perform highway construction, reconstruction, or maintenance work. [1987 c 313 § 1; 1983 c 4 § 1; 1980 c 68 § 2; 1974 ex.s. c 25 § 2. Prior: 1973 1st ex.s. c 161 § 1; 1973 1st ex.s. c 153 § 6; 1967 c 126 § 3; 1965 ex.s. c 170 § 50; 1963 c 77 § 9.]

18.27.100 Business practices—Advertising—Penalty.

(1) Except as provided in RCW 18.27.065 for partnerships and joint ventures, no person who has registered under one name as provided in this chapter shall engage in the business, or act in the capacity, of a contractor under any other name unless such name also is registered under this chapter.

(2) All advertising and all contracts, correspondence, cards, signs, posters, papers, and documents which show a contractor's name or address shall show the contractor's name or address as registered under this chapter.

(3) All advertising that shows the contractor's name or address shall show the contractor's current registration number. The registration number may be omitted in an alphabetized listing of registered contractors stating only the name, address, and telephone number: PROVIDED, That signs on motor vehicles subject to RCW 46.16.010 and on-premise signs shall not constitute advertising as provided in this section. All materials used to directly solicit business from retail customers who are not businesses shall show the contractor's current registration number. A contractor shall not use a false or expired registration number in purchasing or offering to purchase an advertisement for which a contractor registration number is required. Advertising by airwave transmission shall not be subject to this subsection if the person selling the advertisement obtains the contractor's current registration number from the contractor.

(4) No contractor shall advertise that he or she is bonded and insured because of the bond required to be filed and sufficiency of insurance as provided in this chapter.

(5) A contractor shall not falsify a registration number and use it in connection with any solicitation or identification as a contractor. All individual contractors and all partners, associates, agents, salesmen, solicitors, officers, and employees of contractors shall use their true names and addresses at all times while engaged in the business or capacity of a contractor or activities related thereto.

(6)(a) The finding of a violation of this section by the director at a hearing held in accordance with the Administrative Procedure Act, chapter 34.05 RCW, shall subject the person committing the violation to a penalty of not more than five thousand dollars as determined by the director.

(b) Penalties under this section shall not apply to a violation determined to be an inadvertent error. [1996 c 147 § 2; 1993 c 454 § 3; 1990 c 46 § 1; 1987 c 362 § 3; 1980 c 68 § 1; 1979 ex.s. c 116 § 1; 1963 c 77 § 10.]

Effective date—1996 c 147 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 147 § 10.]

Finding—1993 c 454: See note following RCW 18.27.010.

Effective date—1979 ex.s. c 116: "The provisions of this 1979 amendatory act shall become effective on January 1, 1980." [1979 ex.s. c 116 § 2.]

18.27.102 Unlawful advertising—Liability. When determining a violation of RCW 18.27.100, the director and administrative law judge shall hold responsible the person who purchased or offered to purchase the advertising. [1993 c 454 § 4; 1987 c 362 § 4.]

Finding—1993 c 454: See note following RCW 18.27.010.

18.27.104 Unlawful advertising—Citations. (1) If, upon investigation, the director or the director's designee has probable cause to believe that a person holding a registration, an applicant for registration, or an unregistered person acting in the capacity of a contractor who is not otherwise exempted from this chapter, has violated RCW 18.27.100 by unlawfully advertising for work covered by this chapter in an alphabetical or classified directory, the department may issue a citation containing an order of correction. Such order shall require the violator to cease the unlawful advertising.

(2) If the person to whom a citation is issued under subsection (1) of this section notifies the department in writing that he or she contests the citation, the department shall afford an opportunity for an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, within thirty days after receiving the notification. [1989 c 175 § 61; 1987 c 362 § 5.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.27.110 Building permits—Verification of registration required—Responsibilities of issuing entity—Penalties.

(1) No city, town or county shall issue a construction building permit for work which is to be done by any contractor required to be registered under this chapter without verification that such contractor is currently registered as required by law. When such verification is made, nothing contained in this section is intended to be, nor shall be construed to create, or form the basis for any liability under this chapter on the part of any city, town or county, or its officers, employees or agents. However, failure to verify the contractor registration number results in liability to the city, town, or county to a penalty to be imposed according to RCW 18.27.100(6)(a).

(2) At the time of issuing the building permit, all cities, towns, or counties are responsible for:

(a) Printing the contractor registration number on the building permit; and

(b) Providing a written notice to the building permit applicant informing them of contractor registration laws and the potential risk and monetary liability to the homeowner for using an unregistered contractor.

(3) If a building permit is obtained by an applicant or contractor who falsifies information to obtain an exemption provided under RCW 18.27.090, the building permit shall be forfeited. [1993 c 454 § 5; 1986 c 197 § 14; 1967 c 126 § 4.]

Finding—1993 c 454: See note following RCW 18.27.010.

18.27.111 Public works, contracts with unregistered contractors prohibited. See RCW 39.06.010.**18.27.114 Disclosure statement required—**

Prerequisite to lien claim. (1) Until July 1, 1989, any contractor agreeing to perform any contracting project: (a) For the repair, alteration, or construction of four or fewer residential units or accessory structures on such residential property when the bid or contract price totals one thousand dollars or more; or (b) for the repair, alteration, or construction of a commercial building when the bid or contract price totals one thousand dollars or more but less than sixty thousand dollars, must provide the customer with the

following disclosure statement prior to starting work on the project:

"NOTICE TO CUSTOMER

This contractor is registered with the state of Washington, registration no., as a general/specialty contractor and has posted with the state a bond or cash deposit of \$6,000/\$4,000 for the purpose of satisfying claims against the contractor for negligent or improper work or breach of contract in the conduct of the contractor's business. This bond or cash deposit may not be sufficient to cover a claim which might arise from the work done under your contract. If any supplier of materials used in your construction project or any employee of the contractor or subcontractor is not paid by the contractor or subcontractor on your job, your property may be liened to force payment. If you wish additional protection, you may request the contractor to provide you with original "lien release" documents from each supplier or subcontractor on your project. The contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the department of labor and industries."

(2) On and after July 1, 1989, any contractor agreeing to perform any contracting project: (a) For the repair, alteration, or construction of four or fewer residential units or accessory structures on such residential property when the bid or contract price totals one thousand dollars or more; or (b) for the repair, alteration, or construction of a commercial building when the bid or contract price totals one thousand dollars or more but less than sixty thousand dollars, must provide the customer with the following disclosure statement prior to starting work on the project:

"NOTICE TO CUSTOMER

This contractor is registered with the state of Washington, registration no., as a general/specialty contractor and has posted with the state a bond or cash deposit of \$6,000/\$4,000 for the purpose of satisfying claims against the contractor for negligent or improper work or breach of contract in the conduct of the contractor's business. The expiration date of this contractor's registration is This bond or cash deposit may not be sufficient to cover a claim which might arise from the work done under your contract. If any supplier of materials used in your construction project or any employee of the contractor or subcontractor is not paid by the contractor or subcontractor on your job, your property may be liened to force payment. If you wish additional protection, you may request the contractor to provide you with original "lien release" documents from each supplier or subcontractor on your project. The contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the department of labor and industries."

(3) On and after July 1, 1989, a contractor subject to this section shall notify any consumer to whom notice is required under subsection (2) of this section if the contractor's registration has expired or is revoked or suspended by the department prior to completion or other termination of the contract with the consumer.

(4) No contractor subject to this section may bring or maintain any lien claim under chapter 60.04 RCW based on any contract to which this section applies without alleging and proving that the contractor has provided the customer with a copy of the disclosure statement as required in subsection (1) or (2) of this section.

(5) This section does not apply to contracts authorized under chapter 39.04 RCW or to contractors contracting with other contractors.

(6) Failure to comply with this section shall constitute an infraction under the provisions of this chapter.

(7) The department shall produce model disclosure statements, and public service announcements detailing the information needed to assist contractors and contractors' customers to comply under this section. As necessary, the department shall periodically update these education materials. [1988 c 182 § 1; 1987 c 419 § 1.]

Voluntary compliance with notification requirements. "Nothing in RCW 18.27.114 shall be construed to prohibit a contractor from voluntarily complying with the notification requirements of that section which take effect July 1, 1989, prior to that date." [1988 c 182 § 2.]

18.27.117 Violations relating to mobile/manufactured homes. The legislature finds that setting up and siting mobile/manufactured homes must be done properly for the health, safety, and enjoyment of the occupants. Therefore, when any of the following cause a health and safety risk to the occupants of a mobile/manufactured home, or severely hinder the use and enjoyment of the mobile/manufactured home, a violation of RCW 19.86.020 shall have occurred:

(1) The mobile/manufactured home has been improperly installed by a contractor licensed under chapter 18.27 RCW, or a mobile/manufactured dealer or manufacturer licensed under chapter 46.70 RCW;

(2) A warranty given under chapter 18.27 RCW or chapter 46.70 RCW has not been fulfilled by the person or business giving the warranty; and

(3) A bonding company that issues a bond under chapter 18.27 RCW or chapter 46.70 RCW does not reasonably and professionally investigate and resolve claims made by injured parties. [1987 c 313 § 2.]

18.27.120 List of registered contractors—Availability, fee. (1) The department shall compile a list of all contractors registered under this chapter and update the list at least bimonthly. The list shall be considered as public record information and shall be available to the public upon request: PROVIDED, That the department may charge a reasonable fee under RCW 42.17.300.

(2) The department shall inform any person, firm, or corporation, if a contractor is registered, and if a contractor is bonded or insured, without charge except for a reasonable fee under RCW 42.17.300 for copies made. [1983 1st ex.s. c 2 § 20; 1973 1st ex.s. c 153 § 7; 1972 ex.s. c 118 § 5.]

Fees, generally: RCW 18.27.070.

18.27.125 Rules. The director shall adopt rules in compliance with chapter 34.05 RCW to effect the purposes of this chapter. [1986 c 197 § 12.]

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

18.27.140 Purpose. It is the purpose of this chapter to afford protection to the public including all persons, firms, and corporations furnishing labor, materials, or equipment to a contractor from unreliable, fraudulent, financially irresponsible, or incompetent contractors. [1983 1st ex.s. c 2 § 21; 1973 1st ex.s. c 161 § 2.]

18.27.200 Violation—Infraction. (1) It is a violation of this chapter and an infraction for any contractor to:

(a) Advertise, offer to do work, submit a bid, or perform any work as a contractor without being registered as required by this chapter;

(b) Advertise, offer to do work, submit a bid, or perform any work as a contractor when the contractor's registration is suspended; or

(c) Transfer a valid registration to an unregistered contractor or allow an unregistered contractor to work under a registration issued to another contractor.

(2) Each day that a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended, or works under a registration issued to another contractor is a separate infraction. Each worksite at which a contractor works without being registered as required by this chapter, works while the contractor's registration is suspended, or works under a registration issued to another contractor is a separate infraction. [1993 c 454 § 7; 1983 1st ex.s. c 2 § 1.]

Finding—1993 c 454: See note following RCW 18.27.010.

Effective date—1983 1st ex.s. c 2: "Sections 1 through 17 of this act shall take effect January 1, 1984." [1983 1st ex.s. c 2 § 24.]

Prohibited acts—Criminal penalties: RCW 18.27.020.

18.27.210 Violations—Investigations—Evidence. (1) The director shall appoint compliance inspectors to investigate alleged or apparent violations of this chapter. The director, or authorized compliance inspector, upon presentation of appropriate credentials, may inspect and investigate job sites at which a contractor had bid or presently is working to determine whether the contractor is registered in

accordance with this chapter or the rules adopted under this chapter or whether there is a violation of RCW 18.27.200. Upon request of the compliance inspector of the department, a contractor or an employee of the contractor shall provide information identifying the contractor.

(2) If the employee of an unregistered contractor is cited by a compliance inspector, that employee is cited as the agent of the employer-contractor, and issuance of the infraction to the employee is notice to the employer-contractor that the contractor is in violation of this chapter. An employee who is cited by a compliance inspector shall not be liable for any of the alleged violations contained in the citation unless the employee is also the contractor. [1993 c 454 § 8; 1987 c 419 § 2; 1986 c 197 § 2; 1983 1st ex.s. c 2 § 2.]

Finding—1993 c 454: See note following RCW 18.27.010.

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.220 Investigations—Penalty for failure to identify contractor. Wilful refusal to provide information identifying a contractor as required by RCW 18.27.210 is a misdemeanor. [1983 1st ex.s. c 2 § 12.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.225 Violations—Restraining orders—Injunctions. (1) If, upon inspection or investigation, the director or authorized compliance inspector reasonably believes that a contractor has failed to register in accordance with this chapter or the rules adopted under this chapter, the director shall issue an order immediately restraining further construction work at the job site by the contractor. The order shall describe the specific violation that necessitated issuance of the restraining order. The contractor or representative to whom the restraining order is directed may request a hearing before an administrative law judge, such hearing to be conducted pursuant to chapter 34.05 RCW. A request for hearing shall not stay the effect of the restraining order.

(2) In addition to and after having invoked the powers of restraint vested in the director as provided in subsection (1) of this section, the director, through the attorney general, may petition the superior court of the state of Washington to enjoin any activity in violation of this chapter. A prima facie case for issuance of an injunction shall be established by affidavits and supporting documentation demonstrating that a restraining order was served upon the contractor and that the contractor continued to work after service of the order. Upon the filing of the petition, the superior court shall have jurisdiction to grant injunctive or other appropriate relief, pending the outcome of enforcement proceedings under this chapter, or to enforce restraining orders issued by the director. If the contractor fails to comply with any court order, the director shall request the attorney general to petition the superior court for an order holding the contractor in contempt of court and for any other appropriate relief. [1987 c 419 § 3.]

18.27.230 Notice of infraction—Service. The department may issue a notice of infraction if the department reasonably believes that the contractor required to be reg-

istered by this chapter has failed to do so or has otherwise committed a violation under RCW 18.27.200. A notice of infraction issued under this section shall be personally served on the contractor named in the notice by the department's compliance inspectors or service can be made by certified mail directed to the contractor named in the notice of infraction. If the contractor named in the notice of infraction is a firm or corporation, the notice may be personally served on any employee of the firm or corporation. If a notice of infraction is personally served upon an employee of a firm or corporation, the department shall within four days of service send a copy of the notice by certified mail to the contractor if the department is able to obtain the contractor's address. [1993 c 454 § 9; 1986 c 197 § 3; 1983 1st ex.s. c 2 § 3.]

Finding—1993 c 454: See note following RCW 18.27.010.

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.240 Notice—Form—Contents. The form of the notice of infraction issued under this chapter shall include the following:

(1) A statement that the notice represents a determination that the infraction has been committed by the contractor named in the notice and that the determination shall be final unless contested as provided in this chapter;

(2) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;

(3) A statement of the specific violation which necessitated issuance of the infraction;

(4) A statement of penalty involved if the infraction is established;

(5) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(6) A statement that at any hearing to contest the notice of infraction the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the contractor may subpoena witnesses, including the compliance inspector of the department who issued and served the notice of infraction;

(7) A statement, which the person who has been served with the notice of infraction shall sign, that the contractor promises to respond to the notice of infraction in one of the ways provided in this chapter;

(8) A statement that refusal to sign the infraction as directed in subsection (7) of this section is a misdemeanor and may be punished by a fine or imprisonment in jail; and

(9) A statement that a contractor's failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine or imprisonment in jail. [1986 c 197 § 4; 1983 1st ex.s. c 2 § 5.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.250 Notice—Filing—Administrative hearing—Appeal. A violation designated as an infraction under this chapter shall be heard and determined by an administrative law judge of the office of administrative hearings. If a party desires to contest the notice of infraction, the party shall file

a notice of appeal with the department, within twenty days of issuance of the infraction. The administrative law judge shall conduct hearings in these cases at locations in the county where the infraction occurred. [1986 c 197 § 5; 1983 1st ex.s. c 2 § 4.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.260 Notice—Determination infraction committed. Unless contested in accordance with this chapter, the notice of infraction represents a determination that the contractor to whom the notice was issued committed the infraction. [1983 1st ex.s. c 2 § 6.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.270 Notice—Response—Failure to respond, appear, or pay penalties. (1) A contractor who is issued a notice of infraction shall respond within twenty days of the date of issuance of the notice of infraction.

(2) If the contractor named in the notice of infraction does not elect to contest the notice of infraction, then the contractor shall pay to the department, by check or money order, the amount of the penalty prescribed for the infraction. When a response which does not contest the notice of infraction is received by the department with the appropriate penalty, the department shall make the appropriate entry in its records.

(3) If the contractor named in the notice of infraction elects to contest the notice of infraction, the contractor shall respond by filing an answer of protest with the department specifying the grounds of protest.

(4) If any contractor issued a notice of infraction fails to respond within the prescribed response period, the contractor shall be guilty of a misdemeanor and prosecuted in the county where the infraction occurred.

(5) After final determination by an administrative law judge that an infraction has been committed, a contractor who fails to pay a monetary penalty within thirty days, that is not waived, reduced, or suspended pursuant to RCW 18.27.340(2), and who fails to file an appeal pursuant to RCW 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the county where the infraction occurred.

(6) A contractor who fails to pay a monetary penalty within thirty days after exhausting appellate remedies pursuant to RCW 18.27.310(4), shall be guilty of a misdemeanor and be prosecuted in the county where the infraction occurred. [1986 c 197 § 6; 1983 1st ex.s. c 2 § 7.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.280 Notice—Penalty for person refusing to promise to respond. It is a misdemeanor for any person who has been personally served with a notice of infraction to refuse to sign a written promise to respond to the notice. [1983 1st ex.s. c 2 § 10.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.290 Notice—Penalty for contractor failing to respond. It is a misdemeanor for a contractor who has been

personally served with a notice of infraction to wilfully violate the written promise to respond to a notice of infraction as provided in this chapter, regardless of the ultimate disposition of the infraction. [1983 1st ex.s. c 2 § 11.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.300 Representation by attorney, attorney general. A contractor subject to proceedings under this chapter may appear or be represented by counsel. The department shall be represented by the attorney general in administrative proceedings and any subsequent appeals under this chapter. [1986 c 197 § 7; 1983 1st ex.s. c 2 § 8.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.310 Infraction—Administrative hearing—Procedure—Burden of proof—Order—Appeal. (1) The administrative law judge shall conduct contractors' notice of infraction cases pursuant to chapter 34.05 RCW.

(2) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence. The notice of infraction shall be dismissed if the defendant establishes that, at the time the notice was issued, the defendant was registered by the department, without suspension, or was exempt from registration.

(3) After consideration of the evidence and argument, the administrative law judge shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the record of the proceedings. If it has been established that the infraction was committed, the administrative law judge shall issue findings of fact and conclusions of law in its decision and order determining whether the infraction was committed.

(4) An appeal from the administrative law judge's determination or order shall be to the superior court. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the Rules of Appellate Procedure. [1993 c 454 § 10; 1986 c 197 § 8; 1983 1st ex.s. c 2 § 9.]

Finding—1993 c 454: See note following RCW 18.27.010.

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.320 Infraction—Dismissal, when. The administrative law judge shall dismiss the notice of infraction at any time upon written notification from the department that the contractor named in the notice of infraction was registered, without suspension, at the time the notice of infraction was issued. [1993 c 454 § 11; 1986 c 197 § 9; 1983 1st ex.s. c 2 § 13.]

Finding—1993 c 454: See note following RCW 18.27.010.

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.340 Infraction—Monetary penalty. (1) A contractor found to have committed an infraction under RCW 18.27.200 shall be assessed a monetary penalty of not less than two hundred dollars and not more than three thousand dollars.

(2) The administrative law judge may waive, reduce, or suspend the monetary penalty imposed for the infraction only upon a showing of good cause that the penalty would be unduly burdensome to the contractor.

(3) Monetary penalties collected under this chapter shall be deposited in the general fund. [1986 c 197 § 10; 1983 1st ex.s. c 2 § 15.]

Effective date—1983 1st ex.s. c 2: See note following RCW 18.27.200.

18.27.350 Violations—Consumer Protection Act. The consumers of this state have a right to be protected from unfair or deceptive acts or practices when they enter into contracts with contractors. The fact that a contractor is found to have committed a misdemeanor or infraction under this chapter shall be deemed to affect the public interest and shall constitute a violation of chapter 19.86 RCW. The surety bond shall not be liable for monetary penalties or violations of chapter 19.86 RCW. [1986 c 197 § 11.]

18.27.360 Certificate of registration suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the certificate of registration of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's certificate of registration shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for certification of registration during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 7.]

Severability—1996 c 293: See note following RCW 18.04.420.

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

Chapter 18.28 DEBT ADJUSTING

Sections

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) "Director" means the director of the department of licensing. [1979 c 156 § 1; 1970 ex.s. c 97 § 1; 1967 c 201 § 1.]

***Reviser's note:** In chapter 31.08 RCW, the term "small loan companies" was changed to "consumer finance business" by 1979 c 18. Chapter 31.08 RCW was repealed by 1991 c 208 § 24, effective January 1, 1993, which also renamed chapter 31.04 RCW (formerly "industrial loan companies") the "consumer loan act."

Effective date—1979 c 156: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1979." [1979 c 156 § 14.]

Severability—1979 c 156: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1979 c 156 § 13.]

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

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

Except as provided hereinafter in this section the applicant shall pay an investigation fee and a licensing fee determined by the director as provided in RCW 43.24.086: PROVIDED, That a branch office of a licensed debt adjusting agency need not pay an investigation fee but only the licensing fee. If a license is not issued in response to the application, the director shall return the licensing fee to the applicant. An annual license fee determined by the director as provided in RCW 43.24.086, shall be paid to the director by January 1st of each year. If the annual license fee is not paid by January 1st, the licensee shall be assessed a penalty for late payment determined by the director as provided in RCW 43.24.086. And if the fee and penalty are not paid by January 31st, reapplication for a new license will be necessary, which may include taking any examination prescribed by the director.

The applicant shall file a surety bond with the director or in lieu thereof the applicant may file with the director a

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

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

If the applicant is an individual person making an original license application he shall pay an examination fee determined by the director as provided in RCW 43.24.086.

If the applicant is applying for a debt adjusting agency license it shall furnish the director with complete forms of all contracts and assignments designed for execution by debtors making any assignments to or placing any property with the applicant for the purpose of paying the creditors of such debtors, and complete forms of all contracts and agreements designed for execution by creditors to whom payments are made by the applicant. Only such forms furnished the director and not disapproved by him shall be used by a debt adjusting agency licensee. [1985 c 7 § 18; 1975 1st ex.s. c 30 § 23; 1971 ex.s. c 266 § 6; 1967 c 201 § 3.]

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

An applicant for a license under this chapter may furnish, file and deposit with the director, in lieu of the surety bond provided for herein, United States currency or bonds, representing obligations of the United States, or bonds of the state of Washington or any legal subdivision

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

18.28.045 Additional bond—When required. If the director finds at any time that the bond is insecure, depleted, exhausted, or otherwise doubtful, an additional bond of the character specified in RCW 18.28.040 and approved by the director in the sum of not more than ten thousand dollars, shall be filed by the licensee within ten days after written demand upon the licensee by the director. [1979 c 156 § 2.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

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

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

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

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

(3) An individual applicant is at least eighteen years of age.

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

(5) An individual applicant for an original license as a debt adjuster has passed an examination administered by the director, which examination may be oral or written, or partly oral and partly written, and shall be practical in nature and sufficiently thorough to ascertain the applicant's fitness. Questions on bookkeeping, credit adjusting, business ethics, agency, contracts, debtor and creditor relationships, trust funds and the provisions of this chapter shall be included in the examination. No applicant may use any books or other similar aids while taking the examination, and no applicant may take the examination more than three times in any twelve month period. [1979 c 156 § 3; 1971 ex.s. c 292 § 20; 1967 ex.s. c 141 § 1; 1967 c 201 § 6.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

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

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

- (1) Be in the form and size prescribed by the director;
- (2) Show the name of the licensee and the address at which the business of debt adjusting is to be conducted;
- (3) Show the date of expiration of the license as December 31st, and show such other matter as may be prescribed by the director;
- (4) While in force, be at all times conspicuously displayed in the outer office of the debt adjusting agency or branch thereof; and
- (5) Not be transferable or assignable. [1967 c 201 § 7.]

18.28.080 Fees for debt adjusting services—Limitations—Requirements. (1) By contract a licensee may charge a reasonable fee for debt adjusting services. The total fee for debt adjusting services may not exceed fifteen percent of the total debt listed by the debtor on the contract. The fee retained by the licensee from any one payment made by or on behalf of the debtor may not exceed fifteen percent of the payment: PROVIDED, That the licensee may make an initial charge of up to twenty-five dollars which shall be considered part of the total fee. If an initial charge is made, no additional fee may be retained which will bring the total fee retained to date to more than fifteen percent of the total payments made to date. No fee whatsoever shall be applied against rent and utility payments for housing.

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

(2) A licensee shall not be entitled to retain any fee until notifying all creditors listed by the debtor that the debtor has engaged the licensee in a program of debt adjusting. [1979 c 156 § 4; 1967 ex.s. c 141 § 2; 1967 c 201 § 8.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

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

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

- (1) List every debt to be handled with the creditor's name and disclose the approximate total of all known debts;
- (2) Provide in precise terms payments reasonably within the ability of the debtor to pay;
- (3) Disclose in precise terms the rate and amount of all of the licensee's charges and fees;
- (4) Disclose the approximate number and amount of installments required to pay the debts in full;
- (5) Disclose the name and address of the licensee and of the debtor;
- (6) Provide that the licensee shall notify the debtor, in writing, within five days of notification to the licensee by a creditor that the creditor refuses to accept payment pursuant to the contract between the licensee and the debtor;
- (7) Contain the following notice in ten point boldface type or larger directly above the space reserved in the contract for the signature of the buyer: NOTICE TO DEBTOR:
 - (a) Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank.
 - (b) You are entitled to a copy of this contract at the time you sign it.
 - (c) You may cancel this contract within three days of signing by sending notice of cancellation by certified mail return receipt requested to the debt adjuster at his address shown on the contract, which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing of the contract; and
 - (8) Contain such other and further provisions or disclosures as the director shall determine are necessary for the protection of the debtor and the proper conduct of business by the licensee. [1979 c 156 § 5; 1967 c 201 § 10.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

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

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

or by microfilm or other methods of duplication acceptable to the director, for at least six years after making the final entry therein.

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

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

(4) Distribute to the creditors of the debtor at least once each forty days after receipt of payment during the term of the contract at least eighty-five percent of each payment received from the debtor.

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

(6) Notify the debtor, in writing, within five days of notification to the licensee by a creditor that the creditor refuses to accept payment pursuant to the contract between the licensee and the debtor.

(7) Furnish the director with all contracts, assignments, and forms as described in RCW 18.28.030 which are currently in use. [1979 c 156 § 6; 1967 c 201 § 11.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

18.28.120 Licensees—Prohibited acts. A licensee shall not:

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

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

(3) Lend money or credit;

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

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

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

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

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

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

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

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

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

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

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

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

18.28.150 Trust account for payments by debtor—Disbursements. (1) Any payment received by a licensee from or on behalf of a debtor shall be held in trust by the licensee from the moment it is received. The licensee shall not commingle such payment with his own property or funds, but shall maintain a separate trust account and deposit in such account all such payments received. All disbursements whether to the debtor or to the creditors of the debtor, or to the licensee, shall be made from such account.

(2) In the event that the debtor cancels or defaults on the contract between the debtor and the licensee, the licensee shall close out the debtor's trust account in the following manner:

(a) The licensee may take from the account that amount necessary to satisfy any fees, other than any cancellation or default fee, authorized by this chapter.

(b) After deducting the fees provided in subsection (2)(a) of this section, the licensee shall distribute the remaining amount in the account to the creditors of the debtor. The distribution shall be made within five days of the demand therefor by the debtor, but if the debtor fails to make the demand, then the licensee shall make the distribution within thirty days of the date of cancellation or default. [1979 c 156 § 8; 1967 c 201 § 15.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

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

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

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

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

18.28.165 Investigations. For the purpose of discovering violations of this chapter or securing information lawfully required by him hereunder, the director may at any time, either personally or by a person or persons duly designated by him, investigate the debt adjusting business and examine the books, accounts, records, and files used therein, of every licensee. For that purpose the director and his duly designated representatives shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all licensees. The director and all persons duly designated by him may require the attendance of and examine under oath all persons whomsoever whose testimony he may require relative to such debt adjusting business or to the subject matter of any examination, investigation, or hearing. [1979 c 156 § 7.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

18.28.170 Rules, orders, decisions, etc. The director may promulgate rules, make specific decisions, orders and rulings, including therein demands and findings, and take other necessary action for the implementation and enforcement of this chapter. The director shall include among rules promulgated, those which describe and forbid deceptive advertising. [1979 c 156 § 9; 1967 c 201 § 17.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

18.28.180 Administrative procedure act to govern administration. The administrative procedure act, chapter 34.05 RCW, shall wherever applicable herein, govern the rights, remedies, and procedures respecting the administration of this chapter. [1967 c 201 § 18.]

18.28.185 Violations—Unfair practice under chapter 19.86 RCW. A violation of this chapter constitutes an unfair or deceptive act or practice in the conduct of trade or commerce under chapter 19.86 RCW. [1979 c 156 § 10.]

Effective date—Severability—1979 c 156: See notes following RCW 18.28.010.

18.28.190 Violations—Penalty. Any person who violates any provision of this chapter or aids or abets such violation, or any rule lawfully promulgated hereunder or any order or decision of the director hereunder, or any person

who operates as a debt adjuster without a license, shall be guilty of a misdemeanor. [1967 c 201 § 19.]

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

18.28.210 Violations—Assurance of discontinuance—Effect. The attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter in the enforcement thereof from any person engaging in or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in the alternative, in Thurston county. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter for the purpose of securing any injunction as provided for in RCW 18.28.200: PROVIDED, That after commencement of any action by a prosecuting attorney, as provided therein, the attorney general may not accept an assurance of discontinuance without the consent of said prosecuting attorney. [1967 c 201 § 21.]

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

18.28.230 License suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the license of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 8.]

Severability—1996 c 293: See note following RCW 18.04.420.

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

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

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

Chapter 18.29

DENTAL HYGIENIST

Sections

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Reviser's note: Powers and duties of the department of licensing and the director of licensing transferred to the department of health and the secretary of health. See RCW 43.70.220.

Dentistry: Chapter 18.32 RCW.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

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

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.29.003 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

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

18.29.011 License required. No person may practice as a dental hygienist in this state without having a license as

such and, after the first year, an unexpired license renewal certificate. [1987 c 150 § 16.]

Severability—1987 c 150: See RCW 18.122.901.

18.29.021 Requirements for licensing. (1) The department shall issue a license to any applicant who, as determined by the secretary:

(a) Has successfully completed an educational program approved by the secretary. This educational program shall include course work encompassing the subject areas within the scope of the license to practice dental hygiene in the state of Washington;

(b) Has successfully completed an examination administered or approved by the dental hygiene examining committee; and

(c) Has not engaged in unprofessional conduct or is not unable to practice with reasonable skill and safety as a result of a physical or mental impairment.

(2) Applications for licensure must comply with administrative procedures, administrative requirements, and fees established according to RCW 43.70.250 and 43.70.280. [1996 c 191 § 10; 1995 c 198 § 4; 1991 c 3 § 46; 1989 c 202 § 1.]

18.29.045 Licensure by endorsement. An applicant holding a valid license and currently engaged in practice in another state may be granted a license without examination required by this chapter, on the payment of any required fees, if the secretary in consultation with the advisory committee determines that the other state's licensing standards are substantively equivalent to the standards in this state: PROVIDED, That the secretary in consultation with the advisory committee may require the applicant to: (1) File with the secretary documentation certifying the applicant is licensed to practice in another state; and (2) provide information as the secretary deems necessary pertaining to the conditions and criteria of the uniform disciplinary act, chapter 18.130 RCW and to demonstrate to the secretary a knowledge of Washington law pertaining to the practice of dental hygiene. [1991 c 3 § 47; 1989 c 202 § 29.]

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

(1) Any surgical removal of tissue of the oral cavity;

(2) Any prescription of drugs or medications requiring the written order or prescription of a licensed dentist or physician;

(3) Any diagnosis for treatment or treatment planning;

or
(4) The taking of any impression of the teeth or jaw, or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis.

Such licensed dental hygienists may perform dental operations and services only under the supervision of a licensed dentist, and under such supervision may be employed by hospitals; boards of education of public or private schools, county boards, boards of health, or public or charitable institutions, or in dental offices: PROVIDED, That the number of hygienists so employed in any dental office shall not exceed twice in number the licensed dentists practicing therein. [1971 ex.s. c 235 § 1; 1969 c 47 § 4; 1923 c 16 § 27; RRS § 10030-27.]

18.29.056 Employment by health care facilities authorized—Limitations. (1) Dental hygienists licensed under this chapter with two years' practical clinical experience with a licensed dentist within the preceding five years may be employed or retained by health care facilities to perform authorized dental hygiene operations and services without dental supervision, limited to removal of deposits and stains from the surfaces of the teeth, application of topical preventive or prophylactic agents, polishing and smoothing restorations, and performance of root planing and soft-tissue curettage, but shall not perform injections of anesthetic agents, administration of nitrous oxide, or diagnosis for dental treatment. The performance of dental hygiene operations and services in health care facilities shall be limited to patients, students, and residents of the facilities. For dental planning and dental treatment, dental hygienists shall refer patients to licensed dentists.

(2) For the purposes of this section, "health care facilities" are limited to hospitals; nursing homes; home health agencies; group homes serving the elderly, handicapped, and juveniles; state-operated institutions under the jurisdiction of the department of social and health services or the department of corrections; and federal, state, and local public health facilities. [1984 c 279 § 63.]

Severability—1984 c 279: See RCW 18.130.901.

18.29.060 License issuance—Display. Upon passing an examination and meeting the requirements as provided in RCW 18.29.021, the secretary of health shall issue to the successful applicant a license as dental hygienist. The license shall be displayed in a conspicuous place in the operation room where such licensee shall practice. [1991 c 3 § 48; 1989 c 202 § 12; 1985 c 7 § 21; 1981 c 277 § 4; 1979 c 158 § 32; 1923 c 16 § 31; RRS § 10030-31.]

18.29.071 Renewals. The secretary shall establish the administrative procedures, administrative requirements, and fees for renewal of licenses as provided in this chapter and in RCW 43.70.250 and 43.70.280. [1996 c 191 § 11; 1991 c 3 § 49; 1989 c 202 § 2.]

18.29.076 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 15; 1986 c 259 § 31.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.29.100 Violations—Penalty—Prosecutions. Any person who shall violate any provision of this chapter shall be guilty of a misdemeanor. It shall be the duty of the prosecuting attorney of each county to prosecute all cases involving a violation of this chapter arising within his or her county. The attorney general may assist in such prosecutions and shall appear at all hearings when requested to do so by the secretary of health. [1991 c 3 § 50; 1979 c 158 § 34; 1923 c 16 § 36; RRS § 10030-36.]

Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.29.110 Dental hygiene examining committee—Generally. There shall be a dental hygiene examining committee consisting of three practicing dental hygienists and one public member appointed by the secretary, to be known as the Washington dental hygiene examining committee. Each dental hygiene member shall be licensed and have been actively practicing dental hygiene for a period of not less than five years immediately before appointment and shall not be connected with any dental hygiene school. The public member shall not be connected with any dental hygiene program or engaged in any practice or business related to dental hygiene. Members of the committee shall be appointed by the secretary to prepare and conduct examinations for dental hygiene licensure. Members shall be appointed to serve for terms of three years from October 1 of the year in which they are appointed. Terms of the members shall be staggered. Each member shall hold office for the term of his or her appointment and until his or her successor is appointed and qualified. Any member of the committee may be removed by the secretary for neglect of duty, misconduct, malfeasance, or misfeasance in office, after being given a written statement of the charges against him or her and sufficient opportunity to be heard thereon. Members of the committee shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1991 c 3 § 51; 1989 c 202 § 3.]

18.29.120 Examinations—Secretary's authority—Consultation with examining authority. The secretary in consultation with the Washington dental hygiene examining committee shall:

(1) Adopt rules in accordance with chapter 34.05 RCW necessary to prepare and conduct examinations for dental hygiene licensure;

(2) Require an applicant for licensure to pass an examination consisting of written and practical tests upon such subjects and of such scope as the committee determines;

(3) Set the standards for passage of the examination;

(4) Administer at least two examinations each calendar year. Additional examinations may be given as necessary; and

(5) Establish by rule the procedures for an appeal of an examination failure. [1995 c 198 § 5; 1991 c 3 § 52; 1989 c 202 § 4.]

18.29.130 Secretary's authority—Generally—Continuing education. In addition to any other authority provided by law, the secretary may:

- (1) Adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;
- (2) Establish forms necessary to administer this chapter;
- (3) Issue a license to any applicant who has met the education and examination requirements for licensure and deny a license to applicants who do not meet the minimum qualifications for licensure. Proceedings concerning the denial of licenses based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;
- (4) Employ clerical, administrative, and investigative staff as needed to implement and administer this chapter and hire individuals, including those licensed under this chapter, to serve as examiners or consultants as necessary to implement and administer this chapter;
- (5) Maintain the official departmental record of all applicants and licensees;
- (6) Establish, by rule, the minimum education requirements for licensure, including but not limited to approval of educational programs; and
- (7) Establish and implement by rule a continuing education program. [1991 c 3 § 53; 1989 c 202 § 5.]

18.29.140 Approval of educational programs. The secretary shall establish by rule the standards and procedures for approval of educational programs and may contract with individuals or organizations having expertise in the profession or in education to report to the secretary information necessary for the secretary to evaluate the educational programs. The secretary may establish a fee for educational program evaluation. The fee shall be set to defray the administrative costs for evaluating the educational program, including, but not limited to, costs for site evaluation. [1991 c 3 § 54; 1989 c 202 § 6.]

18.29.150 Examinations. (1) The secretary shall establish the date and location of the examination. Applicants who meet the education requirements for licensure shall be scheduled for the next examination following the filing of the application. The secretary shall establish by rule the examination application deadline.

(2) The examination shall contain subjects appropriate to the scope of practice and on laws in the state of Washington regulating dental hygiene practice.

(3) The committee shall establish by rule the requirements for a reexamination if the applicant has failed the examination.

(4) The committee may approve an examination prepared or administered by a private testing agency or association of licensing authorities. [1991 c 3 § 55; 1989 c 202 § 7.]

18.29.160 Immunity. The secretary, members of the committee, and individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any acts performed in the course of their duties. [1991 c 3 § 56; 1989 c 202 § 8.]

18.29.170 Committee meetings—Quorum—Effect of vacancy. The committee shall meet at least once a year and at such times as may be necessary for the transaction of business.

A majority of the committee shall constitute a quorum.

A vacancy in the committee membership shall not impair the right of the remaining members of the committee to exercise any power or to perform any duty of the committee, so long as the power is exercised or the duty performed by a quorum of the committee. [1989 c 202 § 9.]

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

(1) The practice of dental hygiene in the discharge of official duties by dental hygienists in the United States armed services, coast guard, public health services, veterans' bureau, or bureau of Indian affairs;

(2) Dental hygiene programs approved by the secretary and the practice of dental hygiene by students in dental hygiene programs approved by the secretary, when acting under the direction and supervision of persons licensed under chapter 18.29 or 18.32 RCW acting as instructors. [1991 c 3 § 57; 1989 c 202 § 10.]

18.29.190 Temporary licenses. (Expires January 1, 1998.) (1) The department shall issue a temporary license without the examination required by this chapter to any applicant who, as determined by the secretary:

(a) Holds a valid license in another state that allows the scope of practice in subsection (3) (a) through (j) of this section;

(b) Is currently engaged in active practice in another state. For the purposes of this section, "active practice" means five hundred sixty hours of practice in the preceding twenty-four months;

(c) Files with the secretary documentation certifying that the applicant:

(i) Has graduated from an accredited dental hygiene school approved by the secretary;

(ii) Has successfully completed the dental hygiene national board examination; and

(iii) Is licensed to practice in another state;

(d) Provides information as the secretary deems necessary pertaining to the conditions and criteria of the uniform disciplinary act, chapter 18.130 RCW;

(e) Demonstrates to the secretary a knowledge of Washington state law pertaining to the practice of dental hygiene, including the administration of legend drugs;

(f) Pays any required fees; and

(g) Meets requirements for AIDS education.

(2) The term of the temporary license issued under this section is eighteen months and it is nonrenewable.

(3) A person practicing with a temporary license granted under this section has the authority to perform hygiene procedures that are limited to:

(a) Oral inspection and measuring of periodontal pockets;

(b) Patient education in oral hygiene;

(c) Taking intra-oral and extra-oral radiographs;

(d) Applying topical preventive or prophylactic agents;

- (e) Polishing and smoothing restorations;
 - (f) Oral prophylaxis and removal of deposits and stains from the surface of the teeth;
 - (g) Recording health histories;
 - (h) Taking and recording blood pressure and vital signs;
 - (i) Performing subgingival and supragingival scaling;
- and
- (j) Performing root planing.

(4)(a) A person practicing with a temporary license granted under this section may not perform the following dental hygiene procedures unless authorized in (b) or (c) of this subsection:

- (i) Give injections of local anesthetic;
 - (ii) Place restorations into the cavity prepared by a licensed dentist and afterwards carve, contour, and adjust contacts and occlusion of the restoration;
 - (iii) Soft tissue curettage; or
 - (iv) Administer nitrous oxide/oxygen analgesia.
- (b) A person licensed in another state who can demonstrate substantively equivalent licensing standards in the administration of local anesthetic may receive a temporary endorsement to administer local anesthesia.

(c) A person licensed in another state who can demonstrate substantively equivalent licensing standards in restorative procedures may receive a temporary endorsement for restorative procedures. [1993 c 323 § 2.]

Legislative declaration—1993 c 323: "The legislature declares that the granting of temporary licenses under this act is not intended to be a solution to the shortage of dental hygienists in the state of Washington. The legislature further declares that the long-term solution to these shortages must be addressed by expanding dental hygiene training programs at the state's colleges and universities." [1993 c 323 § 1.]

Expiration date—1993 c 323 §§ 2, 3: "Sections 2 and 3 of this act shall expire on January 1, 1998." [1993 c 323 § 6.]

Temporary licenses—Report—Period of validity: "(1) The department of health shall report to the legislature by December 1, 1996, on the need to continue granting temporary licenses to dental hygienists. The report shall identify alternatives to granting temporary licenses that meet the same goals and objectives, including increasing the number of dental hygienists trained in the state of Washington.

(2) A temporary license granted by the department under RCW 18.29.190 through 18.29.210 is valid for the period issued." [1993 c 323 § 7.]

18.29.200 Temporary licensees—Requirements for regular examination. (*Expires January 1, 1998.*) A person granted a temporary license under this chapter who does not meet the requirements for substantively equivalent licensing standards in restorative or local anesthetic must submit proof of completion of approved education in these procedures before being eligible to take the dental hygiene examination. [1993 c 323 § 3.]

Legislative declaration—Expiration date—1993 c 323: See notes following RCW 18.29.190.

18.29.210 Rules. The secretary in consultation with the dental hygiene examining committee shall develop rules and definitions to implement this chapter. [1993 c 323 § 4.]

Legislative declaration—1993 c 323: See note following RCW 18.29.190.

18.29.900 Construction—1923 c 16. Words used in this chapter importing the singular number may also be applied to the plural of persons and things. Words importing

the plural may be applied to the singular, and words importing the masculine gender may be extended to females also. [1923 c 16 § 37.]

Number and gender: RCW 1.12.050.

18.29.910 Severability—1923 c 16. Should any section of this chapter, or any portion of any section be for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. [1923 c 16 § 38.]

18.29.915 Captions not law—1989 c 202. Section headings as used in this act do not constitute any part of the law. [1989 c 202 § 11.]

Chapter 18.30 DENTURISTS

Sections

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18.30.900	Short title—1995 c 1 (Initiative Measure No. 607).
18.30.901	Severability—1995 c 1 (Initiative Measure No. 607).

18.30.005 Finding, intent. The state of Washington finds that to realize the state's current statutory policy of regulating health professions at the least restrictive level consistent with the public interest, a program of licensure for denturists should be established. The intent of the legislature is to help assure the public's health, provide a mechanism for consumer protection, and offer cost-effective alternatives for denture care services and products to individual consumers and the state. [1995 c 1 § 1 (Initiative Measure No. 607, approved November 8, 1994).]

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

(1) "Board" means the state board of denture technology.

(2) "Denture" means a removable full or partial upper or lower dental appliance to be worn in the mouth to replace missing natural teeth.

(3) "Denturist" means a person licensed under this chapter to engage in the practice of denturism.

(4) "Department" means the department of health.

(5) "Practice of denturism" means:

(a) Making, placing, constructing, altering, reproducing, or repairing a denture; and

(b) Taking impressions and furnishing or supplying a denture directly to a person or advising the use of a denture, and maintaining a facility for the same.

(6) "Secretary" means the secretary of health or the secretary's designee. [1995 c 1 § 2 (Initiative Measure No. 607, approved November 8, 1994).]

18.30.020 Examination of patient—Sanctions—Training and licensing examination. (1) Before making and fitting a denture, a denturist shall examine the patient's oral cavity.

(a) If the examination gives the denturist reasonable cause to believe that there is an abnormality or disease process that requires medical or dental treatment, the denturist shall immediately refer the patient to a dentist or physician. In such cases, the denturist shall take no further action to manufacture or place a denture until the patient has been examined by a dentist or physician and the dentist or physician gives written clearance that the denture will pose no threat to the patient's health.

(b) If the examination reveals the need for tissue or teeth modification in order to assure proper fit of a full or partial denture, the denturist shall refer the patient to a dentist and assure that the modification has been completed before taking an impression for the completion of the denture.

(2) A denturist who makes or places a denture in a manner not consistent with this section is subject to the sanctions provided in chapter 18.130 RCW, the uniform disciplinary act.

(3) A denturist must successfully complete special training in oral pathology prescribed by the secretary, whether as part of an approved associate degree program or equivalent training, and pass an examination prescribed by the secretary, which may be a part of the examination for licensure to become a licensed denturist. [1995 c 198 § 18; 1995 c 1 § 3 (Initiative Measure No. 607, approved November 8, 1994).]

Effective date—1995 c 198 §§ 18-25: "Sections 18 through 25 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 1, 1995]." [1995 c 198 § 27.]

18.30.030 Licensing required. No person may represent himself or herself as a licensed denturist or use any title or description of services without applying for licensure, meeting the required qualifications, and being licensed as a denturist by the department, unless otherwise exempted by this chapter. [1995 c 1 § 4 (Initiative Measure No. 607, approved November 8, 1994).]

18.30.040 Exclusions from chapter. Nothing in this chapter prohibits or restricts:

(1) The practice of a profession by an individual who is licensed, certified, or registered under other laws of this state and who is performing services within the authorized scope of practice;

(2) The practice of denturism by an individual employed by the government of the United States while the individual

is engaged in the performance of duties prescribed by the laws and regulations of the United States;

(3) The practice of denturism by students enrolled in a school approved by the department. The performance of services must be pursuant to a course of instruction or an assignment from an instructor and under the supervision of an instructor; or

(4) Work performed by dental labs and dental technicians under the written prescription of a dentist. [1995 c 1 § 5 (Initiative Measure No. 607, approved November 8, 1994).]

18.30.050 Board of denture technology—Members, terms, travel expenses, removal. (1) The state board of denture technology is created. The board shall consist of seven members appointed by the secretary as follows:

(a) Four members of the board must be denturists licensed under this chapter, except initial appointees, who must have five years' experience in the field of denturism or a related field.

(b) Two members shall be selected from persons who are not affiliated with any health care profession or facility, at least one of whom must be over sixty-five years of age representing the elderly.

(c) One member must be a dentist licensed in the state of Washington.

(2) The members of the board shall serve for terms of three years. The terms of the initial members shall be staggered, with the members appointed under subsection (1)(a) of this section serving two-year and three-year terms initially and the members appointed under subsection (1)(b) and (c) of this section serving one-year, two-year, and three-year terms initially. Vacancies shall be filled in the same manner as the original appointments are made. Appointments to fill vacancies shall be for the remainder of the unexpired term of the vacant position.

(3) No appointee may serve more than two consecutive terms.

(4) Members of the board shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060.

(5) A member of the board may be removed for just cause by the secretary. [1995 c 1 § 6 (Initiative Measure No. 607, approved November 8, 1994).]

18.30.060 Board—Officers, quorum. (1) The board shall elect a chairperson of the board annually. The same person may not hold the office of chairperson for more than three years in succession.

(2) A majority of the board constitutes a quorum for all purposes, and a majority vote of the members voting governs the decisions of the board. [1995 c 1 § 7 (Initiative Measure No. 607, approved November 8, 1994).]

18.30.080 Secretary—Powers and duties. The secretary shall:

(1) In consultation with the board, determine the qualifications of persons applying for licensure under this chapter;

(2) In consultation with the board, prescribe, administer, and determine the requirements for examinations under this

chapter and establish a passing grade for licensure under this chapter;

(3) In consultation with the board, adopt rules under chapter 34.05 RCW to carry out the provisions of this chapter;

(4) In consultation with the board, set all licensure, examination, and renewal fees in accordance with RCW 43.70.250;

(5) Evaluate and designate those schools from which graduation will be accepted as proof of an applicant's completion of course work requirements for licensure;

(6) Act as the disciplining authority under this chapter in accordance with the Uniform Disciplinary Act, chapter 18.130 RCW, which governs unlicensed practice, the issuance and denial of licenses, and the disciplining of license holders under this chapter;

(7) Issue licenses for the practice of denturism under this chapter;

(8) Administer oaths and subpoena witnesses for the purpose of carrying out the activities authorized under this chapter;

(9) Establish forms and procedures necessary to administer this chapter;

(10) Hire clerical, administrative, investigative, and other staff as needed to implement this chapter and act on behalf of the board and the secretary; and

(11) Issue licenses of endorsement for applicants from states with substantially equivalent licensing standards to this state. [1995 c 198 § 19; 1995 c 1 § 9 (Initiative Measure No. 607, approved November 8, 1994).]

Effective date—1995 c 198 §§ 18-25: See note following RCW 18.30.020.

18.30.090 Licensing requirements. The secretary shall issue a license to practice denturism to an applicant who submits a completed application, pays the appropriate fees, and meets the following requirements:

(1) A person currently licensed to practice denturism under statutory provisions of another state with substantially equivalent licensing standards to this chapter shall be licensed without examination upon providing the department with the following:

(a) Proof of successfully passing a written and clinical examination for denturism in a state that the secretary has determined has substantially equivalent standards as those in this chapter in both the written and clinical examinations; and

(b) An affidavit from the state agency where the person is licensed or certified attesting to the fact of the person's licensure or certification.

(2) A person graduating from a formal denturism program shall be licensed if he or she:

(a) Documents successful completion of formal training with a major course of study in denturism of not less than two years in duration at an educational institution recognized by the secretary; and

(b) Passes a written and clinical examination approved by the secretary.

(3) An applicant who does not otherwise qualify under subsection (1) or (2) of this section shall be licensed within two years of December 8, 1994, if he or she:

(a) Provides to the secretary three affidavits by persons other than family members attesting to the applicant's employment in denture technology for at least five years, or provides documentation of at least four thousand hours of practical work within denture technology;

(b) Provides documentation of successful completion of a training course approved by the secretary or completion of an equivalent course approved by the secretary; and

(c) Passes a written and clinical examination administered by the secretary. [1995 c 198 § 20; 1995 c 1 § 10 (Initiative Measure No. 607, approved November 8, 1994).]

Effective date—1995 c 198 §§ 18-25: See note following RCW 18.30.020.

18.30.100 Licensing examinations. The secretary shall administer the examinations for licensing under this chapter, subject to the following requirements:

(1) Examinations shall determine the qualifications, fitness, and ability of the applicant to practice denturism. The test shall include a written examination and a practical demonstration of skills.

(2) Examinations shall be held at least annually.

(3) The first examination shall be conducted not later than July 1, 1995.

(4) The written examination shall cover the following subjects: (a) Head and oral anatomy and physiology; (b) oral pathology; (c) partial denture construction and design; (d) microbiology; (e) clinical dental technology; (f) dental laboratory technology; (g) clinical jurisprudence; (h) asepsis; (i) medical emergencies; and (j) cardiopulmonary resuscitation.

(5) Upon payment of the appropriate fee, an applicant who fails either the written or practical examination may have additional opportunities to take the portion of the examination that he or she failed.

The secretary may hire trained persons licensed under this chapter to prepare, administer, and grade the examinations or may contract with regional examiners who meet qualifications adopted by the secretary. [1995 c 198 § 21; 1995 c 1 § 11 (Initiative Measure No. 607, approved November 8, 1994).]

Effective date—1995 c 198 §§ 18-25: See note following RCW 18.30.020.

18.30.120 Requirements determined by secretary—License content. (1) The licensing period, administrative procedures, administrative requirements, and fees shall be determined by the secretary as provided in RCW 43.70.250 and 43.70.280.

(2) The license shall contain, on its face, the address or addresses where the license holder will perform the denturist services. [1996 c 191 § 12; 1995 c 1 § 13 (Initiative Measure No. 607, approved November 8, 1994).]

18.30.130 License renewal. The secretary shall establish by rule the requirements for renewal of licenses to practice denturism, but shall not increase the licensure requirements provided in this chapter. The secretary shall establish administrative procedures, administrative requirements, and fees for license periods and renewals as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 13; 1995

c 198 § 23; 1995 c 1 § 14 (Initiative Measure No. 607, approved November 8, 1994).]

Effective date—1995 c 198 §§ 18-25: See note following RCW 18.30.020.

18.30.135 Discipline. The Uniform Disciplinary Act, chapter 18.130 RCW, shall govern the issuance and denial of licenses, unauthorized practice, and the discipline of persons licensed under this chapter. The secretary shall be the disciplinary authority under this chapter. [1995 c 336 § 3.]

Effective date—1995 c 336 §§ 2 and 3: See note following RCW 18.130.040.

18.30.140 Inactive licenses. (1) An individual may place his or her license on inactive status. The holder of an inactive license shall not practice denturism in this state without first activating the license.

(2) The inactive renewal fee shall be established by the secretary. Failure to renew an inactive license shall result in cancellation in the same manner as failure to renew an active license results in cancellation.

(3) An inactive license may be placed in an active status upon compliance with rules established by the secretary.

(4) The provisions relating to denial, suspension, and revocation of a license are applicable to an inactive license, except that when proceedings to suspend or revoke an inactive license have been initiated, the license shall remain inactive until the proceedings have been completed. [1995 c 198 § 24; 1995 c 1 § 15 (Initiative Measure No. 607, approved November 8, 1994).]

Effective date—1995 c 198 §§ 18-25: See note following RCW 18.30.020.

18.30.150 Partnerships with dentists. Notwithstanding any other provision of state law, a licensed denturist may enter into a partnership or other business association with a dentist, provided that such association does not impede the independent professional judgment of either party. [1995 c 1 § 16 (Initiative Measure No. 607, approved November 8, 1994).]

18.30.900 Short title—1995 c 1 (Initiative Measure No. 607). This chapter may be known and cited as the Washington state denturist act. [1995 c 1 § 17 (Initiative Measure No. 607, approved November 8, 1994).]

18.30.901 Severability—1995 c 1 (Initiative Measure No. 607). If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 1 § 26 (Initiative Measure No. 607, approved November 8, 1994).]

Chapter 18.32 DENTISTRY

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18.32.002 Findings—Purpose. The legislature finds that the health and well-being of the people of this state are of paramount importance.

The legislature further finds that the conduct of members of the dental profession licensed to practice dentistry in this state plays a vital role in preserving the health and well-being of the people of the state.

The legislature further finds that there is no effective means of handling disciplinary proceedings against members of the dental profession licensed in this state when such proceedings are necessary for the protection of the public health.

Therefore, the legislature declares its intention to exercise the police power of the state to protect the public health, to promote the welfare of the state, and to provide a commission to act as a disciplinary and regulatory body for the members of the dental profession licensed to practice dentistry in this state.

It is the purpose of the commission established in RCW 18.32.0351 to regulate the competency and quality of professional health care providers under its jurisdiction by establishing, monitoring, and enforcing qualifications for licensure, consistent standards of practice, continuing competency mechanisms, and discipline. Rules, policies, and procedures developed by the commission must promote the delivery of quality health care to the residents of the state. [1994 sp.s. c 9 § 201.]

18.32.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.32.010 Words defined. Words used in the singular in this chapter may also be applied to the plural of the persons and things; words importing the plural may be applied to the singular; words importing the masculine gender may be extended to females also; the term "commission" used in this chapter shall mean the Washington state dental quality assurance commission; and the term "secretary" shall mean the secretary of health of the state of Washington. [1994 sp.s. c 9 § 202; 1991 c 3 § 58; 1935 c 112 § 1; RRS § 10031-1.]

Number and gender: RCW 1.12.050.

18.32.020 Practice of dentistry defined. A person practices dentistry, within the meaning of this chapter, who (1) represents himself as being able to diagnose, treat, remove stains and concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the human teeth, alveolar process, gums, or jaw, or (2) offers or undertakes by any means or methods to diagnose, treat, remove stains or concretions from teeth, operate or prescribe for any disease, pain, injury, deficiency, deformity, or physical condition of the same, or take impressions of the teeth or jaw, or (3) owns, maintains or operates an office for the practice of dentistry, or (4) engages in any of the practices included in the curricula of recognized and approved dental schools or colleges, or (5) professes to the public by any method to furnish, supply, construct, reproduce, or repair any prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth.

The fact that a person uses any dental degree, or designation, or any card, device, directory, poster, sign, or other media whereby he represents himself to be a dentist, shall be prima facie evidence that such person is engaged in the practice of dentistry.

X-ray diagnosis as to the method of dental practice in which the diagnosis and examination is made of the normal and abnormal structures, parts or functions of the human teeth, the alveolar process, maxilla, mandible or soft tissues adjacent thereto, is hereby declared to be the practice of dentistry. Any person other than a regularly licensed physician or surgeon who makes any diagnosis or interpretation or explanation, or attempts to diagnose or to make any interpretation or explanation of the registered shadow or shadows of any part of the human teeth, alveolar process, maxilla, mandible or soft tissues adjacent thereto by the use of x-ray is declared to be engaged in the practice of dentistry, medicine or surgery.

The practice of dentistry includes the performance of any dental or oral and maxillofacial surgery. "Oral and maxillofacial surgery" means the specialty of dentistry that includes the diagnosis and surgical and adjunctive treatment of diseases, injuries, and defects of the hard and soft tissues of the oral and maxillofacial region. [1996 c 259 § 1; 1957 c 98 § 1; 1957 c 52 § 20. Prior: (i) 1935 c 112 § 6; RRS § 10031-6. (ii) 1943 c 240 § 1; Rem. Supp. 1943 § 10031-6a.]

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

(1) The rendering of dental relief in emergency cases in the practice of his or her profession by a physician or surgeon, licensed as such and registered under the laws of this state, unless the physician or surgeon undertakes to or does reproduce lost parts of the human teeth in the mouth or to restore or to replace in the human mouth lost or missing teeth;

(2) The practice of dentistry in the discharge of official duties by dentists in the United States federal services on federal reservations, including but not limited to the armed services, coast guard, public health service, veterans' bureau, or bureau of Indian affairs;

(3) Dental schools or colleges approved under RCW 18.32.040, and the practice of dentistry by students in Washington state dental schools or colleges approved by the commission, when acting under the direction and supervision of Washington state-licensed dental school faculty;

(4) The practice of dentistry by licensed dentists of other states or countries while appearing as clinicians at meetings of the Washington state dental association, or component parts thereof, or at meetings sanctioned by them, or other groups approved by the commission;

(5) The use of roentgen and other rays for making radiographs or similar records of dental or oral tissues, under the supervision of a licensed dentist or physician;

(6) The making, repairing, altering, or supplying of artificial restorations, substitutions, appliances, or materials for the correction of disease, loss, deformity, malposition, dislocation, fracture, injury to the jaws, teeth, lips, gums, cheeks, palate, or associated tissues or parts; providing the

same are made, repaired, altered, or supplied pursuant to the written instructions and order of a licensed dentist which may be accompanied by casts, models, or impressions furnished by the dentist, and the prescriptions shall be retained and filed for a period of not less than three years and shall be available to and subject to the examination of the secretary or the secretary's authorized representatives;

(7) The removal of deposits and stains from the surfaces of the teeth, the application of topical preventative or prophylactic agents, and the polishing and smoothing of restorations, when performed or prescribed by a dental hygienist licensed under the laws of this state;

(8) A qualified and licensed physician and surgeon or osteopathic physician and surgeon extracting teeth or performing oral surgery pursuant to the scope of practice under chapter 18.71 or 18.57 RCW;

(9) The performing of dental operations or services by persons not licensed under this chapter when performed under the supervision of a licensed dentist: PROVIDED HOWEVER, That such nonlicensed person shall in no event perform the following dental operations or services unless permitted to be performed by the person under this chapter or chapters 18.29, 18.57, 18.71, and 18.79 RCW as it applies to registered nurses and advanced registered nurse practitioners:

(a) Any removal of or addition to the hard or soft tissue of the oral cavity;

(b) Any diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury, or physical condition of the human teeth or jaws, or adjacent structure;

(c) Any administration of general or injected local anaesthetic of any nature in connection with a dental operation, including intravenous sedation;

(d) Any oral prophylaxis;

(e) The taking of any impressions of the teeth or jaw or the relationships of the teeth or jaws, for the purpose of fabricating any intra-oral restoration, appliance, or prosthesis. [1994 sp.s. c 9 § 203; 1991 c 3 § 59; 1989 c 202 § 13; 1979 c 158 § 35; 1971 ex.s. c 236 § 1; 1969 c 47 § 7; 1957 c 52 § 21; 1953 c 93 § 1; 1951 c 130 § 1. Prior: (i) 1941 c 92 § 3; 1935 c 112 § 25; Rem. Supp. 1941 § 10031-25; prior: 1923 c 16 § 23. (ii) 1935 c 112 § 6; RRS § 10031-6; prior: 1923 c 16 § 1; 1901 c 152 § 5; 1893 c 55 § 11.]

18.32.0351 Commission established—Membership.

The Washington state dental quality assurance commission is established, consisting of fourteen members each appointed by the governor to a four-year term. No member may serve more than two consecutive full terms. In appointing the initial members of the commission, it is the intent of the legislature that, to the extent possible, members of the previous boards and committees regulating these professions be appointed to the commission. Members of the commission hold office until their successors are appointed. The governor may appoint members of the initial commission to staggered terms of from one to four years. Thereafter, all members shall be appointed to full four-year terms. Twelve members of the commission must be dentists and two members must be public members. [1994 sp.s. c 9 § 204.]

18.32.0353 Commission—Removal of member—Order of removal—Vacancy. The governor may remove a member of the commission for neglect of duty, misconduct, or malfeasance or misfeasance in office. Whenever the governor is satisfied that a member of the commission has been guilty of neglect of duty, misconduct, or malfeasance or misfeasance in office, the governor shall file with the secretary of state a statement of the causes for and the order of removal from office, and the secretary shall forthwith send a certified copy of the order of removal and statement of causes by certified mail to the last known post office address of the member. If a vacancy occurs on the commission, the governor shall appoint a replacement to fill the remainder of the unexpired term. [1994 sp.s. c 9 § 205.]

18.32.0355 Commission—Qualifications of members. Members must be citizens of the United States and residents of this state. Dentist members must be licensed dentists in the active practice of dentistry for a period of five years before appointment. Of the twelve dentists appointed to the commission, at least four must reside and engage in the active practice of dentistry east of the summit of the Cascade mountain range. Public members of the commission may not be a member of any other health care licensing board or commission, or have a fiduciary obligation to a facility rendering health services regulated by the commission, or have a material or financial interest in the rendering of health services regulated by the commission. [1994 sp.s. c 9 § 206.]

18.32.0357 Commission—Duties and powers—Attorney general to advise, represent. The commission shall elect officers each year. Meetings of the commission are open to the public, except the commission may hold executive sessions to the extent permitted by chapter 42.30 RCW. The secretary of health shall furnish such secretarial, clerical, and other assistance as the commission may require.

A majority of the commission members appointed and serving constitutes a quorum for the transaction of commission business. The affirmative vote of a majority of a quorum of the commission is required to carry a motion or resolution, to adopt a rule, or to pass a measure.

The commission may appoint members of panels consisting of not less than three members. A quorum for transaction of any business shall be a minimum of three members. A majority vote of a quorum of the panel is required to transact business delegated to it by the commission.

The members of the commission are immune from suit in an action, civil or criminal, based upon its disciplinary proceedings or other official acts performed in good faith as members of the commission.

The commission may, whenever the workload of the commission requires, request that the secretary appoint pro tempore members. While serving as members pro tempore persons have all the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses, of the commission.

The commission shall prepare or determine the nature of the examinations for applicants to practice dentistry.

The attorney general shall advise the commission and represent it in all legal proceedings. [1994 sp.s. c 9 § 207.]

18.32.0358 Commission successor to other boards.

The commission is the successor in interest of the board of dental examiners and the dental disciplinary board. All contracts, undertakings, agreements, rules, regulations, and policies continue in full force and effect on July 1, 1994, unless otherwise repealed or rejected by chapter 9, Laws of 1994 sp. sess. or by the commission. [1994 sp.s. c 9 § 226.]

18.32.0361 Compensation of commission members.

Each member of the commission shall be compensated in accordance with RCW 43.03.240. Members shall be reimbursed for travel expenses incurred in the actual performance of their duties, as provided in RCW 43.03.050 and 43.03.060. Commission members shall be compensated and reimbursed for their activities in developing or administering a multistate licensing examination, as provided in this chapter. [1994 sp.s. c 9 § 208.]

18.32.0363 Examinations—Contracts for administration—Multistate. The commission may contract with competent persons on a temporary basis to assist in developing or administering examinations for licensure.

The commission may enter into compacts and agreements with other states and with organizations formed by several states, for the purpose of conducting multistate licensing examinations. The commission may enter into the compacts and agreements even though they would result in the examination of a candidate for a license in this state by an examiner or examiners from another state or states, and even though the compacts and agreements would result in the examination of a candidate or candidates for a license in another state or states by an examiner or examiners from this state. [1994 sp.s. c 9 § 209.]

18.32.0365 Rules. The commission may adopt rules in accordance with chapter 34.05 RCW to implement this chapter and chapter 18.130 RCW. [1994 sp.s. c 9 § 210.]

18.32.039 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 17; 1986 c 259 § 34.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.32.040 Requirements for licensure. The commission shall require that every applicant for a license to practice dentistry shall:

(1) Present satisfactory evidence of graduation from a dental college, school, or dental department of an institution approved by the commission;

(2) Submit, for the files of the commission, a recent picture duly identified and attested; and

(3) Pass an examination prepared or approved by and administered under the direction of the commission. The dentistry licensing examination shall consist of practical and

written tests upon such subjects and of such scope as the commission determines. The commission may accept, in lieu of all or part of a written examination, a certificate granted by a national or regional testing organization approved by the commission. The commission shall set the standards for passing the examination. The secretary shall keep on file the examination papers and records of examination for at least one year. This file shall be open for inspection by the applicant or the applicant's agent unless the disclosure will compromise the examination process as determined by the commission or is exempted from disclosure under RCW 42.17.250 through 42.17.340. [1994 sp.s. c 9 § 211; 1991 c 3 § 61; 1989 c 202 § 16; 1979 c 38 § 2; 1935 c 112 § 5; RRS § 10031-5. Prior: 1923 c 16 §§ 4, 5. Formerly RCW 18.32.040 and 18.32.130 through 18.32.150.]

18.32.050 Compensation and reimbursement for administering examination. Commission members shall be compensated and reimbursed pursuant to this section for their activities in administering a multi-state licensing examination pursuant to the commission's compact or agreement with another state or states or with organizations formed by several states. [1995 c 198 § 2; 1994 sp.s. c 9 § 212; 1984 c 287 § 30; 1979 c 38 § 3; 1975-'76 2nd ex.s. c 34 § 34; 1967 c 188 § 2; 1957 c 52 § 23; 1953 c 93 § 3. Prior: 1935 c 112 § 11, part; RRS § 10031-11, part.]

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

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

18.32.091 License required. No person, unless previously licensed to practice dentistry in this state, shall begin the practice of dentistry without first applying to, and obtaining a license. [1987 c 150 § 18.]

Severability—1987 c 150: See RCW 18.122.901.

18.32.100 Applications. The applicant for a dentistry license shall file an application on a form furnished by the secretary, stating the applicant's name, age, place of residence, the name of the school or schools attended by the applicant, the period of such attendance, the date of the applicant's graduation, whether the applicant has ever been the subject of any disciplinary action related to the practice of dentistry, and shall include a statement of all of the applicant's dental activities. This shall include any other information deemed necessary by the commission.

The application shall be signed by the applicant and sworn to by the applicant before some person authorized to administer oaths, and shall be accompanied by proof of the applicant's school attendance and graduation. [1994 sp.s. c 9 § 213; 1991 c 3 § 62; 1989 c 202 § 18; 1957 c 52 § 28; 1953 c 93 § 4; 1951 c 130 § 2; 1941 c 92 § 2; 1935 c 112 § 4; Rem. Supp. 1941 § 10031-4, part. Prior: 1923 c 16 §§ 2, 3, 6, 7; 1901 c 152 § 1; 1893 c 55 § 4.]

18.32.110 Application fee. Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 14; 1991 c 3 § 63; 1989 c 202 § 19; 1985 c 7 § 23; 1975 1st ex.s. c 30 § 27;

1969 c 49 § 1; 1957 c 52 § 29. Prior: 1941 c 92 § 2, part; 1935 c 112 § 4; Rem. Supp. 1941 § 10031-4, part.]

18.32.160 Licenses—Who shall sign. All licenses issued by the secretary on behalf of the commission shall be signed by the secretary or chairperson and secretary of the commission. [1994 sp.s. c 9 § 215; 1991 c 3 § 65; 1989 c 202 § 21; 1951 c 130 § 3; 1935 c 112 § 17; RRS § 10031-17.]

18.32.170 Duplicate licenses—Fee. A fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280 shall be charged for every duplicate license issued by the secretary. [1996 c 191 § 15; 1991 c 3 § 66; 1985 c 7 § 25; 1975 1st ex.s. c 30 § 29; 1957 c 52 § 25. Prior: 1935 c 112 § 11, part; RRS § 10031-11, part.]

18.32.180 License renewal. Every person licensed to practice dentistry in this state shall renew his or her license and comply with administrative procedures, administrative requirements, and fees as provided in RCW 43.70.250 and 43.70.280. The commission, in its sole discretion, may permit the applicant to be licensed without examination, and with or without conditions, if it is satisfied that the applicant meets all the requirements for licensure in this state and is competent to engage in the practice of dentistry. [1996 c 191 § 16; 1994 sp.s. c 9 § 216; 1991 c 3 § 67; 1989 c 202 § 22; 1985 c 7 § 26; 1975 1st ex.s. c 30 § 30; 1969 c 49 § 3; 1951 c 130 § 4; 1935 c 112 § 24; RRS § 10031-24.]

18.32.185 Inactive license status. The commission may adopt rules under this section authorizing an inactive license status.

(1) An individual licensed under chapter 18.32 RCW may place his or her license on inactive status. The holder of an inactive license must not practice dentistry in this state without first activating the license.

(2) The inactive renewal fee must be established by the secretary under RCW 43.70.250. Failure to renew an inactive license shall result in cancellation of the inactive license in the same manner as an active license.

(3) An inactive license may be placed in an active status upon compliance with rules established by the commission.

(4) Provisions relating to disciplinary action against a person with a license are applicable to a person with an inactive license, except that when disciplinary proceedings against a person with an inactive license have been initiated, the license will remain inactive until the proceedings have been completed. [1996 c 187 § 1.]

18.32.190 Licenses display—Notification of address. Every person who engages in the practice of dentistry in this state shall cause his or her license to be, at all times, displayed in a conspicuous place, in his or her office wherein he or she shall practice such profession, and shall further, whenever requested, exhibit such license to any of the members of the commission, or its authorized agent, and to the secretary or his or her authorized agent. Every licensee shall notify the secretary of the address or addresses, and of every change thereof, where the licensee shall engage in the practice of dentistry. [1994 sp.s. c 9 § 217;

1991 c 3 § 68; 1981 c 277 § 7; 1935 c 112 § 7; RRS § 10031-7. Prior: 1923 c 16 § 15; 1893 c 55 § 5.]

18.32.195 University of Washington dental school faculty and residents—Licenses. The commission may, without examination, issue a license to persons who possess the qualifications set forth in this section.

(1) The commission may, upon written request of the dean of the school of dentistry of the University of Washington, issue a license to practice dentistry in this state to persons who have been licensed or otherwise authorized to practice dentistry in another state or country and who have been accepted for employment by the school of dentistry as full-time faculty members. For purposes of this subsection, this means teaching members of the faculty of the school of dentistry of the University of Washington who are so employed on a one hundred percent of work time basis. Such license shall permit the holder thereof to practice dentistry within the confines of the university facilities for a period of one year while he or she is so employed as a full-time faculty member by the school of dentistry of the University of Washington. It shall terminate whenever the holder ceases to be such a full-time faculty member. Such license shall permit the holder thereof to practice dentistry only in connection with his or her duties in employment with the school of dentistry of the University of Washington. This limitation shall be stated on the license.

(2) The commission may, upon written request of the dean of the school of dentistry of the University of Washington, issue a limited license to practice dentistry in this state to university residents in postgraduate dental education. The license shall permit the resident dentist to provide dental care only in connection with his or her duties as a university resident.

(3) The commission may condition the granting of a license under this section with terms the commission deems appropriate. All persons licensed under this section shall be subject to the jurisdiction of the commission to the same extent as other members of the dental profession, in accordance with this chapter, and in addition the licensee may be disciplined by the commission after a hearing has been held in accordance with the provisions set forth in this chapter, and determination by the commission that such licensee has violated any of the restrictions set forth in this section.

(4) Persons applying for licensure pursuant to this section shall pay the application fee determined by the secretary and, in the event the license applied for is issued, a license fee at the rate provided for licenses generally. After review by the commission, licenses issued under this section may be renewed annually if the licensee continues to be employed as a full-time faculty member of the school of dentistry of the University of Washington, or a university resident in postgraduate dental education, and otherwise meets the requirements of the provisions and conditions deemed appropriate by the commission. Any person who obtains a license pursuant to this section may, without an additional application fee, apply for licensure under this chapter, in which case the applicant shall be subject to examination and the other requirements of this chapter. [1994 sp.s. c 9 § 218; 1992 c 59 § 1; 1991 c 3 § 69; 1985 c 111 § 1.]

18.32.215 Licensure without examination—Licensed in another state. An applicant holding a valid license and currently engaged in practice in another state may be granted a license without examination required by this chapter, on the payment of any required fees, if the commission determines that the other state's licensing standards are substantively equivalent to the standards in this state. The commission may also require the applicant to: (1) File with the commission documentation certifying the applicant is licensed to practice in another state; and (2) provide information as the commission deems necessary pertaining to the conditions and criteria of the Uniform Disciplinary Act, chapter 18.130 RCW, and to demonstrate to the commission a knowledge of Washington law pertaining to the practice of dentistry. [1994 sp.s. c 9 § 219; 1989 c 202 § 30.]

18.32.220 Certificate available for dentists going out-of-state. Anyone who is a licensed dentist in the state of Washington who desires to change residence to another state or territory, shall, upon application to the secretary and payment of a fee as determined by the secretary under RCW 43.70.250 and 43.70.280, receive a certificate over the signature of the secretary or his or her designee, which shall attest to the facts mentioned in this section, and giving the date upon which the dentist was licensed. [1996 c 191 § 17; 1991 c 3 § 70; 1989 c 202 § 23; 1935 c 112 § 14; RRS § 10031-14. FORMER PART OF SECTION: 1935 c 112 § 15; RRS § 10031-15, now codified as RCW 18.32.225.]

18.32.326 Identification of dental prostheses—Technical assistance.

Reviser's note: RCW 18.32.326 was both recodified and repealed during the 1989 legislative sessions, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.32.390 Penalty—General. Any person who violates any of the provisions of the chapter for which no specific penalty has been provided herein, shall be subject to prosecution before any court of competent jurisdiction, and shall, upon conviction, be guilty of a gross misdemeanor. [1986 c 259 § 38; 1935 c 112 § 16; RRS § 10031-16. Prior: 1901 c 152 § 4; 1893 c 55 § 8.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.32.400 Dentist members of committees to evaluate credentials and qualifications of dentists—Immunity from civil suit. See RCW 4.24.240.

18.32.410 Dentists filing charges or presenting evidence before dental society committee or board—Immunity from civil suit. See RCW 4.24.250.

18.32.420 Records of dental society committees or boards not subject to civil process. See RCW 4.24.250.

18.32.530 "Unprofessional conduct." In addition to those acts defined in chapter 18.130 RCW, the term "unprofessional conduct" as used in RCW 18.32.530 through 18.32.765 includes gross, willful, or continued overcharging

for professional services. [1989 c 202 § 26; 1986 c 259 § 41; 1977 ex.s. c 5 § 3.]

Savings—1986 c 259 §§ 36, 37, 41, 43: See note following RCW 18.32.665.

Severability—1986 c 259: See note following RCW 18.130.010.

Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.32.533 Unprofessional conduct—Abrogation of copayment provisions. It is unprofessional conduct under this chapter and chapter 18.130 RCW for a dentist to abrogate the copayment provisions of a contract by accepting the payment received from a third party payer as full payment. [1985 c 202 § 1.]

18.32.534 Impaired dentist program—Content—License surcharge. (1) To implement an impaired dentist program as authorized by RCW 18.130.175, the commission shall enter into a contract with a voluntary substance abuse monitoring program. The impaired dentist program may include any or all of the following:

- (a) Contracting with providers of treatment programs;
- (b) Receiving and evaluating reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment;
- (d) Referring impaired dentists to treatment programs;
- (e) Monitoring the treatment and rehabilitation of impaired dentists including those ordered by the commission;
- (f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired dentists; and
- (g) Performing other related activities as determined by the commission.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of up to fifteen dollars on each license issuance or renewal to be collected by the department of health from every dentist licensed under chapter 18.32 RCW. These moneys shall be placed in the health professions account to be used solely for the implementation of the impaired dentist program. [1994 sp.s. c 9 § 220; 1991 c 3 § 72; 1989 c 125 § 1.]

18.32.640 Rules—Administration of sedation and general anesthesia. (1) The commission may adopt such rules as it deems necessary to carry out this chapter.

(2) The commission may adopt rules governing administration of sedation and general anesthesia by persons licensed under this chapter, including necessary training, education, equipment, and the issuance of any permits, certificates, or registration as required. [1994 sp.s. c 9 § 221; 1988 c 217 § 1; 1986 c 259 § 42; 1977 ex.s. c 5 § 14.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.32.655 Commission—Supervision of records—Rules. The commission shall:

- (1) Require licensed dentists to keep and maintain a copy of each laboratory referral instruction, describing detailed services rendered, for a period to be determined by the commission but not more than three years, and may require the production of all such records for examination by the commission or its authorized representatives; and

(2) Adopt reasonable rules requiring licensed dentists to make, maintain, and produce for examination by the commission or its authorized representatives such other records as may be reasonable and proper in the performance of its duties and enforcing the provisions of this chapter. [1994 sp.s. c 9 § 222; 1986 c 259 § 35; 1953 c 93 § 8. Formerly RCW 18.32.085.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.32.665 Advertising—False—Credit terms. It shall be unlawful for any person, firm, or corporation to publish, directly or indirectly, or circulate any fraudulent, false, or misleading statements within the state of Washington as to the skill or method of practice of any person or operator; or in any way to advertise in print any matter with a view of deceiving the public, or in any way that will tend to deceive or defraud the public; or to claim superiority over neighboring dental practitioners; or to publish reports of cases or certificates of same in any public advertising media; or to advertise as using any anesthetic, drug, formula, medicine, which is either falsely advertised or misnamed; or to employ "capper" or "steerers" to obtain patronage; and any person committing any offense against any of the provisions of this section shall, upon conviction, be subjected to such penalties as are provided in this chapter: **PROVIDED**, That any person licensed under this chapter may announce credit, terms of credit or installment payments that may be made at periodical intervals to apply on account of any dental service rendered. The commission may adopt such rules as are necessary to carry out the intent of this section. [1994 sp.s. c 9 § 223; 1986 c 259 § 36; 1935 c 112 § 20; RRS § 10031-20. Formerly RCW 18.32.290.]

Savings—1986 c 259 §§ 36, 37, 41, 43: "The repeal of RCW 18.32.090 and 18.32.550 and the amendment of RCW 18.32.290, 18.32.360, and 18.32.530 by this act shall not be construed as affecting any rights and duties which matured, penalties which were incurred, and proceedings which were begun before June 11, 1986." [1986 c 259 § 44.]

Severability—1986 c 259: See note following RCW 18.130.010.

False advertising: RCW 9.04.010.

18.32.675 Practice or solicitation by corporations prohibited—Penalty. No corporation shall practice dentistry or shall solicit through itself, or its agent, officers, employees, directors or trustees, dental patronage for any dentists or dental surgeon employed by any corporation: **PROVIDED**, That nothing contained in this chapter shall prohibit a corporation from employing a dentist or dentists to render dental services to its employees: **PROVIDED**, **FURTHER**, That such dental services shall be rendered at no cost or charge to the employees; nor shall it apply to corporations or associations in which the dental services were originated and are being conducted upon a purely charitable basis for the worthy poor, nor shall it apply to corporations or associations furnishing information or clerical services which can be furnished by persons not licensed to practice dentistry, to any person lawfully engaged in the practice of dentistry, when such dentist assumes full responsibility for such information and services. Any corporation violating the provisions of this section is guilty of a gross misdemeanor, and each day that this chapter is violated shall be considered a separate offense. [1935 c 112 § 19; RRS § 10031-19. Formerly RCW 18.32.310.]

18.32.685 Prescriptions—Filled by druggists. Registered pharmacists of this state may fill prescriptions of legally licensed dentists of this state for any drug necessary in the practice of dentistry. [1935 c 112 § 26; RRS § 10031-26. Prior: 1923 c 16 § 24. Formerly RCW 18.32.320.]

Pharmacists: Chapter 18.64 RCW.

18.32.695 Identification of new dental prostheses. Every complete upper and lower denture and removable dental prosthesis fabricated by a dentist licensed under this chapter, or fabricated pursuant to the dentist's work order or under the dentist's direction or supervision, shall be marked with the name of the patient for whom the prosthesis is intended. The markings shall be done during fabrication and shall be permanent, legible, and cosmetically acceptable. The exact location of the markings and the methods used to apply or implant them shall be determined by the dentist or dental laboratory fabricating the prosthesis. If, in the professional judgment of the dentist or dental laboratory, this identification is not practical, identification shall be provided as follows:

(1) The initials of the patient may be shown alone, if use of the name of the patient is impracticable; or

(2) The identification marks may be omitted in their entirety if none of the forms of identification specified in subsection (1) of this section is practicable or clinically safe. [1987 c 252 § 1. Formerly RCW 18.32.322.]

Severability—1987 c 252: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 252 § 5.]

18.32.705 Identification of previously fabricated prostheses. Any removable prosthesis in existence before July 26, 1987, that was not marked in accordance with RCW 18.32.695 at the time of its fabrication, shall be so marked at the time of any subsequent rebasing. [1987 c 252 § 2. Formerly RCW 18.32.324.]

Severability—1987 c 252: See note following RCW 18.32.695.

18.32.715 Identification of dental prostheses—Violation. Failure of any dentist to comply with RCW 18.32.695 and 18.32.705 is a violation for which the dentist may be subject to proceedings if the dentist is charged with the violation within two years of initial insertion of the dental prosthetic device. [1987 c 252 § 4. Formerly RCW 18.32.328.]

Severability—1987 c 252: See note following RCW 18.32.695.

18.32.725 Sanitary regulations. It shall be the duty of every person engaged in the practice of dentistry or who shall own, operate, or manage any dental office to keep said office and dental equipment in a thoroughly clean and sanitary condition. [1935 c 112 § 27; RRS § 10031-27. Prior: 1923 c 16 § 25. Formerly RCW 18.32.330.]

18.32.735 Unlawful practice—Hygienists—Penalty. Any licensed dentist who shall permit any dental hygienist operating under his supervision to perform any operation required to be performed by a dentist under the provisions of

this chapter shall be guilty of a misdemeanor. [1935 c 112 § 28; RRS § 10031-28. Formerly RCW 18.32.340.]

18.32.745 Unlawful practice—Employing unlicensed dentist—Penalty. No manager, proprietor, partnership, or association owning, operating, or controlling any room, office, or dental parlors, where dental work is done, provided, or contracted for, shall employ or retain any unlicensed person or dentist as an operator; nor shall fail, within ten days after demand made by the secretary of health or the commission in writing sent by certified mail, addressed to any such manager, proprietor, partnership, or association at the room, office, or dental parlor, to furnish the secretary of health or the commission with the names and addresses of all persons practicing or assisting in the practice of dentistry in his or her place of business or under his or her control, together with a sworn statement showing by what license or authority the persons are practicing dentistry.

The sworn statement shall not be used as evidence in any subsequent court proceedings, except in a prosecution for perjury connected with its execution.

Any violation of the provisions of this section is improper, unprofessional, and dishonorable conduct; it also is grounds for injunction proceedings as provided by this chapter, and in addition is a gross misdemeanor, except that the failure to furnish the information as may be requested in accordance with this section is a misdemeanor. [1994 sp.s. c 9 § 224; 1991 c 3 § 73; 1977 ex.s. c 5 § 31; 1957 c 52 § 38; 1953 c 93 § 7. Prior: 1937 c 45 § 1, part; 1935 c 112 § 18, part; RRS § 10031-18, part. Formerly RCW 18.32.350.]

18.32.755 Advertising—Names used—Penalty. Any advertisement or announcement for dental services must include for each office location advertised the names of all persons practicing dentistry at that office location.

Any violation of the provisions of this section is improper, unprofessional, and dishonorable conduct; it also is grounds for injunction proceedings as provided by RCW 18.130.190(4), and in addition is a gross misdemeanor. [1994 sp.s. c 9 § 225; 1986 c 259 § 37; 1957 c 52 § 39. Prior: 1937 c 45 § 1, part; 1935 c 112 § 18, part; RRS § 10031-18, part. Formerly RCW 18.32.360.]

Savings—1986 c 259 §§ 36, 37, 41, 43: See note following RCW 18.32.660.

Severability—1986 c 259: See note following RCW 18.130.010.

18.32.900 Severability—1935 c 112. Should any section of this act for any reason be held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the act. [1935 c 112 § 29.]

18.32.910 Severability—1953 c 93. If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable. [1953 c 93 § 9.]

18.32.915 Severability—1977 ex.s. c 5. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 5 § 36.]

18.32.916 Severability—1979 c 38. If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 38 § 4.]

18.32.917 Severability—Headings and captions not law—Effective date—1994 sp.s. c 9. See RCW 18.79.900 through 18.79.902.

Chapter 18.34

DISPENSING OPTICIANS

Sections

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18.34.020	Definitions.
18.34.030	Apprentices.
18.34.050	Examining committee—Compensation and travel expenses.
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Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Homeless person vision services: RCW 43.20A.800 through 43.20A.850.

18.34.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.34.010 Licensing—Exemptions—Limitations. Nothing in this chapter shall:

(1) Be construed to limit or restrict a duly licensed physician or optometrist or employees working under the personal supervision of a duly licensed physician or optometrist from the practices enumerated in this chapter, and each such licensed physician and optometrist shall have all the rights and privileges which may accrue under this chapter to dispensing opticians licensed hereunder;

(2) Be construed to prohibit an unlicensed person from performing mechanical work upon inert matter in an optical office, laboratory or shop;

(3) Be construed to prohibit an unlicensed person from engaging in the sale of spectacles, eyeglasses, magnifying glasses, goggles, sunglasses, telescopes, binoculars, or any such articles which are completely preassembled and sold only as merchandise;

(4) Be construed to authorize or permit a licensee hereunder to hold himself out as being able to, or to offer to, or to undertake to attempt, by any manner of means, to examine or exercise eyes, diagnose, treat, correct, relieve,

operate or prescribe for any human ailment, deficiency, deformity, disease or injury. [1957 c 43 § 1.]

18.34.020 Definitions. The term "secretary" wherever used in this chapter shall mean the secretary of health of the state of Washington. The term "apprentice" wherever used in this chapter shall mean a person who shall be designated an apprentice in the records of the secretary at the request of a physician, registered optometrist, or licensee hereunder, who shall thereafter be the primary supervisor of the apprentice. The apprentice may thereafter receive from a physician, registered optometrist, or licensee hereunder training and direct supervision in the work of a dispensing optician. [1995 c 178 § 1; 1991 c 3 § 74; 1979 c 158 § 37; 1957 c 43 § 2.]

18.34.030 Apprentices. No licensee hereunder may have more than two apprentices in training or under their direct supervision at any one time. However, the primary supervisor shall be responsible for the acts of his or her apprentices in the performance of their work in the apprenticeship program and provide the majority of the training and direct supervision received by the apprentice. Apprentices shall complete their apprenticeship in six years and shall not work longer as an apprentice unless the secretary determines, after a hearing, that the apprentice was prevented by causes beyond his or her control from completing his or her apprenticeship and becoming a licensee hereunder in six years. [1995 c 178 § 2; 1991 c 3 § 75; 1957 c 43 § 3.]

18.34.050 Examining committee—Compensation and travel expenses. The examining committee shall consist of three persons primarily engaged in the business of dispensing opticians and who currently hold a valid license under this chapter. Members of the committee shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 32; 1957 c 43 § 5.]

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

18.34.060 Dispensing optician. A dispensing optician is a person who prepares duplications of, or prepares and dispenses lenses, spectacles, eyeglasses and/or appurtenances thereto to the intended wearers thereof on written prescriptions from physicians or optometrists, and in accordance with such prescriptions, measures, adapts, adjusts and fabricates such lenses, spectacles, eyeglasses and/or appurtenances thereto to the human face for the aid or correction of visual or ocular anomalies of the human eye: PROVIDED, HOWEVER, That contact lenses may be fitted only upon a written prescription of a physician or optometrist. [1957 c 43 § 6.]

18.34.070 Applicants—Eligibility for examination—Fee. Any applicant for a license shall be examined if he or she pays an examination fee determined by the secretary as provided in RCW 43.70.250 and certifies under oath that he or she:

- (1) Is eighteen years or more of age; and
- (2) Has graduated from an accredited high school; and

(3) Is a citizen of the United States or has declared his or her intention of becoming such citizen in accordance with law; and

(4) Is of good moral character; and

(5) Has either:

(a) Had at least three years of apprenticeship training; or

(b) Successfully completed a prescribed course in opticianry in a college or university approved by the secretary; or

(c) Been principally engaged in practicing as a dispensing optician not in the state of Washington for five years. [1991 c 3 § 76; 1985 c 7 § 29; 1975 1st ex.s. c 30 § 34; 1971 ex.s. c 292 § 22; 1957 c 43 § 7.]

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

18.34.080 Examination—Issuance and display of license. The examination shall determine whether the applicant has a thorough knowledge of the principles governing the practice of a dispensing optician which is hereby declared necessary for the protection of the public health. The examining committee may approve an examination prepared or administered by a private testing agency or association of licensing authorities. The secretary shall license successful examinees and the license shall be conspicuously displayed in the place of business of the licensee. [1995 c 198 § 3; 1991 c 3 § 77; 1957 c 43 § 8.]

18.34.110 Existing practitioner—Fee. The secretary shall issue a license without examination to any person who makes application therefor within six months after June 12, 1957, pays a fee of fifty dollars and certifies under oath that he or she is of good moral character and has been actually and principally engaged in the practice of a dispensing optician in the state of Washington for a period of not less than six months immediately preceding June 12, 1957. [1991 c 3 § 78; 1957 c 43 § 11.]

18.34.115 Credentialing by endorsement. An applicant holding a credential in another state may be credentialed to practice in this state without examination if the secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1991 c 332 § 33.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

18.34.120 Renewal registration fee—Continuing education. Each licensee hereunder shall pay a renewal registration fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. The secretary may adopt rules establishing mandatory continuing education requirements to be met by persons applying for license renewal. [1996 c 191 § 18; 1991 c 3 § 79; 1984 c 279 § 52; 1975 1st ex.s. c 30 § 35; 1957 c 43 § 12.]

Severability—1984 c 279: See RCW 18.130.901.

18.34.136 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and

the discipline of licensees under this chapter. [1987 c 150 § 19; 1986 c 259 § 45.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.34.141 License required. No person may practice or represent himself or herself as a dispensing optician without first having a valid license to do so. [1987 c 150 § 20.]

Severability—1987 c 150: See RCW 18.122.901.

18.34.900 Severability—1957 c 43. If any provisions of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1957 c 43 § 16.]

Chapter 18.35

HEARING AND SPEECH SERVICES

(Formerly: Hearing aids)

Sections

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18.35.902	Severability—1996 c 200.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

18.35.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.35.008 Intent. It is the intent of this chapter to protect the public health, safety, and welfare; to protect the public from being misled by incompetent, unethical, and unauthorized persons; and to assure the availability of hearing and speech services of high quality to persons in need of such services. [1996 c 200 § 1.]

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

(1) "Assistive listening device or system" means an amplification system that is specifically designed to improve the signal to noise ratio for the listener, reduce interference from noise in the background, and enhance hearing levels at a distance by picking up sound from as close to source as possible and sending it directly to the ear of the listener, excluding hearing instruments as defined in this chapter.

(2) "Certified audiologist" means a person who is certified by the department to engage in the practice of audiology and meets the qualifications in this chapter.

(3) "Audiology" means the application of principles, methods, and procedures related to hearing and the disorders of hearing and to related language and speech disorders, whether of organic or nonorganic origin, peripheral or central, that impede the normal process of human communication including, but not limited to, disorders of auditory sensitivity, acuity, function, processing, or vestibular function, the application of aural habilitation, rehabilitation, and appropriate devices including fitting and dispensing of hearing instruments, and cerumen management to treat such disorders.

(4) "Board" means the board of hearing and speech.

(5) "Department" means the department of health.

(6) "Direct supervision" means that the supervisor is physically present and in the same room with the hearing instrument fitter/dispenser permit holder, observing the nondiagnostic testing, fitting, and dispensing activities of the hearing instrument fitter/dispenser permit holder at all times.

(7) "Establishment" means any permanent site housing a person engaging in the practice of fitting and dispensing of hearing instruments by a hearing instrument fitter/dispenser or audiologist; where the client can have personal contact and counsel during the firm's business hours; where business is conducted; and the address of which is given to the state for the purpose of bonding.

(8) "Facility" means any permanent site housing a person engaging in the practice of speech-language pathology and/or audiology, excluding the sale, lease, or rental of hearing instruments.

(9) "Fitting and dispensing of hearing instruments" means the sale, lease, or rental or attempted sale, lease, or rental of hearing instruments together with the selection and modification of hearing instruments and the administration

of nondiagnostic tests as specified by RCW 18.35.110 and the use of procedures essential to the performance of these functions; and includes recommending specific hearing instrument systems, specific hearing instruments, or specific hearing instrument characteristics, the taking of impressions for ear molds for these purposes, the use of nondiagnostic procedures and equipment to verify the appropriateness of the hearing instrument fitting, and hearing instrument orientation. The fitting and dispensing of hearing instruments as defined by this chapter may be equally provided by a licensed hearing instrument fitter/dispenser or certified audiologist.

(10) "Good standing" means a licensed hearing instrument fitter/dispenser or certified audiologist or speech-language pathologist whose license or certificate has not been subject to sanctions pursuant to chapter 18.130 RCW or sanctions by other states, territories, or the District of Columbia in the last two years.

(11) "Hearing instrument" means any wearable prosthetic instrument or device designed for or represented as aiding, improving, compensating for, or correcting defective human hearing and any parts, attachments, or accessories of such an instrument or device, excluding batteries and cords, ear molds, and assistive listening devices.

(12) "Hearing instrument fitter/dispenser" means a person who is licensed to engage in the practice of fitting and dispensing of hearing instruments and meets the qualifications of this chapter.

(13) "Hearing instrument fitter/dispenser permit holder" means a person who practices under the direct supervision of a licensed hearing instrument fitter/dispenser or certified audiologist.

(14) "Secretary" means the secretary of health.

(15) "Certified speech-language pathologist" means a person who is certified by the department to engage in the practice of speech-language pathology and meets the qualifications of this chapter.

(16) "Speech-language pathology" means the application of principles, methods, and procedures related to the development and disorders, whether of organic or nonorganic origin, that impede oral, pharyngeal, or laryngeal sensorimotor competencies and the normal process of human communication including, but not limited to, disorders and related disorders of speech, articulation, fluency, voice, verbal and written language, auditory comprehension, cognition/communication, and the application of augmentative communication treatment and devices for treatment of such disorders. [1996 c 200 § 2; 1993 c 313 § 1; 1991 c 3 § 80; 1983 c 39 § 1; 1979 c 158 § 38; 1973 1st ex.s. c 106 § 1.]

18.35.020 Hearing instruments—Dispensing—License, certificate, permit required. No person shall engage in the fitting and dispensing of hearing instruments or imply or represent that he or she is engaged in the fitting and dispensing of hearing instruments unless he or she is a licensed hearing instrument fitter/dispenser or a certified audiologist or holds a hearing instrument fitter/dispenser permit or audiology interim permit issued by the department as provided in this chapter and is an owner or employee of an establishment that is bonded as provided by RCW 18.35.240. The owner or manager of an establishment that

dispenses hearing instruments is responsible under this chapter for all transactions made in the establishment name or conducted on its premises by agents or persons employed by the establishment engaged in fitting and dispensing of hearing instruments. Every establishment that fits and dispenses shall have in its employ at least one licensed hearing instrument fitter/dispenser or certified audiologist at all times, and shall annually submit proof that all testing equipment at that establishment that is required by the board to be calibrated has been properly calibrated. [1996 c 200 § 3; 1989 c 198 § 1; 1983 c 39 § 2; 1973 1st ex.s c 106 § 2.]

18.35.030 Receipt required—Contents. Any person who engages in fitting and dispensing of hearing instruments shall provide to each person who enters into an agreement to purchase a hearing instrument a receipt at the time of the agreement containing the following information:

(1) The seller's name, signature, license, certificate, or permit number, address, and phone number of his or her regular place of business;

(2) A description of the instrument furnished, including make, model, circuit options, and the term "used" or "reconditioned" if applicable;

(3) A disclosure of the cost of all services including but not limited to the cost of testing and fitting, the actual cost of the hearing instrument furnished, the cost of ear molds if any, and the terms of the sale. These costs, including the cost of ear molds, shall be known as the total purchase price. The receipt shall also contain a statement of the purchaser's rescission rights under this chapter and an acknowledgment that the purchaser has read and understands these rights. Upon request, the purchaser shall also be supplied with a signed and dated copy of any hearing evaluation performed by the seller.

(4) At the time of delivery of the hearing instrument, the purchaser shall also be furnished with the serial number of the hearing instrument supplied. [1996 c 200 § 4; 1983 c 39 § 3; 1973 1st ex.s. c 106 § 3.]

18.35.040 Applicants—Generally. (1) An applicant for licensure as a hearing instrument fitter/dispenser must have the following minimum qualifications and shall pay a fee determined by the secretary as provided in RCW 43.70.250. An applicant shall be issued a license under the provisions of this chapter if the applicant:

(a)(i) Satisfactorily completes the hearing instrument fitter/dispenser examination required by this chapter; or

(ii) Holds a current, unsuspended, unrevoked license from another jurisdiction if the standards for licensing in such other jurisdiction are substantially equivalent to those prevailing in this state;

(b) After December 31, 1996, has at least six months of apprenticeship training that meets requirements established by the board. The board may waive part or all of the apprenticeship training in recognition of formal education in fitting and dispensing of hearing instruments or in recognition of previous licensure in Washington or in another state, territory, or the District of Columbia;

(c) Is at least twenty-one years of age; and

(d) Has not committed unprofessional conduct as specified by the uniform disciplinary act.

The applicant must present proof of qualifications to the board in the manner and on forms prescribed by the secretary and proof of completion of a minimum of four clock hours of AIDS education and training pursuant to rules adopted by the board.

(2) An applicant for certification as a speech-language pathologist or audiologist must have the following minimum qualifications:

(a) Has not committed unprofessional conduct as specified by the uniform disciplinary act;

(b) Has a master's degree or the equivalent, or a doctorate degree or the equivalent, from a program at a board-approved institution of higher learning, which includes completion of a supervised clinical practicum experience as defined by rules adopted by the board; and

(c) Has completed postgraduate professional work experience approved by the board.

All qualified applicants must satisfactorily complete the speech-language pathology or audiology examinations required by this chapter.

The applicant must present proof of qualifications to the board in the manner and on forms prescribed by the secretary and proof of completion of a minimum of four clock hours of AIDS education and training pursuant to rules adopted by the board. [1996 c 200 § 5; 1991 c 3 § 81; 1989 c 198 § 2; 1985 c 7 § 30; 1983 c 39 § 4; 1975 1st ex.s. c 30 § 36; 1973 1st ex.s. c 106 § 4.]

18.35.050 Examination—Required—When offered—Review. Except as otherwise provided in this chapter an applicant for license or certification shall appear at a time and place and before such persons as the department may designate to be examined by written or practical tests, or both. Examinations in hearing instrument fitting/dispensing, speech-language pathology, and audiology shall be held within the state at least once a year. The examinations shall be reviewed annually by the board and the department, and revised as necessary. The examinations shall include appropriate subject matter to ensure the competence of the applicant. Nationally recognized examinations in the fields of fitting and dispensing of hearing instruments, speech-language pathology, and audiology may be used to determine if applicants are qualified for licensure or certification. An applicant who fails an examination may apply for reexamination upon payment of a reexamination fee. The hearing instrument fitting/dispensing reexamination fee for hearing instrument fitter/dispensers and audiologists shall be set by the secretary under RCW 43.70.250. [1996 c 200 § 6; 1993 c 313 § 2; 1989 c 198 § 3; 1983 c 39 § 5; 1973 1st ex.s. c 106 § 5.]

18.35.060 Trainee license—Generally (as amended by 1996 c 191). (1) The department shall issue a trainee license to any applicant who has shown to the satisfaction of the department that the applicant:

(a) ~~((The applicant))~~ Is at least eighteen years of age;

(b) If issued a trainee license, would be employed and directly supervised in the fitting and dispensing of hearing aids by a person licensed in good standing as a fitter-dispenser for at least one year unless otherwise approved by the board; and

(c) Has ~~((paid an application fee))~~ complied with administrative procedures, administrative requirements, and fees determined ((by the

secretary)) as provided in RCW 43.70.250(~~(to the department))~~ and 43.70.280.

The provisions of RCW 18.35.030, 18.35.110, and 18.35.120 shall apply to any person issued a trainee license. Pursuant to the provisions of this section, a person issued a trainee license may engage in the fitting and dispensing of hearing aids without having first passed the examination provided under this chapter.

(2) The trainee license shall contain the name of the person licensed under this chapter who is employing and supervising the trainee and that person shall execute an acknowledgment of responsibility for all acts of the trainee in connection with the fitting and dispensing of hearing aids.

(3) A trainee may fit and dispense hearing aids, but only if the trainee is under the direct supervision of a person licensed under this chapter in a capacity other than as a trainee. Direct supervision by a licensed fitter-dispenser shall be required whenever the trainee is engaged in the fitting or dispensing of hearing aids during the trainee's first three months of full-time employment. The board shall develop and adopt guidelines on any additional supervision or training it deems necessary.

(4) ~~((The trainee license shall expire one year from the date of its issuance except that on recommendation of the board the license may be reissued for one additional year only))~~ No individual may hold a trainee license for more than two years.

(5) No person licensed under this chapter may assume the responsibility for more than two trainees at any one time, except that the department may approve one additional trainee if none of the trainees is within the initial ninety-day period of direct supervision and the licensee demonstrates to the department's satisfaction that adequate supervision will be provided for all trainees. [1996 c 191 § 19; 1993 c 313 § 3; 1991 c 3 § 82; 1985 c 7 § 31; 1983 c 39 § 6; 1975 1st ex.s. c 30 § 37; 1973 1st ex.s. c 106 § 6.]

18.35.060 Hearing instrument fitter/dispenser permit (as amended by 1996 c 200). (1) The department shall issue a ~~((trainee license))~~ hearing instrument fitting/dispensing permit to any applicant who has shown to the satisfaction of the department that the applicant:

(a) ~~((The applicant))~~ Is at least ~~((eighteen))~~ twenty-one years of age;

(b) If issued a ~~((trainee license))~~ hearing instrument fitter/dispenser permit, would be employed and directly supervised in the fitting and dispensing of hearing ~~((aids))~~ instruments by a person licensed or certified in good standing as a ~~((fitter-dispenser))~~ hearing instrument fitter/dispenser or audiologist for at least ~~((one year))~~ two years unless otherwise approved by the board; ~~((and))~~

(c) Has paid an application fee determined by the secretary as provided in RCW 43.70.250, to the department;

(d) Has not committed unprofessional conduct as specified by the uniform disciplinary act; and

(e) Is a high school graduate or the equivalent.

The provisions of RCW 18.35.030, 18.35.110, and 18.35.120 shall apply to any person issued a ~~((trainee license))~~ hearing instrument fitter/dispenser permit. Pursuant to the provisions of this section, a person issued a ~~((trainee license))~~ hearing instrument fitter/dispenser permit may engage in the fitting and dispensing of hearing ~~((aids))~~ instruments without having first passed the hearing instrument fitter/dispenser examination provided under this chapter.

(2) The ~~((trainee license))~~ hearing instrument fitter/dispenser permit shall contain the names of the ~~((person))~~ employer and the licensed or certified supervisor under this chapter who ~~((is))~~ are employing and supervising the ~~((trainee))~~ hearing instrument fitter/dispenser permit holder and ~~((that))~~ those persons shall execute an acknowledgment of responsibility for all acts of the ~~((trainee))~~ hearing instrument fitter/dispenser permit holder in connection with the fitting and dispensing of hearing ~~((aids))~~ instruments.

(3) A ~~((trainee))~~ hearing instrument fitter/dispenser permit holder may fit and dispense hearing ~~((aids))~~ instruments, but only if the ~~((trainee))~~ hearing instrument fitter/dispenser permit holder is under the direct supervision of a ~~((person))~~ licensed hearing instrument fitter/dispenser or certified audiologist under this chapter in a capacity other than as a ~~((trainee))~~ hearing instrument fitter/dispenser permit holder. Direct supervision by a licensed ~~((fitter-dispenser))~~ hearing instrument fitter/dispenser or certified audiologist shall be required whenever the ~~((trainee))~~ hearing instrument fitter/dispenser permit holder is engaged in the fitting or dispensing of hearing ~~((aids))~~ instruments during the ~~((trainee's first three months of full-time))~~ hearing instrument fitter/dispenser permit holder's employment. The board shall develop and adopt guidelines on any additional supervision or training it deems necessary.

(4) The ~~((trainee license))~~ hearing instrument fitter/dispenser permit shall expire one year from the date of its issuance except that on recommen-

dition of the board the ~~((license))~~ permit may be reissued for one additional year only.

(5) No ~~((person licensed))~~ certified audiologist or licensed hearing instrument fitter/dispenser under this chapter may assume the responsibility for more than ~~((two trainees))~~ one hearing instrument fitter/dispenser permit holder at any one time ~~((except that the department may approve one additional trainee if none of the trainees is within the initial ninety-day period of direct supervision and the licensee demonstrates to the department's satisfaction that adequate supervision will be provided for all trainees))~~.

(6) The department, upon approval by the board, shall issue an interim permit authorizing an applicant for speech-language pathologist certification or audiologist certification who, except for the postgraduate professional experience and the examination requirements, meets the academic and practicum requirements of RCW 18.35.040 to practice under interim permit supervision by a certified speech-language pathologist or certified audiologist. The interim permit is valid for a period of one year from date of issuance. The board shall determine conditions for the interim permit. [1996 c 200 § 7; 1993 c 313 § 3; 1991 c 3 § 82; 1985 c 7 § 31; 1983 c 39 § 6; 1975 1st ex.s. c 30 § 37; 1973 1st ex.s. c 106 § 6.]

Reviser's note: RCW 18.35.060 was amended twice during the 1996 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

18.35.070 Examination—Contents—Tests. The hearing instrument fitter/dispenser written or practical examination, or both, provided in RCW 18.35.050 shall consist of:

(1) Tests of knowledge in the following areas as they pertain to the fitting of hearing instruments:

(a) Basic physics of sound;

(b) The human hearing mechanism, including the science of hearing and the causes and rehabilitation of abnormal hearing and hearing disorders; and

(c) Structure and function of hearing instruments.

(2) Tests of proficiency in the following areas as they pertain to the fitting of hearing instruments:

(a) Pure tone audiometry, including air conduction testing and bone conduction testing;

(b) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;

(c) Effective masking;

(d) Recording and evaluation of audiograms and speech audiometry to determine hearing instrument candidacy;

(e) Selection and adaptation of hearing instruments and testing of hearing instruments; and

(f) Taking ear mold impressions.

(3) Evidence of knowledge regarding the medical and rehabilitation facilities for children and adults that are available in the area served.

(4) Evidence of knowledge of grounds for revocation or suspension of license under the provisions of this chapter.

(5) Any other tests as the board may by rule establish. [1996 c 200 § 8; 1973 1st ex.s. c 106 § 7.]

18.35.080 License—Generally (as amended by 1996 c 191). The department shall license each applicant ~~((without discrimination;))~~ who satisfactorily completes the required examination and ~~((upon payment of a fee determined by the secretary as provided in RCW 43.70.250 to the department, shall issue to the applicant a license. If a person does not apply for a license within three years of the successful completion of the license examination, reexamination is required for licensure. The license shall be effective until the licensee's next birthday at which time it is subject to renewal. Subsequent renewal dates shall coincide with the licensee's birthday))~~ complies with administrative procedures and administrative

requirements established pursuant to RCW 43.70.250 and 43.70.280. [1996 c 191 § 20; 1991 c 3 § 83; 1989 c 198 § 4; 1985 c 7 § 32; 1975 1st ex.s. c 30 § 38; 1973 1st ex.s. c 106 § 8.]

18.35.080 License—Certification—Generally (as amended by 1996 c 200). (1) The department shall license or certify each qualified applicant, without discrimination, who satisfactorily completes the required examinations for his or her profession and, upon payment of a fee determined by the secretary as provided in RCW 43.70.250 to the department, shall issue to the applicant a license or certificate. A person shall not knowingly make a false, material statement in an application for a license, certification, or permit or for a renewal of a license, certification, or permit.

If a ~~((person))~~ prospective hearing instrument fitter/dispenser does not apply for a license within three years of the successful completion of the hearing instrument fitter/dispenser license examination, reexamination is required for licensure. The license shall be effective until the licensee's next birthday at which time it is subject to renewal. Subsequent renewal dates shall coincide with the licensee's birthday.

(2) The board shall waive the examination and grant a speech-language pathology certificate to a person engaged in the profession of speech-language pathology in this state on June 6, 1996, if the board determines that the person meets commonly accepted standards for the profession, as defined by rules adopted by the board. Persons eligible for certification under this subsection must apply for a certificate before July 1, 1997.

(3) The board shall waive the examinations and grant an audiology certificate to a person engaged in the profession of audiology in this state on June 6, 1996, if the board determines that the person meets the commonly accepted standards for the profession and has passed the hearing instrument fitter/dispenser examination. Persons eligible for certification under this subsection must apply for a certificate before July 1, 1997.

(4) The board shall grant an audiology certificate to a person engaged in the profession of audiology, who has not been licensed as a hearing aid ~~[[instrument]]~~ fitter/dispenser, but who meets the commonly accepted standards for the profession of audiology and graduated from a board-approved program after January 1, 1993, and has passed sections of the examination pertaining to RCW 18.35.070 (3), (4), and (5). Persons eligible for certification under this subsection must apply for a certificate before July 1, 1997.

(5) Persons engaged in the profession of audiology who meet the commonly accepted standards for the profession of audiology and graduated from a board-approved program prior to January 1, 1993, and who have not passed the hearing instrument fitter/dispenser examination shall be granted a temporary audiology certificate (nondispensing) for a period of two years from June 6, 1996, during which time they must pass sections of the hearing instrument fitter/dispenser examination pertaining to RCW 18.35.070 (1)(c), (2)(e) and (f), (3), (4), and (5). The board may extend the term of the temporary certificate upon review. Persons eligible for certification under this subsection must apply for a certificate before July 1, 1997. [1996 c 200 § 9; 1991 c 3 § 83; 1989 c 198 § 4; 1985 c 7 § 32; 1975 1st ex.s. c 30 § 38; 1973 1st ex.s. c 106 § 8.]

Reviser's note: RCW 18.35.080 was amended twice during the 1996 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

18.35.085 Credentialing by endorsement. An applicant holding a credential in another state, territory, or the District of Columbia may be credentialed to practice in this state without examination if the board determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1996 c 200 § 10; 1991 c 332 § 31.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

18.35.090 Compliance with administrative procedures, requirements—Display of license—Continuing education, competency standards (as amended by 1996 c 191). Each person who engages in the fitting and dispensing of hearing aids shall ~~((as the department prescribes by rule, pay to the department a fee established by the secretary under RCW 43.70.250 for a renewal of the license))~~ comply with administrative procedures and

administrative requirements established under RCW 43.70.250 and 43.70.280 and shall keep the license conspicuously posted in the place of business at all times. ~~((Any person who fails to renew his or her license prior to the expiration date must pay a penalty fee in addition to the renewal fee and satisfy the requirements that may be set forth by rule promulgated by the secretary for reinstatement.))~~ The secretary may ~~((by rule))~~ establish mandatory continuing education requirements and/or continued competency standards to be met by licensees as a condition for license renewal. [1996 c 191 § 21; 1991 c 3 § 84; 1989 c 198 § 5; 1985 c 7 § 33; 1983 c 39 § 7; 1973 1st ex.s. c 106 § 9.]

18.35.090 License renewal—Display of license—Lapsed license—Continuing education, competency standards (as amended by 1996 c 200). Each person who engages in ~~((the fitting and dispensing of hearing aids))~~ practice under this chapter shall, as the department prescribes by rule, pay to the department a fee established by the secretary under RCW 43.70.250 for a renewal of the license, certificate, or permit and shall keep the license, certificate, or permit conspicuously posted in the place of business at all times. ~~The license, certificate, or permit of any person who fails to renew his or her license ((prior to the expiration date must pay a penalty fee in addition to the renewal fee and satisfy the requirements)), certificate, or permit prior to the expiration date shall automatically lapse. Within three years from the date of lapse and upon recommendation of the board, the secretary may revive a lapsed license or certificate upon payment of all past unpaid renewal fees and a penalty fee to be determined by the secretary and satisfaction of any requirements, which may include reexamination, that may be set forth by rule promulgated by the secretary for reinstatement.~~ The secretary may by rule establish mandatory continuing education requirements and/or continued competency standards to be met by licensees or certificate or permit holders as a condition for license, certificate, or permit renewal. [1996 c 200 § 11; 1991 c 3 § 84; 1989 c 198 § 5; 1985 c 7 § 33; 1983 c 39 § 7; 1973 1st ex.s. c 106 § 9.]

Reviser's note: RCW 18.35.090 was amended twice during the 1996 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

18.35.095 Licensees—Inactive status. (1) A hearing instrument fitter/dispenser licensed under this chapter and not actively practicing may be placed on inactive status by the department at the written request of the licensee. The board shall define by rule the conditions for inactive status licensure. In addition to the requirements of RCW 43.24.086, the licensing fee for a licensee on inactive status shall be directly related to the costs of administering an inactive license by the department. A hearing instrument fitter/dispenser on inactive status may be voluntarily placed on active status by notifying the department in writing, paying the remainder of the licensing fee for the licensing year, and complying with subsection (2) of this section.

(2) Hearing instrument fitter/dispenser inactive licensees applying for active licensure shall comply with the following: A licensee who has not fitted or dispensed hearing instruments for more than five years from the expiration of the licensee's full fee license shall retake the practical or the written, or both, hearing instrument fitter/dispenser examinations required under this chapter and other requirements as determined by the board. Persons who have inactive status in this state but who are actively licensed and in good standing in any other state shall not be required to take the hearing instrument fitter/dispenser practical examination, but must submit an affidavit attesting to their knowledge of the current Washington Administrative Code rules and Revised Code of Washington statutes pertaining to the fitting and dispensing of hearing instruments.

(3) A speech-language pathologist or audiologist certified under this chapter and not actively practicing either

speech-language pathology or audiology may be placed on inactive status by the department at the written request of the certificate holder. The board shall define by rule the conditions for inactive status certification. In addition to the requirements of RCW 43.24.086, the fee for a certificate on inactive status shall be directly related to the cost of administering an inactive certificate by the department. A person on inactive status may be voluntarily placed on active status by notifying the department in writing, paying the remainder of the fee for the year, and complying with subsection (4) of this section.

(4) Speech-language pathologist or audiologist inactive certificate holders applying for active certification shall comply with requirements set forth by the board, which may include completion of continuing competency requirements and taking an examination. [1996 c 200 § 12; 1993 c 313 § 12.]

18.35.100 Place of business. (1) Every hearing instrument fitter/dispenser, audiologist, speech-language pathologist, hearing instrument fitter/dispenser permit holder, or interim permit holder, who is regulated under this chapter, shall notify the department in writing of the regular address of the place or places in the state of Washington where the person practices or intends to practice more than twenty consecutive business days and of any change thereof within ten days of such change. Failure to notify the department in writing shall be grounds for suspension or revocation of license, certificate, or permit.

(2) The department shall keep a record of the places of business of persons who hold licenses, certificates, or permits.

(3) Any notice required to be given by the department to a person who holds a license, certificate, or permit may be given by mailing it to the address of the last establishment or facility of which the person has notified the department, except that notice to a licensee or certificate or permit holder of proceedings to deny, suspend, or revoke the license, certificate, or permit shall be by certified or registered mail or by means authorized for service of process. [1996 c 200 § 13; 1983 c 39 § 8; 1973 1st ex.s. c 106 § 10.]

18.35.105 Records—Contents. Each licensee and certificate and permit holder under this chapter shall keep records of all services rendered for a minimum of three years. These records shall contain the names and addresses of all persons to whom services were provided. Hearing instrument fitter/dispensers, audiologists, and permit holders shall also record the date the hearing instrument warranty expires, a description of the services and the dates the services were provided, and copies of any contracts and receipts. All records, as required pursuant to this chapter or by rule, shall be owned by the establishment or facility and shall remain with the establishment or facility in the event the licensee or certificate holder changes employment. If a contract between the establishment or facility and the licensee or certificate holder provides that the records are to remain with the licensee or certificate holder, copies of such records shall be provided to the establishment or facility. [1996 c 200 § 14; 1989 c 198 § 6; 1983 c 39 § 16.]

18.35.110 Disciplinary action—Grounds. In addition to causes specified under RCW 18.130.170 and 18.130.180, any person licensed or holding a permit or certificate under this chapter may be subject to disciplinary action by the board for any of the following causes:

(1) For unethical conduct in dispensing hearing instruments. Unethical conduct shall include, but not be limited to:

(a) Using or causing or promoting the use of, in any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is false, misleading or deceptive;

(b) Failing or refusing to honor or to perform as represented any representation, promise, agreement, or warranty in connection with the promotion, sale, dispensing, or fitting of the hearing instrument;

(c) Advertising a particular model, type, or kind of hearing instrument for sale which purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing and where it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type, or kind than that advertised;

(d) Falsifying hearing test or evaluation results;

(e)(i) Whenever any of the following conditions are found or should have been found to exist either from observations by the licensee or certificate or permit holder or on the basis of information furnished by the prospective hearing instrument user prior to fitting and dispensing a hearing instrument to any such prospective hearing instrument user, failing to advise that prospective hearing instrument user in writing that the user should first consult a licensed physician specializing in diseases of the ear or if no such licensed physician is available in the community then to any duly licensed physician:

(A) Visible congenital or traumatic deformity of the ear, including perforation of the eardrum;

(B) History of, or active drainage from the ear within the previous ninety days;

(C) History of sudden or rapidly progressive hearing loss within the previous ninety days;

(D) Acute or chronic dizziness;

(E) Any unilateral hearing loss;

(F) Significant air-bone gap when generally acceptable standards have been established as defined by the food and drug administration;

(G) Visible evidence of significant cerumen accumulation or a foreign body in the ear canal;

(H) Pain or discomfort in the ear; or

(I) Any other conditions that the board may by rule establish. It is a violation of this subsection for any licensee or certificate holder or that licensee's or certificate holder's employees and putative agents upon making such required referral for medical opinion to in any manner whatsoever disparage or discourage a prospective hearing instrument user from seeking such medical opinion prior to the fitting and dispensing of a hearing instrument. No such referral for medical opinion need be made by any licensed hearing instrument fitter/dispenser, certified audiologist, or permit holder in the instance of replacement only of a hearing instrument which has been lost or damaged beyond repair

within twelve months of the date of purchase. The licensed hearing instrument fitter/dispenser, certified audiologist, or permit holder or their employees or putative agents shall obtain a signed statement from the hearing instrument user documenting the waiver of medical clearance and the waiver shall inform the prospective user that signing the waiver is not in the user's best health interest: PROVIDED, That the licensed hearing instrument fitter/dispenser, certified audiologist, or permit holder shall maintain a copy of either the physician's statement showing that the prospective hearing instrument user has had a medical evaluation within the previous six months or the statement waiving medical evaluation, for a period of three years after the purchaser's receipt of a hearing instrument. Nothing in this section required to be performed by a licensee or certificate or permit holder shall mean that the licensee or certificate or permit holder is engaged in the diagnosis of illness or the practice of medicine or any other activity prohibited under the laws of this state;

(ii) Fitting and dispensing a hearing instrument to any person under eighteen years of age who has not been examined and cleared for hearing instrument use within the previous six months by a physician specializing in otolaryngology except in the case of replacement instruments or except in the case of the parents or guardian of such person refusing, for good cause, to seek medical opinion: PROVIDED, That should the parents or guardian of such person refuse, for good cause, to seek medical opinion, the licensed hearing instrument fitter/dispenser or certified audiologist shall obtain from such parents or guardian a certificate to that effect in a form as prescribed by the department;

(iii) Fitting and dispensing a hearing instrument to any person under eighteen years of age who has not been examined by an audiologist who holds at least a master's degree in audiology for recommendations during the previous six months, without first advising such person or his or her parents or guardian in writing that he or she should first consult an audiologist who holds at least a master's degree in audiology, except in cases of hearing instruments replaced within twelve months of their purchase;

(f) Representing that the services or advice of a person licensed to practice medicine and surgery under chapter 18.71 RCW or osteopathic medicine and surgery under chapter 18.57 RCW or of a clinical audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing instruments when that is not true, or using the word "doctor," "clinic," or other like words, abbreviations, or symbols which tend to connote a medical or osteopathic medicine and surgery profession when such use is not accurate;

(g) Permitting another to use his or her license, certificate, or permit;

(h) Stating or implying that the use of any hearing instrument will restore normal hearing, preserve hearing, prevent or retard progression of a hearing impairment, or any other false, misleading, or medically or audiological unsupportable claim regarding the efficiency of a hearing instrument;

(i) Representing or implying that a hearing instrument is or will be "custom-made," "made to order," "prescription made," or in any other sense specially fabricated for an individual when that is not the case; or

(j) Directly or indirectly offering, giving, permitting, or causing to be given, money or anything of value to any person who advised another in a professional capacity as an inducement to influence that person, or to have that person influence others to purchase or contract to purchase any product sold or offered for sale by the hearing instrument fitter/dispenser, audiologist, or permit holder, or to influence any person to refrain from dealing in the products of competitors.

(2) Engaging in any unfair or deceptive practice or unfair method of competition in trade within the meaning of RCW 19.86.020.

(3) Aiding or abetting any violation of the rebating laws as stated in chapter 19.68 RCW. [1996 c 200 § 15; 1996 c 178 § 1; 1993 c 313 § 4; 1987 c 150 § 22; 1983 c 39 § 9; 1973 1st ex.s. c 106 § 11.]

Reviser's note: This section was amended by 1996 c 178 § 1 and by 1996 c 200 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1996 c 178: "This act shall take effect July 1, 1996." [1996 c 178 § 25.]

Severability—1987 c 150: See RCW 18.122.901.

Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.35.120 Disciplinary action—Additional grounds.

A licensee or certificate or permit holder under this chapter may also be subject to disciplinary action if the licensee or certificate or permit holder:

(1) Is found guilty in any court of any crime involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and ten years have not elapsed since the date of the conviction; or

(2) Has a judgment entered against him or her in any civil action involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and five years have not elapsed since the date of the entry of the final judgment in the action, but a license or certificate shall not be issued unless the judgment debt has been discharged; or

(3) Has a judgment entered against him or her under chapter 19.86 RCW and two years have not elapsed since the entry of the final judgment; but a license or certificate shall not be issued unless there has been full compliance with the terms of such judgment, if any. The judgment shall not be grounds for denial, suspension, nonrenewal, or revocation of a license or certificate unless the judgment arises out of and is based on acts of the applicant, licensee, certificate holder, or employee of the licensee or certificate holder; or

(4) Commits unprofessional conduct as defined in RCW 18.130.180 of the uniform disciplinary act. [1996 c 200 § 17; 1983 c 39 § 10; 1973 1st ex.s. c 106 § 12.]

Penalties authorized: RCW 18.35.161.

18.35.140 Powers and duties of department. The powers and duties of the department, in addition to the powers and duties provided under other sections of this chapter, are as follows:

(1) To provide space necessary to carry out the examination set forth in RCW 18.35.070 of applicants for hearing instrument fitter/dispenser licenses or audiology certification.

(2) To authorize all disbursements necessary to carry out the provisions of this chapter.

(3) To require the periodic examination of testing equipment, as defined by the board, and to carry out the periodic inspection of facilities or establishments of persons who are licensed or certified under this chapter, as reasonably required within the discretion of the department.

(4) To appoint advisory committees as necessary.

(5) To keep a record of proceedings under this chapter and a register of all persons licensed, certified, or holding permits under this chapter. The register shall show the name of every living licensee or permit holder for hearing instrument fitting/dispensing, every living certificate or interim permit holder for speech-language pathology, every living certificate or interim permit holder for audiology, with his or her last known place of residence and the date and number of his or her license, permit, or certificate. [1996 c 200 § 18; 1993 c 313 § 5; 1983 c 39 § 11; 1973 1st ex.s. c 106 § 14.]

18.35.150 Board of hearing and speech—Created—Membership—Qualifications—Terms—Vacancies—Meetings—Compensation—Travel expenses. (1) There is created hereby the board of hearing and speech to govern the three separate professions: Hearing instrument fitting/dispensing, audiology, and speech-language pathology. The board shall consist of ten members to be appointed by the governor.

(2) Members of the board shall be residents of this state. Three members shall represent the public and shall have an interest in the rights of consumers of health services, and shall not be or have been a member of, or married to a member of, another licensing board, a licensee of a health occupation board, an employee of a health facility, nor derive his or her primary livelihood from the provision of health services at any level of responsibility. Two members shall be hearing instrument fitter/dispensers who are licensed under this chapter, have at least five years of experience in the practice of hearing instrument fitting and dispensing, and must be actively engaged in fitting and dispensing within two years of appointment. Two members of the board shall be audiologists certified under this chapter who have at least five years of experience in the practice of audiology and must be actively engaged in practice within two years of appointment. Two members of the board shall be speech-language pathologists certified under this chapter who have at least five years of experience in the practice of speech-language pathology and must be actively engaged in practice within two years of appointment. One advisory nonvoting member shall be a medical physician licensed in the state of Washington.

(3) The term of office of a member is three years. Of the initial appointments, one hearing instrument fitter/dispenser, one speech-language pathologist, one audiologist, and one consumer shall be appointed for a term of two years, and one hearing instrument fitter/dispenser, one speech-language pathologist, one audiologist, and two consumers shall be appointed for a term of three years. Thereafter, all appointments shall be made for expired terms. No member shall be appointed to serve more than two consecutive terms. A member shall continue to serve until

a successor has been appointed. The governor shall either reappoint the member or appoint a successor to assume the member's duties at the expiration of his or her predecessor's term. A vacancy in the office of a member shall be filled by appointment for the unexpired term.

(4) The chair shall rotate annually among the hearing instrument fitter/dispensers, speech-language pathologists, audiologists, and public members serving on the board. In the absence of the chair, the board shall appoint an interim chair. In event of a tie vote, the issue shall be brought to a second vote and the chair shall refrain from voting.

(5) The board shall meet at least once each year, at a place, day and hour determined by the board, unless otherwise directed by a majority of board members. The board shall also meet at such other times and places as are requested by the department or by three members of the board. A quorum is a majority of the board. A hearing instrument fitter/dispenser, speech-language pathologist, and audiologist must be represented. Meetings of the board shall be open and public, except the board may hold executive sessions to the extent permitted by chapter 42.30 RCW.

(6) Members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7) The governor may remove a member of the board for cause at the recommendation of a majority of the board. [1996 c 200 § 19; 1993 c 313 § 6; 1989 c 198 § 7; 1984 c 287 § 33; 1983 c 39 § 12; 1975-'76 2nd ex.s. c 34 § 35; 1973 1st ex.s. c 106 § 15.]

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

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

Secretary of health or designee as ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.35.161 Board—Powers and duties. The board shall have the following powers and duties:

(1) To establish by rule such minimum standards and procedures in the fitting and dispensing of hearing instruments as deemed appropriate and in the public interest;

(2) To develop guidelines on the training and supervision of hearing instrument fitter/dispenser permit holders and to establish requirements regarding the extent of apprenticeship training and certification to the department;

(3) To adopt any other rules necessary to implement this chapter and which are not inconsistent with it;

(4) To develop, approve, and administer or supervise the administration of examinations to applicants for licensure and certification under this chapter;

(5) To require a licensee or certificate or permit holder to make restitution to any individual injured by a violation of this chapter or chapter 18.130 RCW, the uniform disciplinary act. The authority to require restitution does not limit the board's authority to take other action deemed appropriate and provided for in this chapter or chapter 18.130 RCW;

(6) To pass upon the qualifications of applicants for licensure, certification, or permits and to certify to the secretary;

(7) To recommend requirements for continuing education and continuing competency requirements as a prerequisite to renewing a license or certificate under this chapter;

(8) To keep an official record of all its proceedings. The record is evidence of all proceedings of the board that are set forth in this record;

(9) To adopt rules, if the board finds it appropriate, in response to questions put to it by professional health associations, hearing instrument fitter/dispensers or audiologists, speech-language pathologists, permit holders, and consumers in this state; and

(10) To adopt rules relating to standards of care relating to hearing instrument fitter/dispensers or audiologists, including the dispensing of hearing instruments, and relating to speech-language pathologists, including dispensing of communication devices. [1996 c 200 § 20; 1993 c 313 § 7; 1987 c 150 § 23; 1983 c 39 § 13.]

Severability—1987 c 150: See RCW 18.122.901.

18.35.162 Unprofessional conduct. Violation of the standards adopted by rule under RCW 18.35.161 is unprofessional conduct under this chapter and chapter 18.130 RCW. [1996 c 200 § 21.]

18.35.172 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, certificates, and permits, and the discipline of licensees and certificate and permit holders under this chapter. [1996 c 200 § 22; 1987 c 150 § 21.]

Severability—1987 c 150: See RCW 18.122.901.

18.35.175 Unlawful sales practices. It is unlawful to fit or dispense a hearing instrument to a resident of this state if the attempted sale or purchase is offered or made by telephone or mail order and there is no face-to-face contact to test or otherwise determine the needs of the prospective purchaser. This section does not apply to the sale of hearing instruments by wholesalers to licensees or certificate holders under this chapter. [1996 c 200 § 23; 1983 c 39 § 21.]

18.35.180 Application of Consumer Protection Act and False Advertising Act. Acts and practices in the course of trade in the promoting, advertising, selling, fitting, and dispensing of hearing instruments shall be subject to the provisions of chapter 19.86 RCW (Consumer Protection Act) and RCW 9.04.050 (False Advertising Act) and any violation of the provisions of this chapter shall constitute violation of RCW 19.86.020. [1996 c 200 § 24; 1973 1st ex.s. c 106 § 18.]

18.35.185 Rescission of transaction—Requirements—Notice. (1) In addition to any other rights and remedies a purchaser may have, the purchaser of a hearing instrument shall have the right to rescind the transaction for other than the licensed hearing instrument fitter/dispenser, certified audiologist, or permit holder's breach if:

(a) The purchaser, for reasonable cause, returns the hearing instrument or holds it at the licensed hearing

instrument fitter/dispenser, certified audiologist, or permit holder's disposal, if the hearing instrument is in its original condition less normal wear and tear. "Reasonable cause" shall be defined by the board but shall not include a mere change of mind on the part of the purchaser or a change of mind related to cosmetic concerns of the purchaser about wearing a hearing instrument; and

(b) The purchaser sends notice of the cancellation by certified mail, return receipt requested, to the establishment employing the licensed hearing instrument fitter/dispenser, certified audiologist, or permit holder at the time the hearing instrument was originally purchased, and the notice is posted not later than thirty days following the date of delivery, but the purchaser and the licensed hearing instrument fitter/dispenser, certified audiologist, or permit holder may extend the deadline for posting of the notice of rescission by mutual, written agreement. In the event the hearing instrument develops a problem which qualifies as a reasonable cause for rescission or which prevents the purchaser from evaluating the hearing instrument, and the purchaser notifies the establishment employing the licensed hearing instrument fitter/dispenser, certified audiologist or permit holder of the problem during the thirty days following the date of delivery and documents such notification, the deadline for posting the notice of rescission shall be extended by an equal number of days as those between the date of the notification of the problem to the date of notification of availability for redeliveries. Where the hearing instrument is returned to the licensed hearing instrument fitter/dispenser, certified audiologist, or permit holder for any inspection for modification or repair, and the licensed hearing instrument fitter/dispenser, certified audiologist, or permit holder has notified the purchaser that the hearing instrument is available for redelivery, and where the purchaser has not responded by either taking possession of the hearing instrument or instructing the licensed hearing instrument fitter/dispenser, certified audiologist, or permit holder to forward it to the purchaser, then the deadline for giving notice of the rescission shall extend no more than seven working days after this notice of availability.

(2) If the transaction is rescinded under this section or as otherwise provided by law and the hearing instrument is returned to the licensed hearing instrument fitter/dispenser, certified audiologist, or permit holder, the licensed hearing instrument fitter/dispenser, certified audiologist, or permit holder shall refund to the purchaser any payments or deposits for that hearing instrument. However, the licensed hearing instrument fitter/dispenser, certified audiologist, or permit holder may retain, for each hearing instrument, fifteen percent of the total purchase price or one hundred twenty-five dollars, whichever is less. After December 31, 1996, the rescission amount shall be determined by the board. The licensed hearing instrument fitter/dispenser, certified audiologist, or permit holder shall also return any goods traded in contemplation of the sale, less any costs incurred by the licensed hearing instrument fitter/dispenser, certified audiologist, or permit holder in making those goods ready for resale. The refund shall be made within ten business days after the rescission. The buyer shall incur no additional liability for such rescission.

(3) For the purposes of this section, the purchaser shall have recourse against the bond held by the establishment

entering into a purchase agreement with the buyer, as provided by RCW 18.35.240. [1996 c 200 § 25; 1993 c 313 § 9; 1989 c 198 § 12.]

18.35.190 Valid license prerequisite to suits. In addition to remedies otherwise provided by law, in any action brought by or on behalf of a person required to be licensed or certified or to hold a permit hereunder, or by any assignee or transferee, it shall be necessary to allege and prove that the licensee or certificate or permit holder at the time of the transaction held a valid license, certificate, or permit as required by this chapter, and that such license, certificate, or permit has not been suspended or revoked pursuant to RCW 18.35.110, 18.35.120, or 18.130.160. [1996 c 200 § 26; 1989 c 198 § 8; 1987 c 150 § 24; 1983 c 39 § 14; 1973 1st ex.s. c 106 § 19.]

Severability—1987 c 150: See RCW 18.122.901.

18.35.195 Exemptions. (1) This chapter shall not apply to military or federal government employees.

(2) This chapter does not prohibit or regulate:

(a) Fitting or dispensing by students enrolled in a board-approved program who are directly supervised by a licensed hearing instrument fitter/dispenser or certified audiologist under the provisions of this chapter; and

(b) Hearing instrument fitter/dispensers, speech-language pathologists, or audiologists of other states, territories, or countries, or the District of Columbia while appearing as clinicians of bona fide educational seminars sponsored by speech-language pathology, audiology, hearing instrument fitter/dispenser, medical, or other healing art professional associations so long as such activities do not go beyond the scope of practice defined by this chapter. [1996 c 200 § 27; 1983 c 39 § 22.]

18.35.200 Other laws unaffected. The provisions of this chapter shall not exclude the application of any other law to persons or circumstances covered under this chapter. [1973 1st ex.s. c 106 § 20.]

18.35.205 Chapter exclusive. The legislature finds that the public health, safety, and welfare would best be protected by uniform regulation of hearing instrument fitter/dispensers, speech-language pathologists, audiologists, and permit holders throughout the state. Therefore, the provisions of this chapter relating to the licensing or certification of hearing instrument fitter/dispensers, speech-language pathologists, and audiologists and regulation of permit holders and their respective establishments or facilities is exclusive. No political subdivision of the state of Washington within whose jurisdiction a hearing instrument fitter/dispenser, audiologist, or speech-language pathologist establishment or facility is located may require any registrations, bonds, licenses, certificates, or permits of the establishment or facility or its employees or charge any fee for the same or similar purposes: **PROVIDED, HOWEVER,** That nothing herein shall limit or abridge the authority of any political subdivision to levy and collect a general and nondiscriminatory license fee levied on all businesses, or to levy a tax based upon the gross business conducted by any

firm within the political subdivision. [1996 c 200 § 28; 1983 c 39 § 24.]

18.35.220 Violations—Cease and desist orders—Notice—Injunctions. (1) If the board determines following notice and hearing, or following notice if no hearing was timely requested, that a person has:

(a) Violated any provisions of this chapter or chapter 18.130 RCW; or

(b) Violated any lawful order, or rule of the board an order may be issued by the board requiring the person to cease and desist from the unlawful practice. The board shall then take affirmative action as is necessary to carry out the purposes of this chapter.

(2) If the board makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, a temporary cease and desist order may be issued. Prior to issuing a temporary cease and desist order, the board, whenever possible, shall give notice by telephone or otherwise of the proposal to issue a temporary cease and desist order to the person to whom the order would be directed. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held to determine whether the order becomes permanent.

(3) The department, with or without prior administrative proceedings, may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, or rule or order under this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall be granted and a receiver or conservator may be appointed. The department shall not be required to post a bond in any court proceedings. [1993 c 313 § 10; 1987 c 150 § 25; 1983 c 39 § 17.]

Severability—1987 c 150: See RCW 18.122.901.

18.35.230 Violations—Registered agent—Service.

(1) Each licensee or certificate or permit holder shall name a registered agent to accept service of process for any violation of this chapter or rule adopted under this chapter.

(2) The registered agent may be released at the expiration of one year after the license, certificate, or permit issued under this chapter has expired or been revoked.

(3) Failure to name a registered agent for service of process for violations of this chapter or rules adopted under this chapter may be grounds for disciplinary action. [1996 c 200 § 29; 1989 c 198 § 9; 1983 c 39 § 19.]

18.35.240 Violations—Surety bond or security in lieu of surety bonds. (1) Every establishment engaged in the fitting and dispensing of hearing instruments shall file with the department a surety bond in the sum of ten thousand dollars, running to the state of Washington, for the benefit of any person injured or damaged as a result of any violation by the establishment's employees or agents of any of the provisions of this chapter or rules adopted by the secretary.

(2) In lieu of the surety bond required by this section, the establishment may file with the department a cash deposit or other negotiable security acceptable to the department. All obligations and remedies relating to surety

bonds shall apply to deposits and security filed in lieu of surety bonds.

(3) If a cash deposit is filed, the department shall deposit the funds. The cash or other negotiable security deposited with the department shall be returned to the depositor one year after the establishment has discontinued the fitting and dispensing of hearing instruments if no legal action has been instituted against the establishment, its agents or employees, or the cash deposit or other security. The establishment owners shall notify the department if the establishment is sold, changes names, or has discontinued the fitting and dispensing of hearing instruments in order that the cash deposit or other security may be released at the end of one year from that date.

(4) A surety may file with the department notice of withdrawal of the bond of the establishment. Upon filing a new bond, or upon the expiration of sixty days after the filing of notice of withdrawal by the surety, the liability of the former surety for all future acts of the establishment terminates.

(5) Upon the filing with the department notice by a surety of withdrawal of the surety on the bond of an establishment or upon the cancellation by the department of the bond of a surety under this section, the department shall immediately give notice to the establishment by certified or registered mail with return receipt requested addressed to the establishment's last place of business as filed with the department.

(6) The department shall immediately cancel the bond given by a surety company upon being advised that the surety company's license to transact business in this state has been revoked.

(7) Each invoice for the purchase of a hearing instrument provided to a customer must clearly display on the first page the bond number of the establishment or the licensee or certificate or permit holder fitting/dispensing the hearing instrument. [1996 c 200 § 30; 1993 c 313 § 11; 1991 c 3 § 85; 1989 c 198 § 10; 1983 c 39 § 18.]

18.35.250 Violations—Remedies—Actions on bond or security. (1) In addition to any other legal remedies, an action may be brought in any court of competent jurisdiction upon the bond, cash deposit, or security in lieu of a surety bond required by this chapter, by any person having a claim against a licensee or certificate or permit holder, agent, or establishment for any violation of this chapter or any rule adopted under this chapter. The aggregate liability of the surety to all claimants shall in no event exceed the sum of the bond. Claims shall be satisfied in the order of judgment rendered.

(2) An action upon the bond shall be commenced by serving and filing the complaint within one year from the date of the cancellation of the bond. An action upon a cash deposit or other security shall be commenced by serving and filing the complaint within one year from the date of notification to the department of the change in ownership of the establishment or the discontinuation of the fitting and dispensing of hearing instruments by that establishment. Two copies of the complaint shall be served by registered or certified mail, return receipt requested, upon the department at the time the suit is started. The service constitutes service

on the surety. The secretary shall transmit one copy of the complaint to the surety within five business days after the copy has been received.

(3) The secretary shall maintain a record, available for public inspection, of all suits commenced under this chapter under surety bonds, or the cash or other security deposited in lieu of the surety bond. In the event that any final judgment impairs the liability of the surety upon a bond so furnished or the amount of the deposit so that there is not in effect a bond undertaking or deposit in the full amount prescribed in this section, the department shall suspend the license or certificate until the bond undertaking or deposit in the required amount, unimpaired by unsatisfied judgment claims, has been furnished.

(4) If a judgment is entered against the deposit or security required under this chapter, the department shall, upon receipt of a certified copy of a final judgment, pay the judgment from the amount of the deposit or security. [1996 c 200 § 31; 1991 c 3 § 86; 1989 c 198 § 11; 1983 c 39 § 20.]

18.35.260 Misrepresentation of credentials. (1) A person who is not licensed with the secretary as a hearing instrument fitter/dispenser under the requirements of this chapter may not represent himself or herself as being so licensed and may not use in connection with his or her name the words "licensed hearing instrument fitter/dispenser," "hearing instrument specialist," or "hearing aid fitter/dispenser," or a variation, synonym, word, sign, number, insignia, coinage, or whatever expresses, employs, or implies these terms, names, or functions of a licensed hearing instrument fitter/dispenser.

(2) A person who is not certified with the secretary as a speech-language pathologist under the requirements of this chapter may not represent himself or herself as being so certified and may not use in connection with his or her name the words including "certified speech-language pathologist" or a variation, synonym, word, sign, number, insignia, coinage, or whatever expresses, employs, or implies these terms, names, or functions as a certified speech-language pathologist.

(3) A person who is not certified with the secretary as an audiologist under the requirements of this chapter may not represent himself or herself as being so certified and may not use in connection with his or her name the words "certified audiologist" or a variation, synonym, letter, word, sign, number, insignia, coinage, or whatever expresses, employs, or implies these terms, names, or functions of a certified audiologist.

(4) A person who does not hold a permit issued by the secretary as a hearing instrument fitter/dispenser permittee under the requirements of this chapter may not represent himself or herself as being so permitted and may not use in connection with his or her name the words "hearing instrument fitter/dispenser permit holder" or a variation, synonym, word, sign, number, insignia, coinage, or whatever expresses, employs, or implies these terms, names, or functions of a hearing instrument fitter/dispenser permit holder.

(5) Nothing in this chapter prohibits a person credentialed in this state under another act from engaging in the

practice for which he or she is credentialed. [1996 c 200 § 16.]

18.35.270 Assistant ratios—Data collection. Recognizing the trend in utilization of speech-language pathologist assistants and audiologist assistants across practice settings, the board of hearing and speech shall, on an ongoing basis, collect data on: The number of assistants in specific practice settings; supervisor to speech-language pathologist assistant or audiologist assistant ratios; and the level of education and training of speech-language pathologist assistants and audiologist assistants. [1996 c 200 § 35.]

18.35.900 Severability—1973 1st ex.s. c 106. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provisions to other persons or circumstances is not affected. [1973 1st ex.s. c 106 § 21.]

18.35.901 Severability—1983 c 39. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 39 § 23.]

18.35.902 Severability—1996 c 200. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1996 c 200 § 36.]

Chapter 18.36

DRUGLESS HEALING

Sections

18.36.035 License required.

18.36.035 License required. No person may practice or represent himself or herself as a drugless therapist without first having a valid license to do so. [1987 c 150 § 28.]

Severability—1987 c 150: See RCW 18.122.901.

Chapter 18.36A

NATUROPATHY

Sections

18.36A.010 Intent.

18.36A.020 Definitions.

18.36A.030 License required.

18.36A.040 Scope of practice.

18.36A.050 Application of chapter—Exemptions.

18.36A.060 Powers of secretary—Application of uniform disciplinary act.

18.36A.070 Naturopathic advisory committee.

18.36A.080 Civil immunity.

18.36A.090 Requirements for licensure.

18.36A.100 Standards for approval of educational programs.

18.36A.110 Examination for licensure.

18.36A.120 License standards for applicants from other jurisdictions—Reciprocity.

18.36A.130 Compliance with secretary's determinations.

18.36A.140 Fee for renewal, late renewal.

18.36A.900 Effective date—1987 c 447 §§ 1-14.

18.36A.901 Severability—1987 c 447.

18.36A.010 Intent. The legislature finds that it is necessary to regulate the practice of naturopaths in order to protect the public health, safety, and welfare. It is the legislature's intent that only individuals who meet and maintain minimum standards of competence and conduct may provide service to the public. [1987 c 447 § 1.]

18.36A.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of health or the secretary's designee.

(3) "Naturopath" means an individual licensed under this chapter.

(4) "Committee" means the Washington state naturopathic practice advisory committee.

(5) "Educational program" means a program preparing persons for the practice of naturopathy.

(6) "Nutrition and food science" means the prevention and treatment of disease or other human conditions through the use of foods, water, herbs, roots, bark, or natural food elements.

(7) "Manual manipulation" or "mechanotherapy" means manipulation of a part or the whole of the body by hand or by mechanical means.

(8) "Physical modalities" means use of physical, chemical, electrical, and other noninvasive modalities including, but not limited to heat, cold, air, light, water in any of its forms, sound, massage, and therapeutic exercise.

(9) "Homeopathy" means a system of medicine based on the use of infinitesimal doses of medicines capable of producing symptoms similar to those of the disease treated, as listed in the homeopathic pharmacopeia of the United States.

(10) "Medicines of mineral, animal, and botanical origin" means medicines derived from animal organs, tissues, and oils, minerals, and plants administered orally and topically, excluding legend drugs with the following exceptions: Vitamins, minerals, whole gland thyroid, and substances as exemplified in traditional botanical and herbal pharmacopoeia, and nondrug contraceptive devices excluding interuterine devices. The use of intermuscular injections are limited to vitamin B-12 preparations and combinations when clinical and/or laboratory evaluation has indicated vitamin B-12 deficiency. The use of controlled substances is prohibited.

(11) "Hygiene and immunization" means the use of such preventative techniques as personal hygiene, asepsis, public health, and immunizations, to the extent allowed by rule.

(12) "Minor office procedures" means care incident thereto of superficial lacerations and abrasions, and the removal of foreign bodies located in superficial structures, not to include the eye; and the use of antiseptics and topical local anesthetics in connection therewith.

(13) "Common diagnostic procedures" means the use of venipuncture to withdraw blood, commonly used diagnostic modalities consistent with naturopathic practice, health history taking, physical examination, radiography, examina-

tion of body orifices excluding endoscopy, and laboratory medicine which obtains samples of human tissue products, including superficial scrapings but excluding procedures which would require surgical incision.

(14) "Suggestion" means techniques including but not limited to counseling, biofeedback, and hypnosis.

(15) "Radiography" means the ordering but not the interpretation of radiographic diagnostic studies and the taking and interpretation of standard radiographs. [1991 c 3 § 87; 1987 c 447 § 4.]

18.36A.030 License required. (1) No person may practice naturopathy or represent himself or herself as a naturopath without first applying for and receiving a license from the secretary to practice naturopathy.

(2) A person represents himself or herself as a naturopath when that person adopts or uses any title or any description of services that incorporates one or more of the following terms or designations: Naturopath or doctor of naturopathic medicine. [1991 c 3 § 88; 1987 c 447 § 2.]

18.36A.040 Scope of practice. Naturopathic medicine or naturopathy is the practice by naturopaths of the art and science of the diagnosis, prevention, and treatment of disorders of the body by stimulation or support, or both, of the natural processes of the human body. A naturopath is responsible and accountable to the consumer for the quality of naturopathic care rendered.

The practice of naturopathy includes manual manipulation (mechanotherapy), the prescription, administration, dispensing, and use, except for the treatment of malignancies or neoplastic disease, of nutrition and food science, physical modalities, homeopathy, certain medicines of mineral, animal, and botanical origin, hygiene and immunization, common diagnostic procedures, and suggestion; however, nothing in this chapter shall prohibit consultation and treatment of a patient in concert with a practitioner licensed under chapter 18.57 or 18.71 RCW. No person licensed under this chapter may employ the term "chiropractic" to describe any services provided by a naturopath under this chapter. [1991 c 3 § 89; 1988 c 246 § 1; 1987 c 447 § 3.]

18.36A.050 Application of chapter—Exemptions. Nothing in this chapter shall be construed to prohibit or restrict:

(1) The practice of a profession by individuals who are licensed, certified, or registered under other laws of this state who are performing services within their authorized scope of practice;

(2) The practice of naturopathic medicine by an individual employed by the government of the United States while the individual is engaged in the performance of duties prescribed for him or her by the laws and regulations of the United States;

(3) The practice of naturopathic medicine by students enrolled in a school approved by the secretary. The performance of services shall be pursuant to a course of instruction or assignments from an instructor and under the supervision of the instructor. The instructor shall be a naturopath licensed pursuant to this chapter; or

(4) The practice of oriental medicine or oriental herbology, or the rendering of other dietary or nutritional advice. [1991 c 3 § 90; 1987 c 447 § 5.]

18.36A.060 Powers of secretary—Application of uniform disciplinary act. (1) In addition to any other authority provided by law, the secretary may:

(a) Adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;

(b) Set all license, examination, and renewal fees in accordance with RCW 43.70.250;

(c) Establish forms and procedures necessary to administer this chapter;

(d) Determine the minimum education and experience requirements for licensure in conformance with RCW 18.36A.090, including but not limited to approval of educational programs;

(e) Prepare and administer or approve the preparation and administration of examinations for licensure;

(f) Issue a license to any applicant who has met the education, training, and examination requirements for licensure and deny a license to applicants who do not meet the minimum qualifications for licensure; except that denial of licenses based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(g) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter and to hire individuals, including those licensed under this chapter, to serve as examiners or consultants as necessary to implement and administer this chapter;

(h) Maintain the official department record of all applicants and licensees;

(i) Determine whether alternative methods of training are equivalent to formal education, and establish forms, procedures, and criteria for evaluation of an applicant's equivalent alternative training to determine the applicant's eligibility to take the examination;

(j) Establish by rule the procedures for an appeal of examination failure;

(k) Conduct a hearing on an appeal of a denial of a license based on the applicant's failure to meet the minimum qualifications for licensure. The hearing shall be conducted pursuant to chapter 34.05 RCW; and

(l) Adopt rules implementing a continuing competency program.

(2) The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses and the discipline of licensees under this chapter. The secretary shall be the disciplining authority under this chapter. [1991 c 3 § 91; 1987 c 447 § 6.]

18.36A.070 Naturopathic advisory committee. (1) There is hereby created the Washington state naturopathic advisory committee consisting of five members appointed by the secretary who shall advise the secretary concerning the administration of this chapter. Three members of the initial committee shall be persons who would qualify for licensing under this chapter. Their successors shall be naturopaths who are licensed under this chapter. Two members of the committee shall be individuals who are unaffiliated with the

profession. For the initial committee, one unaffiliated member and one naturopath shall serve four-year terms, one unaffiliated member and one naturopath shall serve three-year terms, and one naturopath shall serve a two-year term. The term of office for committee members after the initial committee is four years. Any committee member may be removed for just cause including a finding of fact of unprofessional conduct, impaired practice, or more than three unexcused absences. The secretary may appoint a new member to fill any vacancy on the committee for the remainder of the unexpired term.

No committee member may serve more than two consecutive terms, whether full or partial.

(2) Committee members shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(3) The committee may elect annually a chair and vice-chair to direct the meetings of the committee. The committee shall meet at least once each year, and may hold additional meetings as called by the secretary or the chair. [1991 c 3 § 92; 1987 c 447 § 7.]

18.36A.080 Civil immunity. The secretary, members of the committee, or individuals acting on their behalf, are immune from suit in any civil action based on any act performed in the course of their duties. [1991 c 3 § 93; 1987 c 447 § 8.]

18.36A.090 Requirements for licensure. The department shall issue a license to any applicant who meets the following requirements:

(1) Successful completion of an educational program approved by the secretary, the minimum standard of which shall be the successful completion of a doctorate degree program in naturopathy which includes a minimum of two hundred post-graduate hours in the study of mechanotherapy from an approved educational program, or successful completion of equivalent alternate training that meets the criteria established by the secretary. The requirement for two hundred post-graduate hours in the study of mechanotherapy shall expire June 30, 1989;

(2) Successful completion of any equivalent experience requirement established by the secretary;

(3) Successful completion of an examination administered or approved by the secretary;

(4) Good moral character; and

(5) Not having engaged in unprofessional conduct or being unable to practice with reasonable skill and safety as a result of a physical or mental impairment.

The secretary shall establish what constitutes adequate proof of meeting the above requirements. Any person holding a valid license to practice drugless therapeutics under chapter 18.36 RCW upon January 1, 1988, shall be deemed licensed pursuant to this chapter. [1991 c 3 § 94; 1987 c 447 § 9.]

18.36A.100 Standards for approval of educational programs. The secretary shall establish by rule the standards for approval of educational programs and alternate training and may contract with individuals or organizations having expertise in the profession and/or in education to

report to the secretary the information necessary for the secretary to evaluate the educational programs. The standards for approval shall be based on the minimal competencies necessary for safe practice. The standards and procedures for approval shall apply equally to educational programs and equivalent alternate training within the United States and those in foreign jurisdictions. The secretary may establish a fee for educational program evaluation. The fee shall be determined by the administrative costs for the educational program evaluation, including, but not limited to, costs for site evaluation. [1991 c 3 § 95; 1987 c 447 § 10.]

18.36A.110 Examination for licensure. (1) The date and location of the examination shall be established by the secretary. Applicants who have been found to meet the education and experience requirements for licensure shall be scheduled for the next examination following the filing of the application. The secretary shall establish by rule the examination application deadline.

(2) The examination shall contain subjects appropriate to the standards of competency and scope of practice.

(3) The secretary shall establish by rule the requirements for a reexamination if the applicant has failed the examination.

(4) The committee may recommend to the secretary an examination prepared or administered, or both, by a private testing agency or association of licensing boards. [1991 c 3 § 96; 1987 c 447 § 11.]

18.36A.120 License standards for applicants from other jurisdictions—Reciprocity. The secretary shall establish by rule the standards for licensure of applicants licensed in another jurisdiction. However, the standards for reciprocity of licensure shall not be less than required for licensure in the state of Washington. [1991 c 3 § 97; 1987 c 447 § 12.]

18.36A.130 Compliance with secretary's determinations. Applicants shall comply with administrative procedures, administrative requirements, and fees determined by the secretary as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 22; 1991 c 3 § 98; 1987 c 447 § 13.]

18.36A.140 Fee for renewal, late renewal. The secretary shall establish the administrative procedures, administrative requirements, and fees for renewal and late renewal of licenses as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 23; 1991 c 3 § 99; 1987 c 447 § 14.]

18.36A.900 Effective date—1987 c 447 §§ 1-14. Sections 1 through 14 of this act shall take effect January 1, 1988. [1987 c 447 § 20.]

18.36A.901 Severability—1987 c 447. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 447 § 25.]

Chapter 18.39

EMBALMERS—FUNERAL DIRECTORS

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- 18.39.800 Funeral directors and embalmers account.
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Burial and removal permits: RCW 70.58.230.

Cemeteries, morgues and human remains: Title 68 RCW.

Disposal of remains prohibited unless accompanied by proper permit: RCW 70.58.260.

Prearrangement contracts for cemeteries: Chapter 68.46 RCW.

Undertaker must file death certificate: RCW 70.58.240.

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

(1) "Funeral director" means a person engaged in the profession or business of conducting funerals and supervising or directing the burial and disposal of dead human bodies.

(2) "Embalmer" means a person engaged in the profession or business of disinfecting, preserving or preparing for disposal or transportation of dead human bodies.

(3) "Two-year college course" means the completion of sixty semester hours or ninety quarter hours of college credit, including the satisfactory completion of certain college courses, as set forth in this chapter.

(4) "Funeral establishment" means a place of business licensed in accordance with RCW 18.39.145, conducted at a specific street address or location, and devoted to the care and preparation for burial or disposal of dead human bodies and includes all areas of such business premises and all tools, instruments, and supplies used in preparation and embalming of dead human bodies for burial or disposal.

(5) "Director" means the director of licensing.

(6) "Board" means the state board of funeral directors and embalmers created pursuant to RCW 18.39.173.

(7) "Prearrangement funeral service contract" means any contract under which, for a specified consideration, a funeral establishment promises, upon the death of the person named or implied in the contract, to furnish funeral merchandise or services.

(8) "Funeral merchandise or services" means those services normally performed and merchandise normally provided by funeral establishments, including the sale of burial supplies and equipment, but excluding the sale by a cemetery of lands or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, niches, or vaults.

(9) "Qualified public depository" means a *depository defined by RCW 39.58.010, a credit union as governed by chapter 31.12 RCW, a mutual savings bank as governed by Title 32 RCW, a savings and loan association as governed by Title 33 RCW, or a federal credit union or a federal savings and loan association organized, operated, and governed by any act of congress, in which prearrangement funeral service contract funds are deposited by any funeral establishment.

Words used in this chapter importing the singular may be applied to the plural of the person or thing, words importing the plural may be applied to the singular, and words importing the masculine gender may be applied to the female. [1989 c 390 § 1; 1982 c 66 § 1; 1981 c 43 § 1; 1979 c 158 § 39; 1977 ex.s. c 93 § 1; 1965 ex.s. c 107 § 1; 1937 c 108 § 1; RRS § 8313.]

*Reviser's note: The term "depository" was redefined as "public depository" by 1996 c 256 § 1.

Effective dates—1982 c 66: See note following RCW 18.39.240.

Number and gender: RCW 1.12.050.

18.39.020 License required. It is a violation of RCW 18.130.190 for any person to act or hold himself out as a funeral director or embalmer or discharge any of the duties of a funeral director or embalmer as defined in this chapter unless the person has a valid license under this chapter. It is unlawful for any person to open up, maintain or operate a funeral establishment without a valid establishment license and without having at all times at least one funeral director to supervise and direct the business conducted therefrom. [1987 c 150 § 30; 1981 c 43 § 2; 1937 c 108 § 2; RRS § 8314-1. Prior: 1909 c 215 § 1. Formerly RCW 18.39.020 and 18.39.110.]

Severability—1987 c 150: See RCW 18.122.901.

18.39.035 Applicant for license as funeral director or embalmer—Eligibility. (1) An applicant for a license as a funeral director shall be at least eighteen years of age, of good moral character, and must have obtained an associate of arts degree in mortuary science or completed a course of not less than two years in an accredited college, and a one-year course of training under a licensed funeral director in this state. The applicant must also pass an examination in the funeral arts and an examination in the laws of this state pertaining to the handling, care, transportation, and disposition of human remains and the contents of this chapter.

(2) An applicant for a license as an embalmer must be at least eighteen years of age, of good moral character, and have obtained an associate of arts degree in mortuary science or completed a course of instruction in an accredited mortuary science college program and other college courses that total sixty semester hours or ninety quarter hours, completed a two-year course of training under a licensed embalmer in this state, and have passed an examination in the funeral sciences and an examination in the laws of this state pertaining to the handling, care, transportation, and disposition of human remains, and the contents of this chapter. [1996 c 217 § 1; 1981 c 43 § 3.]

18.39.045 College course requirements. (1) The two-year college course required for funeral directors under this chapter shall consist of sixty semester or ninety quarter hours of instruction at a school, college, or university accredited by the Northwest Association of Schools and Colleges or other accrediting association approved by the board, with a minimum 2.0 grade point, or a grade of C or better, in each subject required by subsection (2) of this section.

(2) Credits shall include one course in psychology, one in mathematics, two courses in English composition and

rhetoric, two courses in social science, and three courses selected from the following subjects: Behavioral sciences, public speaking, counseling, business administration and management, and first aid.

(3) This section does not apply to any person registered and in good standing as an apprentice funeral director or embalmer on or before January 1, 1982. [1996 c 217 § 2; 1982 c 66 § 20; 1981 c 43 § 4.]

Effective dates—1982 c 66: See note following RCW 18.39.240.

18.39.050 Application—Renewal—Fees. Every application for an initial license or a license renewal under this chapter shall be made in writing on a form prescribed by the director with such information as the director requires. The director shall set license fees in accordance with RCW 43.24.086. [1985 c 7 § 37; 1982 c 66 § 21; 1981 c 43 § 5; 1975 1st ex.s. c 30 § 42; 1971 ex.s. c 266 § 8; 1937 c 108 § 6; RRS § 8318-1. Formerly RCW 18.39.050, 18.39.060, and 18.39.140.]

Effective dates—1982 c 66: See note following RCW 18.39.240.

18.39.070 Examinations—Applications—Notice—Passing grades—Retake of examination. (1) License examinations shall be held by the director at least once each year at a time and place to be designated by the director. Application to take an examination shall be filed with the director at least forty-five days prior to the examination date and the department shall give each applicant notice of the time and place of the next examination by written notice mailed to the applicant's address as given upon his or her application not later than fifteen days before the examination, but no person may take an examination unless his or her application has been on file for at least fifteen days before the examination. The applicant shall be deemed to have passed an examination if the applicant attains a grade of not less than seventy-five percent in each examination. Any applicant who fails an examination shall be entitled, at no additional fee, to one retake of that examination.

(2) An applicant for a license hereunder may take his or her written examination after completing the educational requirements and before completing the course of training required under RCW 18.39.035. [1996 c 217 § 3; 1981 c 43 § 6; 1965 ex.s. c 107 § 4; 1937 c 108 § 5; RRS § 8317. Prior: 1909 c 215 §§ 8, 11.]

18.39.100 License—Form—Restrictions. Every license issued hereunder shall specify the name of the person to whom it is issued and shall be displayed conspicuously in his or her place of business. No license shall be assigned, and not more than one person shall carry on the profession or business of funeral directing or embalming under one license. [1996 c 217 § 4; 1937 c 108 § 7; RRS § 8319. Prior: 1909 c 215 § 13.]

18.39.120 Apprentices—Registration—Renewal—Notice of termination—Fees. Every person engaged in the business of funeral directing or embalming, who employs an apprentice to assist in the conduct of the business, shall register the name of each apprentice with the director at the beginning of the apprenticeship, and shall also forward notice of the termination of the apprenticeship. The registra-

tion shall be renewed annually and shall expire on the anniversary of the apprentice's birthdate. Fees determined under RCW 43.24.086 shall be paid for the initial registration of the apprentice, and for each annual renewal. [1985 c 7 § 38; 1981 c 43 § 7; 1975 1st ex.s. c 30 § 43; 1937 c 108 § 10; RRS § 8322.]

18.39.130 Licenses—Applicants from other states—Examination. The board may recognize licenses issued to funeral directors or embalmers from other states if the applicant's qualifications are comparable to the requirements of this chapter. Five years active experience as a licensee may be accepted to make up a deficit in the comparable education requirements. Upon presentation of the license and payment by the holder of a fee determined under RCW 43.24.086, and successful completion of the examination of the laws of this state pertaining to the handling, care, transportation, and disposition of human remains and the contents of this chapter, the board may issue a funeral director's or embalmer's license under this chapter. [1996 c 217 § 5. Prior: 1986 c 259 § 60; 1985 c 7 § 39; 1982 c 66 § 22; 1981 c 43 § 8; 1975 1st ex.s. c 30 § 44; 1937 c 108 § 15; RRS § 8325; prior: 1909 c 215 § 16.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—1982 c 66: See note following RCW 18.39.240.

18.39.145 Funeral establishment license—Issuance—Requirements—Transferability—Expiration. The board shall issue a funeral establishment license to any person, partnership, association, corporation, or other organization to operate a funeral establishment, at specific locations only, which has met the following requirements:

(1) The applicant has designated the name under which the funeral establishment will operate and has designated locations for which the general establishment license is to be issued;

(2) The applicant is licensed in this state as a funeral director and as an embalmer, or employs at least one person with both such qualifications or one licensed funeral director and one embalmer who will be in service at each designated location;

(3) The applicant has filed an application with the director as required by this chapter and paid the required filing fee therefor as fixed by the director pursuant to RCW 43.24.086;

(4) As a condition of applying for a new funeral establishment license, the person or entity desiring to acquire such ownership or control shall be bound by all then existing prearrangement funeral service contracts.

The board may deny an application for a funeral establishment license, or issue a conditional license, if disciplinary action has previously been taken against the applicant or the applicant's designated funeral director or embalmer. No funeral establishment license shall be transferable, but an applicant may make application for more than one funeral establishment license so long as all of the requirements are met for each license. All funeral establishment licenses shall expire on June 30, or as otherwise determined by the director. [1986 c 259 § 61; 1985 c 7 § 40; 1977 ex.s. c 93 § 3.]

Reviser's note: This section was amended by 1986 c 259 § 61 without reference to its amendment by 1985 c 7 § 40. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2).

Severability—1986 c 259: See note following RCW 18.130.010.

18.39.148 Funeral establishment license—Cancellation—Hearing. If a licensed funeral establishment does not have a licensed funeral director and embalmer in its employ at its place of business, its license shall be canceled immediately by the board. Upon notification of cancellation of a funeral establishment license, the funeral establishment shall be notified of the opportunity for a hearing, which shall be conducted pursuant to chapter 34.05 RCW. [1986 c 259 § 62; 1981 c 43 § 9; 1977 ex.s. c 93 § 4.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.39.150 License lapse—Reinstatement—Fee—Reexamination. Any licensed funeral director or embalmer whose license has lapsed shall reapply for a license and pay a fee as determined under RCW 43.24.086 before the license may be issued. Applications under this section shall be made within one year after the expiration of the previous license. If the application is not made within one year, the applicant shall be required to take an examination or submit other satisfactory proof of continued competency approved by the board and pay the license fee, as required by this chapter in the case of initial applications, together with all unpaid license fees and penalties. [1986 c 259 § 63; 1985 c 7 § 41; 1981 c 43 § 10; 1975 1st ex.s. c 30 § 45; 1937 c 108 § 8; RRS § 8320.]

Reviser's note: This section was amended by 1986 c 259 § 63 without reference to its amendment by 1985 c 7 § 41. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2).

Severability—1986 c 259: See note following RCW 18.130.010.

18.39.170 Inspector of funeral directors and embalmers—Appointment—Eligibility—Term—Powers and duties. There shall be appointed by said director of licensing an agent whose title shall be "inspector of funeral directors and embalmers of the state of Washington." No person shall be eligible for such appointment unless, at the time of his appointment, he shall have been a duly licensed embalmer in the state of Washington, with a minimum experience of not less than five consecutive years both as an embalmer and as a funeral director in the state of Washington. Said inspector shall hold office during the pleasure of said director of licensing, and the duties of said inspector shall be, and he is hereby authorized, to enter the office, premises, establishment or place of business, where funeral directing or embalming is carried on for the purpose of inspecting said office, premises, establishment or place of business, and the licenses and registrations of embalmers, funeral directors and apprentices operating therein. Such inspector shall serve and execute any papers or process issued by the director of licensing under authority of this chapter, and perform any other duty or duties prescribed or ordered by the director of licensing. Said inspector shall at all times be under the supervision of said director of licensing and he may also assist the state health commissioner in enforcing the provisions of the law relating to health and

such rules and regulations as shall have been made and promulgated by the state board of health. [1937 c 108 § 16; RRS § 8325-1.]

18.39.173 Board of funeral directors and embalmers—Established—Membership—Appointment—Qualifications—Terms—Vacancies—Officers—Quorum. There is hereby established a state board of funeral directors and embalmers to be composed of five members appointed by the governor in accordance with this section, one of whom shall be a public member. The three members of the state examining committee for funeral directors and embalmers, which was created pursuant to RCW 43.24.060, as of September 21, 1977 are hereby appointed as members of the board to serve for initial terms. The governor shall appoint two additional members of the board. Each professional member of the board shall be licensed in this state as a funeral director and embalmer and a resident of the state of Washington for a period of at least five years next preceding appointment, during which time such member shall have been continuously engaged in the practice as a funeral director or embalmer as defined in this chapter. No person shall be eligible for appointment to the board of funeral directors and embalmers who is financially interested, directly or indirectly, in any embalming college, wholesale funeral supply business, or casket manufacturing business.

All members of the board of funeral directors and embalmers shall be appointed to serve for a term of five years, to expire on July 1 of the year of termination of their term, and until their successors have been appointed and qualified: PROVIDED, That the governor is granted the power to fix the terms of office of the members of the board first appointed so that the term of office of not more than one member of the board shall terminate in any one year. In case of a vacancy occurring on the board, the governor shall appoint a qualified member for the remainder of the unexpired term of the vacant office. Any member of the board of funeral directors and embalmers who fails to properly discharge the duties of a member may be removed by the governor.

The board shall meet once annually to elect a chairman, vice chairman, and secretary and take official board action on pending matters by majority vote of all the members of the board of funeral directors and embalmers and at other times when called by the director, the chairman, or a majority of the members. A majority of the members of said board shall at all times constitute a quorum. [1977 ex.s. c 93 § 8.]

18.39.175 Board—Duties and responsibilities—Compensation—Travel expenses—Rules. Each member of the board of funeral directors and embalmers shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in connection with board duties in accordance with RCW 43.03.050 and 43.03.060.

The state board of funeral directors and embalmers shall have the following duties and responsibilities:

(1) To be responsible for the preparation, conducting, and grading of examinations of applicants for funeral director and embalmer licenses;

(2) To certify to the director the results of examinations of applicants and certify the applicant as having "passed" or "failed";

(3) To make findings and recommendations to the director on any and all matters relating to the enforcement of this chapter;

(4) To adopt, promulgate, and enforce reasonable rules. Rules regulating the cremation of human remains and permit requirements shall be adopted in consultation with the cemetery board;

(5) To examine or audit or to direct the examination and audit of prearrangement funeral service trust fund records for compliance with this chapter and rules adopted by the board; and

(6) To adopt rules establishing mandatory continuing education requirements to be met by persons applying for license renewal. [1996 c 217 § 6; 1994 c 17 § 1. Prior: 1986 c 259 § 64; 1985 c 402 § 6; 1984 c 287 § 34; 1984 c 279 § 53; 1981 c 43 § 11; 1977 ex.s. c 93 § 9.]

Savings—1986 c 259 §§ 64, 73: "The repeal of RCW 18.39.179 and the amendment of RCW 18.39.175 by this act shall not be construed as affecting any rights and duties which matured, penalties which were incurred, and proceedings which were begun before June 11, 1986." [1986 c 259 § 74.]

Severability—1986 c 259: See note following RCW 18.130.010.

Legislative finding—1985 c 402: See note following RCW 68.50.165.

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

Severability—1984 c 279: See RCW 18.130.901.

18.39.181 Powers and duties of director. The director shall have the following powers and duties:

(1) To issue all licenses provided for under this chapter;

(2) To renew licenses under this chapter;

(3) To collect all fees prescribed and required under this chapter; and

(4) To keep general books of record of all official acts, proceedings, and transactions of the department of licensing while acting under this chapter. [1996 c 217 § 7; 1986 c 259 § 65; 1981 c 43 § 13; 1977 ex.s. c 93 § 5.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.39.195 Pricing information to be given—Billing "cash advanced" items. (1) Every licensed funeral director, his agent, or his employee shall give, or cause to be given, to the person making funeral arrangements or arranging for shipment, transportation, or other disposition of a deceased person:

(a) If requested by telephone, accurate information regarding the retail prices of funeral merchandise and services offered for sale by that funeral director; and

(b) At the time such arrangements are completed or prior to the time of rendering the service, a written, itemized statement showing to the extent then known the price of merchandise and service that such person making such arrangements has selected, the price of supplemental items of service and merchandise, if any, and the estimated amount of each item for which the funeral service firm will advance money as an accommodation to the person making such funeral arrangements.

(2) No such funeral director, his agent, or his employee, shall bill or cause to be billed any item that is referred to as a "cash advanced" item unless the net amount paid for such item by the funeral director is the same amount as is billed to such funeral director. [1979 ex.s. c 62 § 1.]

18.39.215 Embalmers—Authorization required—Exception—Information required—Immediate care of body—Waiver—Penalty. (1) No licensed embalmer shall embalm a deceased body without first having obtained authorization from a family member or representative of the deceased.

Notwithstanding the above prohibition a licensee may embalm without such authority when after due diligence no authorized person can be contacted and embalming is in accordance with legal or accepted standards of care in the community, or the licensee has good reason to believe that the family wishes embalming. If embalming is performed under these circumstances, the licensee shall not be deemed to be in violation of the provisions of this subsection.

The funeral director or embalmer shall inform the family member or representative of the deceased that embalming is not required by state law, except that embalming is required under certain conditions as determined by rule by the state board of health.

(2) Any person authorized to dispose of human remains shall refrigerate or embalm the body within twenty-four hours upon receipt of the body, unless disposition of the body has been made. However, subsection (1) of this section and RCW 68.50.108 shall be complied with before a body is embalmed. Upon written authorization of the proper state or local authority, the provisions of this subsection may be waived for a specified period of time.

Violation of this subsection is a gross misdemeanor. [1987 c 331 § 76; 1985 c 402 § 5; 1981 c 43 § 15.]

Effective date—1987 c 331: See RCW 68.05.900.

Legislative finding—1985 c 402: See note following RCW 68.50.165.

18.39.217 Permit or endorsement required for cremation—Penalty—Regulation of crematories. A permit or endorsement issued by the board or under chapter 68.05 RCW is required in order to operate a crematory or conduct a cremation. Conducting a cremation without a permit or endorsement is a misdemeanor. Each such cremation is a separate violation. Crematories owned or operated by or located on property licensed as a funeral establishment shall be regulated by the board of funeral directors and embalmers. Crematories not affiliated with a funeral establishment shall be regulated by the cemetery board. [1985 c 402 § 7.]

Legislative finding—1985 c 402: See note following RCW 68.50.165.

18.39.220 Unlawful business practices—Penalty. Every funeral director or embalmer who pays, or causes to be paid, directly or indirectly, money, or other valuable consideration, for the securing of business, and every person who accepts money, or other valuable consideration, directly or indirectly, from a funeral director or from an embalmer, in order that the latter may obtain business is guilty of a

gross misdemeanor. Every person who sells, or offers for sale, any share, certificate, or interest in the business of any funeral director or embalmer, or in any corporation, firm, or association owning or operating a funeral establishment, which promises or purports to give to the purchaser a right to the services of the funeral director, embalmer, or corporation, firm, or association at a charge or cost less than that offered or given to the public, is guilty of a gross misdemeanor. [1981 c 43 § 16; 1937 c 108 § 13; RRS § 8323-2.]

Violations—Penalty—Unfair practice under chapter 19.86 RCW: RCW 18.39.350.

18.39.231 Prohibited advice and transactions—Exceptions—Rules—Penalty. A funeral director or any person under the supervision of a funeral director shall not, in conjunction with any professional services performed for compensation under this chapter, provide financial or investment advice to any person other than a family member, represent any person in a real estate transaction, or act as an agent under a power of attorney for any person. However, this section shall not be deemed to prohibit a funeral establishment from entering into prearrangement funeral service contracts in accordance with this chapter or to prohibit a funeral director from providing advice about government or insurance benefits.

A violation of this section is a gross misdemeanor and is grounds for disciplinary action.

The board shall adopt such rules as the board deems reasonably necessary to prevent unethical financial dealings between funeral directors and their clients. [1986 c 259 § 66; 1982 c 66 § 15.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—1982 c 66: See note following RCW 18.39.240.

18.39.240 Prearrangement funeral service contracts—License required. Only a funeral establishment licensed pursuant to this chapter may enter into prearrangement funeral service contracts. [1989 c 390 § 2; 1982 c 66 § 2.]

Effective dates—1982 c 66: "This act shall take effect on September 1, 1982, with the exception of sections 20, 21, and 22 of this act, which are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 26, 1982]." [1982 c 66 § 24.]

Transfer of records, files, and pending business—1982 c 66: "(1) All records, files, reports, papers, or other written material in the possession of the insurance commissioner pertaining to the regulation of prepaid funeral expenses shall be delivered to the director of licensing on the effective date of this act.

(2) All business or matters concerning prepaid funeral expenses pending before the insurance commissioner shall be transferred to the director of licensing and assumed by the director on the effective date of this act." [1982 c 66 § 17.]

Savings—1982 c 66: "The transfer of duties under sections 2 through 14 of this act shall not affect the validity of any rule, action, decision promulgated or held prior to the effective date of this act." [1982 c 66 § 18.]

18.39.250 Prearrangement contracts—Trusts—Refunds. (1) Any funeral establishment selling funeral merchandise or services by prearrangement funeral service contract and accepting moneys therefore shall establish and maintain one or more prearrangement funeral service trusts

under Washington state law with two or more designated trustees, for the benefit of the beneficiary of the prearrangement funeral service contract or may join with one or more other Washington state licensed funeral establishments in a "master trust" provided that each member of the "master trust" shall comply individually with the requirements of this chapter.

(2) Up to ten percent of the cash purchase price of each prearrangement funeral service contract, excluding sales tax, may be retained by the funeral establishment unless otherwise provided in this chapter. If the prearrangement funeral service contract is canceled within thirty calendar days of its signing, then the purchaser shall receive a full refund of all moneys paid under the contract.

(3) At least ninety percent of the cash purchase price of each prearrangement funeral service contract, paid in advance, excluding sales tax, shall be placed in the trust established or utilized by the funeral establishment. Deposits to the prearrangement funeral service trust shall be made not later than the twentieth day of the month following receipt of each payment made on the last ninety percent of each prearrangement funeral service contract, excluding sales tax.

(4) All prearrangement funeral service trust moneys shall be deposited in an insured account in a qualified public depository or shall be invested in instruments issued or insured by any agency of the federal government if these securities are held in a public depository. The account shall be designated as the prearrangement funeral service trust of the funeral establishment for the benefit of the beneficiaries named in the prearrangement funeral service contracts. The prearrangement funeral service trust shall not be considered as, nor shall it be used as, an asset of the funeral establishment.

(5) After deduction of reasonable fees for the administration of the trust, taxes paid or withheld, or other expenses of the trust, all interest, dividends, increases, or accretions of whatever nature earned by a trust shall be kept unimpaired and shall become a part of the trust. Adequate records shall be maintained to allocate the share of principal and interest to each contract. Fees deducted for the administration of the trust shall not exceed one percent per year of the amount in trust. In no instance shall the administrative charges deducted from the prearrangement funeral service trust reduce, diminish, or in any other way lessen the value of the trust so that the services or merchandise provided for under the contract are reduced, diminished, or in any other way lessened.

(6) Except as otherwise provided in this chapter, the trustees of a prearrangement funeral service trust shall permit withdrawal of all funds deposited under a prearrangement funeral service contract, plus accruals thereon, under the following circumstances and conditions:

(a) If the funeral establishment files a verified statement with the trustees that the prearrangement funeral merchandise and services covered by the contract have been furnished and delivered in accordance therewith; or

(b) If the funeral establishment files a verified statement with the trustees that the prearrangement funeral merchandise and services covered by the contract have been canceled in accordance with its terms.

(7) Subsequent to the thirty calendar day cancellation period provided for in this chapter, any purchaser or benefi-

ciary who has a revocable prearrangement funeral service contract has the right to demand a refund of the amount in trust.

(8) Prearrangement funeral service contracts which have or should have an account in a prearrangement funeral service trust may be terminated by the board if the funeral establishment goes out of business, becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, has its prearrangement funeral service certificate of registration revoked, or for any other reason is unable to fulfill the obligations under the contract. In such event, or upon demand by the purchaser or beneficiary of the prearrangement funeral service contract, the funeral establishment shall refund to the purchaser or beneficiary all moneys deposited in the trust and allocated to the contract unless otherwise ordered by a court of competent jurisdiction. The purchaser or beneficiary may, in lieu of a refund, elect to transfer the prearrangement funeral service contract and all amounts in trust to another funeral establishment licensed under this chapter which will agree, by endorsement to the contract, to be bound by the contract and to provide the funeral merchandise or services. Election of this option shall not relieve the defaulting funeral establishment of its obligation to the purchaser or beneficiary for any amounts required to be, but not placed, in trust.

(9) Prior to the sale or transfer of ownership or control of any funeral establishment which has contracted for prearrangement funeral service contracts, any person, corporation, or other legal entity desiring to acquire such ownership or control shall apply to the director in accordance with RCW 18.39.145. Persons and business entities selling or relinquishing, and persons and business entities purchasing or acquiring ownership or control of such funeral establishments shall each verify and attest to a report showing the status of the prearrangement funeral service trust or trusts on the date of the sale. This report shall be on a form prescribed by the board and shall be considered part of the application for a funeral establishment license. In the event of failure to comply with this subsection, the funeral establishment shall be deemed to have gone out of business and the provisions of subsection (8) of this section shall apply.

(10) Prearrangement funeral service trust moneys shall not be used, directly or indirectly, for the benefit of the funeral establishment or any director, officer, agent, or employee of the funeral establishment including, but not limited to, any encumbrance, pledge, or other use of prearrangement funeral service trust moneys as collateral or other security.

(11)(a) If, at the time of the signing of the prearrangement funeral service contract, the beneficiary of the trust is a recipient of public assistance as defined in RCW 74.04.005, or reasonably anticipates being so defined, the contract may provide that the trust will be irrevocable. If after the contract is entered into, the beneficiary becomes eligible or seeks to become eligible for public assistance under Title 74 RCW, the contract may provide for an election by the beneficiary, or by the purchaser on behalf of the beneficiary, to make the trust irrevocable thereafter in order to become or remain eligible for such assistance.

(b) The department of social and health services shall notify the trustee of any prearrangement service trust that the

department has a claim on the estate of a beneficiary for long-term care services. Such notice shall be renewed at least every three years. The trustees upon becoming aware of the death of a beneficiary shall give notice to the department of social and health services, office of financial recovery, who shall file any claim there may be within thirty days of the notice.

(12) Every prearrangement funeral service contract financed through a prearrangement funeral service trust shall contain language which:

(a) Informs the purchaser of the prearrangement funeral service trust and the amount to be deposited in the trust;

(b) Indicates if the contract is revocable or not in accordance with subsection (11) of this section;

(c) Specifies that a full refund of all moneys paid on the contract will be made if the contract is canceled within thirty calendar days of its signing;

(d) Specifies that, in the case of cancellation by a purchaser or beneficiary eligible to cancel under the contract or under this chapter, up to ten percent of the contract amount may be retained by the seller to cover the necessary expenses of selling and setting up the contract;

(e) Identifies the trust to be used and contains information as to how the trustees may be contacted. [1996 c 217 § 8; 1995 1st sp.s. c 18 § 62; 1989 c 390 § 3; 1982 c 66 § 3.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.255 Prearrangement contracts—Insurance funded—Requirements. Prearranged funeral service contracts funded through insurance shall contain language which:

(1) States the amount of insurance;

(2) Informs the purchaser of the name and address of the insurance company through which the insurance will be provided, the policy number, and the name of the beneficiary;

(3) Informs the purchaser that amounts paid for insurance may not be refundable;

(4) Informs that any funds from the policy not used for services may be subject to a claim for reimbursement for long-term care services paid for by the state; and

(5) States that for purposes of the contract, the procedures in RCW 18.39.250(11)(b) shall control such recoupment. [1995 1st sp.s. c 18 § 63; 1989 c 390 § 4.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

18.39.260 Prearrangement contracts—Certificates of registration required—Exception. A funeral establishment shall not enter into prearrangement funeral service contracts in this state unless the funeral establishment has obtained a certificate of registration issued by the board and such certificate is then in force.

Certificates of registration shall be maintained by funeral establishments and the funeral establishment shall comply with all requirements related to the sale of prearrangement contracts until all obligations have been fulfilled. The board may, for just cause, release a funeral establish-

ment from specific registration or reporting requirements. [1989 c 390 § 5; 1986 c 259 § 67; 1982 c 66 § 4.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.270 Prearrangement contracts—Registration qualifications. To qualify for and hold a certificate of registration, a funeral establishment must:

- (1) Be licensed pursuant to this chapter; and
- (2) Fully comply with and qualify according to the provisions of this chapter. [1982 c 66 § 5.]

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.280 Prearrangement contracts—Application for registration. To apply for an original certificate of registration, a funeral establishment must:

- (1) File with the board its request showing:
 - (a) Its name, location, and organization date;
 - (b) The kinds of funeral business it proposes to transact;
 - (c) A statement of its financial condition, management, and affairs on a form satisfactory to or furnished by the board;
 - (d) Documents establishing its trust, or its affiliation with a master trust, and the names and addresses of the trustees if a trust is to be used to finance prearrangement funeral service contracts;
 - (e) Documents establishing its relationship with insurance carriers if insurance is to be used to finance;
 - (f) Documents establishing any other financing relationships; and
 - (g) Such other documents, stipulations, or information as the board may reasonably require to evidence compliance with the provisions of this chapter.
- (2) Deposit with the director the fees required by this chapter to be paid for filing the accompanying documents, and for the certificate of registration, if granted. [1989 c 390 § 6; 1986 c 259 § 68; 1982 c 66 § 7.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

Fees: RCW 18.39.290.

18.39.290 Prearrangement contracts—Registration—Renewal—Fees—Disposition. All certificates of registration issued pursuant to this chapter shall continue in force until the expiration date unless suspended or revoked. A certificate shall be subject to renewal annually ninety days after the end of its fiscal year, as stated on the original application, by the funeral establishment and payment of the required fees.

The director shall determine and collect fees related to certificate of registration licensure.

All fees so collected shall be remitted by the director to the state treasurer not later than the first business day following receipt of such funds and the funds shall be credited to the funeral directors and embalmers account. [1993 c 43 § 1; 1986 c 259 § 69; 1982 c 66 § 8.]

Effective date of 1993 c 43—1993 sp.s. c 24: "Chapter 43, Laws of 1993 is necessary for the immediate preservation of the public peace, health,

or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 sp.s. c 24 § 931.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.300 Prearrangement contracts—Grounds for disciplinary action. In addition to the grounds for action set forth in RCW 18.130.170 and 18.130.180, the board may take the disciplinary action set forth in RCW 18.130.160 against the funeral establishment's license, the license of any funeral director and/or the funeral establishment's certificate of registration, if the licensee or registrant:

(1) Fails to comply with any provisions of this chapter, chapter 18.130 RCW, or any proper order or regulation of the board;

(2) Is found by the board to be in such condition that further execution of prearrangement contracts could be hazardous to purchasers or beneficiaries and the people of this state;

(3) Refuses to be examined, or refuses to submit to examination by the board when required;

(4) Fails to pay the expense of an examination; or

(5) Is found by the board after investigation or receipt of reliable information to be managed by persons who are incompetent or untrustworthy or so lacking in managerial experience as to make the proposed or continued execution or servicing of prearrangement funeral service contracts hazardous to purchasers, beneficiaries, or to the public. [1989 c 390 § 7; 1986 c 259 § 70; 1982 c 66 § 6.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.320 Prearrangement contracts—Annual financial statement—Failure to file. (1) Each funeral establishment which has prearrangement funeral service contracts outstanding shall annually, as required by the board, file with the board a true and accurate statement of its financial condition and transactions and affairs involving prearrangement funeral service contracts for its preceding fiscal year. The statement shall be on such forms and shall contain such information as required by this chapter and by the board.

(2) The board shall take disciplinary action against the certificate of registration of any funeral establishment which fails to file its annual statement when due or after any extension of time which the board has, for good cause, granted. [1989 c 390 § 8; 1986 c 259 § 71; 1982 c 66 § 10.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.330 Prearrangement contract forms—Approval required—Grounds for disapproval. No prearrangement funeral contract forms shall be used without the prior approval of the board.

The board shall disapprove any such contract form, or withdraw prior approval, when such form:

- (1) Violates or does not comply with this chapter;

(2) Contains or incorporates by reference any inconsistent, ambiguous or misleading clauses, or exceptions and conditions which unreasonably or deceptively affect the merchandise or service purported to be provided in the general coverage of the contract;

(3) Has any title, heading, or other part of its provisions which is misleading;

(4) Is being solicited by deceptive advertising;

(5) Fails to disclose fully the terms of the funeral service being provided by the contract, including but not limited to, any discounts, guarantees, provisions for merchandise or service substitutions or other significant items; or

(6) Is not written in language which the board considers to be easily understood by the purchaser. [1989 c 390 § 9; 1986 c 259 § 72; 1982 c 66 § 11.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.345 Prearrangement trust—Examination by board. (1) The board shall examine a prearrangement funeral service trust whenever it deems it necessary, but at least once every three years, or whenever the licensee fails after reasonable notice from the board to file the reports required by this chapter or the board.

(2) The expense of the prearrangement funeral service trust examination shall be paid by the licensee and shall not be deducted from the earnings of the trust. In the case of a "master trust," the expense of the prearrangement funeral service trust examination shall be shared jointly by all funeral establishments participating in such trust.

(3) Such examination shall be conducted in private in the principal office of the licensee and the records relating to prearrangement funeral service contracts and prearrangement funeral service trusts shall be available at such office. [1989 c 390 § 10.]

18.39.350 Violations—Penalty—Consumer protection—Retail installment contracts. Any person who violates or fails to comply with, or aids or abets any person in the violation of, or failure to comply with any of the provisions of this chapter is guilty of a class C felony pursuant to chapter 9A.20 RCW. Any such violation constitutes an unfair practice under chapter 19.86 RCW and this chapter and conviction thereunder is grounds for license revocation under this chapter. Retail installment contracts under this chapter shall be governed by chapter 63.14 RCW. [1989 c 390 § 11; 1982 c 66 § 13.]

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

Unlawful business practices—Penalty: RCW 18.39.220.

18.39.360 Fraternal or benevolent organizations and labor unions excepted. This chapter does not apply to any funeral right or benefit issued or granted as an incident to or by reason of membership in any fraternal or benevolent association or cooperative or society, or labor union not organized for profit. [1989 c 390 § 12; 1982 c 66 § 14.]

Effective dates—Transfer of records, files, and pending business—Savings—1982 c 66: See notes following RCW 18.39.240.

18.39.370 Prearrangement service contracts—Abandoned trusts. Any trust which has not matured or been refunded and for which no beneficiary can be located fifty years after its creation shall be considered abandoned and will be handled in accordance with the escheat laws of the state of Washington. [1989 c 390 § 13.]

18.39.400 Disciplinary authority of board—Rules. In addition to the authority specified in this chapter, the board has the following additional authority concerning disciplinary hearings:

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

(2) To take or cause to be taken depositions and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;

(3) To compel attendance of witnesses at hearings;

(4) To take emergency action ordering summary suspension of a license, registration, endorsement, or permit, or restriction or limitation of the licensee's, registrant's, or endorsement or permit holder's practice pending proceedings by the board;

(5) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the board shall make the final decision regarding disposition of the license, registration, endorsement, or permit;

(6) To use individual members of the board to direct investigations. However, a member of the board used to direct an investigation may not subsequently participate in the hearing of the case;

(7) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(8) To contract with licensees, registrants, or endorsement or permit holders, or other persons or organizations to provide services necessary for the monitoring and supervision of licensees, registrants, or endorsement or permit holders who are placed on probation, whose professional activities are restricted, or who are for an authorized purpose subject to monitoring by the board;

(9) To adopt rules for standards of professional conduct or practice;

(10) To grant or deny license, registration, endorsement, or permit applications, and in the event of a finding of unprofessional conduct by an applicant or license, registration, endorsement, or permit holder, to impose a sanction against a license, registration, endorsement, or permit applicant or license, registration, endorsement, or permit holder provided by this chapter;

(11) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance must consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or license, registration, endorsement, or permit holder may not be required to admit to a violation of the law, nor is the assurance such an admission. Violation of an assurance under this section is grounds for disciplinary action;

(12) To designate individuals authorized to sign subpoenas and statements of charges; and

(13) To revoke, suspend, or take other action provided for by RCW 18.39.500 against licenses, registrations, endorsements, or permits issued under this chapter. [1994 c 17 § 2.]

18.39.410 Unprofessional conduct. The following shall constitute unprofessional conduct:

(1) Solicitation of dead human bodies by a licensee, registrant, endorsement, or permit holder, or agent, assistant, or employee of the licensee, registrant, endorsement, or permit holder whether the solicitation occurs after death or while death is impending. This chapter does not prohibit general advertising or the sale of prearrangement funeral service contracts;

(2) Solicitation may include employment of solicitors, payment of commission, bonus, rebate, or any form of gratuity or payment of a finder's fee, referral fee, or other consideration given for the purpose of obtaining or providing the services for a dead human body or where death is impending;

(3) Acceptance by a licensee, registrant, endorsement, or permit holder or other employee of a funeral establishment of a commission, bonus, rebate, or gratuity in consideration of directing business to a cemetery, crematory, mausoleum, columbarium, florist, or other person providing goods and services to the disposition of dead human bodies;

(4) Using a casket or part of a casket that has previously been used as a receptacle for, or in connection with, the burial or other disposition of a dead human body without the written consent of the person lawfully entitled to control the disposition of remains of the deceased person in accordance with RCW 68.50.160. This subsection does not prohibit the use of rental caskets, such as caskets of which the outer shell portion is rented and the inner insert that contains the dead human body is purchased and used for the disposition, that are disclosed as such in the statement of funeral goods and services;

(5) Violation of a state law, municipal law, or county ordinance or regulation affecting the handling, custody, care, transportation, or disposition of dead human bodies;

(6) Refusing to promptly surrender the custody of a dead human body upon the expressed order of the person lawfully entitled to its custody under RCW 68.50.160;

(7) Selling, or offering for sale, a share, certificate, or an interest in the business of a funeral establishment, or in a corporation, firm, or association owning or operating a funeral establishment that promises or purports to give to purchasers a right to the services of a licensee, registrant, endorsement, or permit holder at a charge or cost less than offered or given to the public;

(8) The commission of an act involving moral turpitude, dishonesty, or corruption relating to the practice of the funeral profession whether or not the act constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the licensee, registrant, endorsement, or permit holder, or applicant of the crime described in the

indictment or information and of the person's violation of the statute on which it is based. For the purpose of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction in all proceedings in which the sentence has been deferred or suspended. This section does not abrogate rights guaranteed under chapter 9.96A RCW;

(9) Misrepresentation or concealment of a material fact in obtaining a license, registration, endorsement, or permit or in reinstatement thereof;

(10) All advertising that is false, fraudulent, or misleading;

(11) Suspension or revocation or restriction of the individual's license, registration, endorsement, or permit to practice the profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(12) Violation of any state or federal statute or administrative ruling relating to funeral practice;

(13) Failure to cooperate with the board by:

(a) Not furnishing any papers or documents;

(b) Not furnishing in writing a full and complete explanation covering the matters contained in a complaint filed with the board; or

(c) Not responding to subpoenas issued by the board whether or not the recipient of the subpoena is the accused in the proceeding;

(14) Failure to comply with an order issued by the board or an assurance of discontinuance entered into with the board;

(15) Aiding or abetting an unlicensed or unregistered person to practice where a license, registration, endorsement, or permit is required;

(16) Misrepresentation or fraud in any aspect of the conduct of funeral practice;

(17) Conviction of a gross misdemeanor or felony relating to this title. For the purpose of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. This section does not abrogate rights guaranteed under chapter 9.96A RCW;

(18) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the board or its authorized representative or the inspector, or by the use of threats or harassment against a witness to prevent that witness from providing evidence in a disciplinary hearing or other legal action;

(19) Diminished capacity or habitual intemperance in the use of alcohol, controlled substances, or prescribed drugs that impairs, interferes, or otherwise prevents the proper performance of licensed, registered, endorsed, or permitted duties or functions;

(20) Knowingly concealing information concerning a violation of this title;

(21) Incompetence or negligence as a licensee, registrant, endorsement, or permit holder in carrying out the duties of the profession. [1994 c 17 § 3.]

18.39.420 Complaint to board—Submittal—Determination—Investigation—Immunity of complainant. A person, including but not limited to a consumer, licensee, corporation, organization, and state and local governmental agency, may submit a written complaint to the board charging a license, registration, endorsement, or permit holder or applicant with unprofessional conduct and specifying the grounds for the complaint. If the board determines that the complaint merits investigation, or if the board has reason to believe, without a formal complaint, that a license holder or applicant might have engaged in unprofessional conduct, the board shall investigate to determine whether there has been unprofessional conduct. A person who files a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint. [1994 c 17 § 4.]

18.39.430 Statement of charge of violation—Notice—Hearing. (1) If the board determines, upon investigation, that there is reason to believe a violation of this chapter has occurred, a statement of charge or charges should be prepared and served upon the license, registration, endorsement, or permit holder or applicant at the earliest practical time. The statement of charge or charges must be accompanied by a notice that the license, registration, endorsement, or permit holder or applicant may request a hearing to contest the charge or charges. The license, registration, endorsement, or permit holder or applicant must file a request for hearing with the board within twenty days after being served the statement of charges. The failure to request a hearing constitutes a default, upon which the board may enter a decision on the basis of the facts available to it.

(2) If a hearing is requested, the board shall fix the time of the hearing as soon as convenient, but the hearing must not be held earlier than thirty days after service of the charges upon the license, registration, endorsement, or permit holder or applicant. A notice of hearing must be issued at least twenty days before the hearing, specifying the time, date, and place of the hearing. The notice must also notify the license, registration, endorsement, or permit holder or applicant that a record of the proceeding will be kept, that the holder or applicant will have the opportunity to appear personally and to have counsel present, with the right to produce witnesses who will be subject to cross-examination, and evidence in the holder's or applicant's own behalf, to cross-examine witnesses testifying against the holder or applicant, to examine such documentary evidence as may be produced against the holder or applicant, to conduct depositions, and to have subpoenas issued by the board. [1994 c 17 § 5.]

18.39.440 Hearings—Procedures—Administrative Procedure Act. The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the Administrative Procedure Act, govern all hearings before the board. The board has, in addition to the powers and duties set forth in this chapter, all of the powers and duties under chapter 34.05 RCW, that include, without limitation, all powers relating to the administration of oaths, the receipt of evidence, the issuance and enforcing of subpoenas, and the taking of depositions. [1994 c 17 § 6.]

18.39.450 Findings of fact—Order—Notice—Report. (1) In the event of a finding of unprofessional conduct, the board shall prepare and serve findings of fact and an order as provided in chapter 34.05 RCW and the board shall notify the public, which notice must include press releases to appropriate local news media and the major news wire services. If the license, registration, endorsement, or permit holder or applicant is found to have not committed unprofessional conduct, the board shall immediately prepare and serve findings of fact and an order of dismissal of the charges. The board shall retain the findings of fact and order as a permanent record.

(2) The board shall report the issuance of statements of charges and final orders in cases processed by the board to:

(a) The person or agency who brought to the board's attention information that resulted in the initiation of the case;

(b) Appropriate organizations, public or private, that serve the professions; and

(c) Counterpart licensing boards in other states or associations of state licensing boards.

(3) This section does not require the reporting of information that is exempt from public disclosure under chapter 42.17 RCW. [1994 c 17 § 7.]

18.39.460 Actions against license—Exceptions. The department shall not issue a license, registration, endorsement, or permit to a person whose license, registration, endorsement, or permit has been denied, revoked, or suspended by the board except in conformity with the terms and conditions of the certificate or order of denial, revocation, or suspension; or in conformity with an order of reinstatement issued by the board; or in accordance with the final judgment in a proceeding for review instituted under this chapter. [1994 c 17 § 8.]

18.39.465 License suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the license of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 9.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.39.470 Order—When effective—Stay. An order under proceedings authorized under this chapter, after due notice and findings in accordance with this chapter and

chapter 34.05 RCW, or an order of summary suspension entered under this chapter, takes effect immediately upon its being served. The order, if appealed to the court, may not be stayed pending the appeal unless the board or court to which the appeal is taken enters an order staying the order of the board, which stay must provide for terms necessary to protect the public. [1994 c 17 § 9.]

18.39.480 Appeal. An individual who has been disciplined or whose license, registration, endorsement, or permit has been denied by the board may appeal the decision as provided in chapter 34.05 RCW. [1994 c 17 § 10.]

18.39.490 Reinstatement—Hearings—Examination. A person whose license, registration, endorsement, or permit has been suspended or revoked under this chapter may petition the board for reinstatement after an interval as determined by the board in the order. The board shall hold hearings on the petition and may deny the petition or may order reinstatement, impose terms and conditions as provided in RCW 18.39.500, and issue an order of reinstatement. The board may require successful completion of an examination as a condition of reinstatement. [1994 c 17 § 11.]

18.39.500 Finding of unprofessional conduct—Order—Sanctions—Stay—Costs. Upon a finding that a license holder or applicant has committed unprofessional conduct, the board may issue an order providing for one or any combination of the following:

- (1) Revocation of the license, registration, endorsement, or permit;
- (2) Suspension of the license, registration, endorsement, or permit for a fixed or indefinite term;
- (3) Restriction or limitation of the practice;
- (4) Requiring the satisfactory completion of a specific program of remedial education or treatment;
- (5) The monitoring of the practice by a superior approved by the board;
- (6) Censure or reprimand;
- (7) Compliance with conditions of probation for a designated period of time;
- (8) Payment of a fine for each violation of this chapter, not to exceed one thousand dollars per violation, that is to be paid to the board's fund;
- (9) Denial of the license, registration, endorsement, or permit request; and
- (10) Corrective action.

An action under this section may be totally or partly stayed by the board. In determining what action is appropriate, the board must first consider what sanctions are necessary to protect or compensate the public. Only after the provisions have been made may the board consider and include in the order requirements designed to rehabilitate the license, registration, endorsement, or permit holder or applicant. Costs associated with compliance with orders issued under this section are the obligation of the license, registration, endorsement, or permit holder or applicant.

The licensee, registrant, endorsement or permit holder, or applicant may enter into a stipulated disposition of charges that includes one or more of the sanctions of this section, but only after a statement of charges has been issued

and the licensee, registrant, endorsement or permit holder, or applicant has been afforded the opportunity for a hearing and has elected on the record to forego such a hearing. The stipulation shall either contain one or more specific findings of unprofessional conduct or inability to practice, or a statement by the licensee, registrant, endorsement or permit holder, or applicant acknowledging that evidence is sufficient to justify one or more specified findings of unprofessional conduct or inability to practice. The stipulation entered into pursuant to this subsection shall be considered formal disciplinary action for all purposes. [1994 c 17 § 12.]

18.39.510 Informal disposal—Statement of allegations—Summary of evidence—Stipulation—Sanctions—Disclosure—Enforcement. (1) Prior to serving a statement of charges, the board may furnish a statement of allegations to the licensee, registrant, endorsement or permit holder, or applicant along with a detailed summary of the evidence relied upon to establish the allegations and a proposed stipulation for informal resolution of the allegations. These documents shall be exempt from public disclosure until such time as the allegations are resolved either by stipulation or otherwise.

(2) The board and the licensee, registrant, endorsement or permit holder, or applicant may stipulate that the allegations may be disposed of informally in accordance with this subsection. The stipulation shall contain a statement of the facts leading to the filing of the complaint; the act or acts of unprofessional conduct alleged to have been committed or the alleged basis for determining that the licensee, registrant, endorsement or permit holder, or applicant is unable to practice with reasonable skill and safety; a statement that the stipulation is not to be construed as a finding of either unprofessional conduct or inability to practice; an acknowledgement that a finding of unprofessional conduct or inability to practice, if proven, constitutes grounds for discipline under this chapter; an agreement on the part of the licensee, registrant, endorsement or permit holder, or applicant that the sanctions set forth in this chapter, except for revocation, suspension, censure, or reprimand of a licensee, registrant, endorsement of [or] permit holder, or applicant may be imposed as part of the stipulation, except that no fine may be imposed but the licensee, registrant, endorsement or permit holder, or applicant may agree to reimburse the board the costs of investigation and processing the complaint up to an amount not exceeding one thousand dollars per allegation; and an agreement on the part of the board to forego further disciplinary proceedings concerning the allegations. A stipulation entered into pursuant to this subsection shall not be considered formal disciplinary action.

(3) If the licensee, registrant, endorsement or permit holder, or applicant declines to agree to disposition of the charges by means of a stipulation pursuant to subsection (2) of this section, the board may proceed to formal disciplinary action pursuant to this chapter.

(4) Upon execution of a stipulation under subsection (2) of this section by both the licensee, registrant, endorsement or permit holder, or applicant and the board, the complaint is deemed disposed of and shall become subject to public disclosure on the same basis and to the same extent as other records of the board. Should the licensee, registrant,

endorsement or permit holder [holder], or applicant fail to pay any agreed reimbursement within thirty days of the date specified in the stipulation for payment, the board may seek collection of the amount agreed to be paid in the same manner as enforcement of a fine under this chapter. [1994 c 17 § 13.]

18.39.520 Enforcement of fine. If an order for payment of a fine is made as a result of an order entered under this chapter and timely payment is not made as directed in the final order, the board may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement is in addition to other rights the board may have as to a licensee, registrant, endorsement, or permit holder ordered to pay a fine but does not limit a licensee's, registrant's, or endorsement or permit holder's ability to seek judicial review under this chapter. In an action for enforcement of an order of payment of a fine, the board's order is conclusive proof of the validity of the order of payment of a fine and the terms of payment. [1994 c 17 § 14.]

18.39.530 Practice without license—Investigation of complaint—Temporary cease and desist order—Injunction—Penalties. (1) The director shall investigate a complaint concerning practice by an unlicensed person for which a license, registration, endorsement, or permit is required under this chapter. The director shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection. If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. The cease and desist order does not relieve the person practicing or operating a business without a license, registration, permit, or registration from criminal prosecution for the unauthorized practice or operation, but the remedy of a cease and desist order is in addition to criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced by civil contempt. This method of enforcement of the cease and desist order may be used in addition to, or as an alternative to, provisions for enforcement or agency orders under chapter 34.05 RCW.

(2) The attorney general, a county prosecuting attorney, the director, the board, or a person may, in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin a person practicing a profession or business for which a license, registration, endorsement, or permit is required under this chapter without a license, registration, endorsement, or permit from engaging in the practice or operation of the business until the required license, registration, endorsement, or permit is secured. However, the injunction does not relieve the person so practicing or operating a business without a license, registration, endorsement, or permit from criminal prosecution for the unauthorized practice or operation, but the remedy by injunction is in addition to criminal liability.

(3) Unlicensed practice of a profession or operation of a business for which a license, registration, endorsement, or permit is required under this chapter, unless otherwise

exempted by law, is a gross misdemeanor. Fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section must be remitted to the board. [1994 c 17 § 15.]

18.39.540 Violation of injunction—Penalties. A person or business that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars that must be placed in the board account. For the purpose of this section, the superior court issuing an injunction shall retain jurisdiction and the cause must be continued, and the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1994 c 17 § 16.]

18.39.550 Crime by license, registration, endorsement, or permit holder—Notice by board. If the board determines or has cause to believe that a license, registration, endorsement, or permit holder has committed a crime, the board, immediately subsequent to issuing findings of fact and a final order, shall notify the attorney general or the county prosecuting attorney in the county in which the act took place of the facts known to the board. [1994 c 17 § 17.]

18.39.800 Funeral directors and embalmers account. The funeral directors and embalmers account is created in the state treasury. All fees received by the department for licenses, registrations, renewals, examinations, and audits shall be forwarded to the state treasurer who shall credit the money to the account. All fines and civil penalties ordered by the superior court or fines ordered pursuant to RCW 18.130.160(8) against holders of licenses or registrations issued under the provisions of this chapter shall be paid to the account. All expenses incurred in carrying out the licensing and registration activities of the department and the state funeral directors and embalmers board under this chapter shall be paid from the account as authorized by legislative appropriation. Any residue in the account shall be accumulated and shall not revert to the general fund at the end of the biennium. All earnings of investments of balances in the account shall be credited to the general fund. Any fund balance remaining in the health professions account attributable to the funeral director and embalmer professions as of July 1, 1993, shall be transferred to the funeral directors and embalmers account. [1996 c 217 § 9; 1993 c 43 § 2.]

Effective date of 1993 c 43—1993 sp.s. c 24: See note following RCW 18.39.290.

18.39.900 Severability—1937 c 108. If any section, subdivision, sentence or clause of this act shall be held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this act. [1937 c 108 § 18.]

18.39.901 Severability—1982 c 66. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 66 § 23.]

Chapter 18.43

ENGINEERS AND LAND SURVEYORS

Sections

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Noncompliance with surveys and monuments recording law—Grounds for revocation: RCW 58.09.140.

Public contracts for engineering services: Chapter 39.80 RCW.

Surveys and monuments recording law: Chapter 58.09 RCW.

18.43.010 General provisions. In order to safeguard life, health, and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying, shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided; and it shall be unlawful for any person to practice or to offer to practice in this state, engineering or land surveying, as defined in the provisions of this chapter, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer or a land surveyor, unless such a person has been duly registered under the provisions of this chapter. [1947 c 283 § 1; Rem. Supp. 1947 § 8306-21. Prior: 1935 c 167 § 2; RRS § 8306-2.]

False advertising: Chapter 9.04 RCW.

18.43.020 Definitions. (1) Engineer: The term "engineer" as used in this chapter shall mean a professional engineer as hereinafter defined.

(2) Professional engineer: The term "professional engineer" within the meaning and intent of this chapter, shall mean a person who, by reason of his or her special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and practical experience,

is qualified to practice engineering as hereinafter defined, as attested by his or her legal registration as a professional engineer.

(3) Engineer-in-training: The term "engineer-in-training" as used in this chapter means a candidate who has: (a) Satisfied the experience requirements in RCW 18.43.040 for registration; (b) successfully passed the examination in the fundamental engineering subjects; and (c) is enrolled by the board as an engineer-in-training.

(4) Engineering: The term "engineering" as used in this chapter shall mean the "practice of engineering" as hereinafter defined.

(5) Practice of engineering: The term "practice of engineering" within the meaning and intent of this chapter shall mean any professional service or creative work requiring engineering education, training, and experience and the application of special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects.

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself or herself to be a professional engineer, or through the use of some other title implies that he or she is a professional engineer; or who holds himself or herself out as able to perform, or who does perform, any engineering service or work or any other professional service designated by the practitioner or recognized by educational authorities as engineering.

The practice of engineering shall not include the work ordinarily performed by persons who operate or maintain machinery or equipment.

(6) Land surveyor: The term "land surveyor" as used in this chapter shall mean a professional land surveyor.

(7) Professional land surveyor: The term "professional land surveyor" as used in this chapter means a person who, by reason of his or her special knowledge of the mathematical and physical sciences and principles and practices of land surveying, which is acquired by professional education and practical experience, is qualified to practice land surveying and as attested to by his or her legal registration as a professional land surveyor.

(8) Land-surveyor-in-training: The term "land-surveyor-in-training" as used in this chapter means a candidate who: (a) Has satisfied the experience requirements in RCW 18.43.040 for registration; (b) successfully passes the examination in the fundamental land surveying subjects; and (c) is enrolled by the board as a land-surveyor-in-training.

(9) Practice of land surveying: The term "practice of land surveying" within the meaning and intent of this chapter, shall mean assuming responsible charge of the surveying of land for the establishment of corners, lines, boundaries, and monuments, the laying out and subdivision of land, the defining and locating of corners, lines, boundaries and monuments of land after they have been estab-

lished, the survey of land areas for the purpose of determining the topography thereof, the making of topographical delineations and the preparing of maps and accurate records thereof, when the proper performance of such services requires technical knowledge and skill.

(10) Board: The term "board" as used in this chapter shall mean the state board of registration for professional engineers and land surveyors, provided for by this chapter. [1995 c 356 § 1; 1991 c 19 § 1; 1947 c 283 § 2; Rem. Supp. 1947 § 8306-22. Prior: 1935 c 167 § 1; RRS § 8306-1.]

Effective date—1995 c 356: "This act shall take effect July 1, 1996." [1995 c 356 § 6.]

18.43.030 Board of registration—Members—Terms—Qualifications—Compensation and travel expenses. A state board of registration for professional engineers and land surveyors is hereby created which shall exercise all of the powers and perform all of the duties conferred upon it by this chapter. After July 9, 1986, the board shall consist of seven members, who shall be appointed by the governor and shall have the qualifications as hereinafter required. The terms of board members in office on June 11, 1986, shall not be affected. The first additional member shall be appointed for a four-year term and the second additional member shall be appointed for a three-year term. On the expiration of the term of any member, the governor shall appoint a successor for a term of five years to take the place of the member whose term on said board is about to expire. However, no member shall serve more than two consecutive terms on the board. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been duly appointed and shall have qualified.

Five members of the board shall be registered professional engineers licensed under the provisions of this chapter. Two members shall be registered professional land surveyors licensed under this chapter. Each of the members of the board shall have been actively engaged in the practice of engineering or land surveying for at least ten years subsequent to registration, five of which shall have been immediately prior to their appointment to the board.

Each member of the board shall be a citizen of the United States and shall have been a resident of this state for at least five years immediately preceding his appointment.

Each member of the board shall be compensated in accordance with RCW 43.03.240 and, in addition thereto, shall be reimbursed for travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060.

The governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor as hereinabove provided. [1986 c 102 § 1; 1984 c 287 § 35; 1975-'76 2nd ex.s. c 34 § 37; 1947 c 283 § 3; Rem. Supp. 1947 § 8306-23.]

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

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

18.43.035 Bylaws—Employees—Rules—Investigations—Oaths, subpoenas—Periodic reports and roster. The board may adopt and amend bylaws establishing its organization and method of operation, including but not limited to meetings, maintenance of books and records, publication of reports, code of ethics, and rosters, and adoption and use of a seal. Four members of the board shall constitute a quorum for the conduct of any business of the board. The board may employ such persons as are necessary to carry out its duties under this chapter. It may adopt rules and regulations reasonably necessary to administer the provisions of this chapter. It may conduct investigations concerning alleged violations of the provisions of this chapter. In making such investigations and in all proceedings under RCW 18.43.110, the chairman of the board or any member of the board acting in his place may administer oaths or affirmations to witnesses appearing before the board, subpoena witnesses and compel their attendance, and require the production of books, records, papers and documents. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or produce any books, records, papers or documents so required to be produced, the board may present its petition to the superior court of the county in which such person resides, setting forth the facts, and thereupon the court shall, in any proper case, enter a suitable order compelling compliance with the provisions of this chapter and imposing such other terms and conditions as the court may deem equitable. The board shall submit to the governor such periodic reports as may be required. A roster, showing the names and places of business of all registered professional engineers and land surveyors may be published for distribution, upon request, to professional engineers and land surveyors registered under this chapter and to the public. [1986 c 102 § 2; 1977 c 75 § 10; 1961 c 142 § 1; 1959 c 297 § 1.]

18.43.040 Registration requirements. The following will be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer, engineer-in-training, professional land surveyor, or land-surveyor-in-training, respectively:

As a professional engineer: A specific record of eight years or more of experience in engineering work of a character satisfactory to the board and indicating that the applicant is competent to practice engineering; and successfully passing a written or oral examination, or both, in engineering as prescribed by the board.

Graduation in an approved engineering curriculum of four years or more from a school or college approved by the board as of satisfactory standing shall be considered equivalent to four years of such required experience. The satisfactory completion of each year of such an approved engineering course without graduation shall be considered as equivalent to a year of such required experience. Graduation in a curriculum other than engineering from a school or college approved by the board shall be considered as equivalent to two years of such required experience: PROVIDED, That no applicant shall receive credit for more than four years of experience because of undergraduate educational qualifications. The board may, at its discretion, give credit as

experience not in excess of one year, for satisfactory postgraduate study in engineering.

As an engineer-in-training: An applicant for registration as a professional engineer shall take the prescribed examination in two stages. The first stage of the examination may be taken upon submission of his or her application for registration as an engineer-in-training and payment of the application fee prescribed in RCW 18.43.050 at any time after the applicant has completed four years of the required engineering experience, as defined in this section, or has achieved senior standing in a school or college approved by the board. The first stage of the examination shall test the applicant's knowledge of appropriate fundamentals of engineering subjects, including mathematics and the basic sciences.

At any time after the completion of the required eight years of engineering experience, as defined in this section, the applicant may take the second stage of the examination upon submission of an application for registration and payment of the application fee prescribed in RCW 18.43.050. This stage of the examination shall test the applicant's ability, upon the basis of his or her greater experience, to apply his or her knowledge and experience in the field of his or her specific training and qualifications.

As a professional land surveyor: A specific record of eight years or more of experience in land surveying work of a character satisfactory to the board and indicating that the applicant is competent to practice land surveying, and successfully passing a written or oral examination, or both, in surveying as prescribed by the board.

Graduation from a school or college approved by the board as of satisfactory standing, including the completion of an approved course in surveying, shall be considered equivalent to four years of the required experience. Post-graduate college courses approved by the board shall be considered for up to one additional year of the required experience.

As a land-surveyor-in-training: An applicant for registration as a professional land surveyor shall take the prescribed examination in two stages. The first stage of the examination may be taken upon submission of his or her application for registration as a land-surveyor-in-training and payment of the application fee prescribed in RCW 18.43.050 at any time after the applicant has completed four years of the required land surveying experience, as defined in this section, or has achieved senior standing in a school or college approved by the board. The first stage of the examination shall test the applicant's knowledge of appropriate fundamentals of land surveying subjects, including mathematics and the basic sciences.

At any time after the completion of the required eight years of land surveying experience, as defined in this section, the applicant may take the second stage of the examination upon submission of an application for registration and payment of the application fee prescribed in RCW 18.43.050. This stage of the examination shall test the applicant's ability, upon the basis of greater experience, to apply knowledge and experience in the field of land surveying.

The first stage shall be successfully completed before the second stage may be attempted. Applicants who have been approved by the board to take the examination based

on the requirement for six years of experience under this section before July 1, 1996, are eligible to sit for the examination.

No person shall be eligible for registration as a professional engineer, engineer-in-training, professional land surveyor, or land-surveyor-in-training, who is not of good character and reputation.

Teaching, of a character satisfactory to the board shall be considered as experience not in excess of two years for the appropriate profession.

The mere execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not be deemed to be practice of engineering.

Any person having the necessary qualifications prescribed in this chapter to entitle him or her to registration shall be eligible for such registration although the person may not be practicing his or her profession at the time of making his or her application. [1995 c 356 § 2; 1991 c 19 § 2; 1947 c 283 § 7; Rem. Supp. 1947 § 8306-24. Prior: 1935 c 167 § 2; RRS § 8306-2.]

Effective date—1995 c 356: See note following RCW 18.43.020.

18.43.050 Application—Registration fees. Application for registration shall be on forms prescribed by the board and furnished by the director, shall contain statements made under oath, showing the applicant's education and detail summary of his or her technical work and shall contain not less than five references, of whom three or more shall be engineers having personal knowledge of the applicant's engineering experience.

The registration fee for professional engineers shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate. The fee for engineer-in-training shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate.

The registration fee for professional land surveyors shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate. The fee for land-surveyor-in-training shall be determined by the director as provided in RCW 43.24.086, which shall accompany the application and shall include the cost of examination and issuance of certificate.

Should the board find an applicant ineligible for registration, the registration fee shall be retained as an application fee. [1995 c 356 § 3; 1991 c 19 § 3; 1985 c 7 § 42; 1975 1st ex.s. c 30 § 46; 1947 c 283 § 8; Rem. Supp. 1947 § 8306-25. Prior: 1935 c 167 § 6; RRS § 8306-6.]

Effective date—1995 c 356: See note following RCW 18.43.020.

18.43.060 Examinations. When oral or written examinations are required, they shall be held at such time and place as the board shall determine. If examinations are required on fundamental engineering subjects (such as ordinarily given in college curricula) the applicant shall be permitted to take this part of the professional examination prior to his or her completion of the requisite years of

experience in engineering work. The board shall issue to each applicant upon successfully passing the examination in fundamental engineering subjects a certificate stating that the applicant has passed the examination in fundamental engineering subjects and that his or her name has been recorded as an engineer-in-training.

The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability to design and supervise engineering works so as to insure the safety of life, health and property. Examinations shall be given for the purpose of determining the qualifications of applicants for registration separately in engineering and in land surveying. A candidate failing an examination may apply for reexamination. Subsequent examinations will be granted upon payment of a fee to be determined by the director as provided in RCW 43.24.086. [1991 c 19 § 4; 1961 c 142 § 2; 1947 c 283 § 9; Rem. Supp. 1947 § 8306-26. Prior: 1935 c 167 § 7; RRS § 8306-7.]

18.43.070 Certificates and seals. The director of licensing shall issue a certificate of registration upon payment of a registration fee as provided for in this chapter, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this chapter. In case of a registered engineer, the certificate shall authorize the practice of "professional engineering" and specify the branch or branches in which specialized, and in case of a registered land surveyor, the certificate shall authorize the practice of "land surveying".

In case of engineer-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental engineering subjects required by the board and has been enrolled as an "engineer-in-training". In case of land-surveyor-in-training, the certificate shall state that the applicant has successfully passed the examination in fundamental surveying subjects required by the board and has been enrolled as a "land-surveyor-in-training." All certificates of registration shall show the full name of the registrant, shall have a serial number, and shall be signed by the chairman and the secretary of the board and by the director of licensing.

The issuance of a certificate of registration by the director of licensing shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered professional engineer or a registered land surveyor, while the said certificate remains unrevoked and unexpired.

Each registrant hereunder shall upon registration obtain a seal of the design authorized by the board, bearing the registrant's name and the legend "registered professional engineer" or "registered land surveyor". Plans, specifications, plats and reports prepared by the registrant shall be signed, dated, and stamped with said seal or facsimile thereof. Such signature and stamping shall constitute a certification by the registrant that the same was prepared by or under his or her direct supervision and that to his or her knowledge and belief the same was prepared in accordance with the requirements of the statute. It shall be unlawful for anyone to stamp or seal any document with said seal or facsimile thereof after the certificate of registrant named

thereon has expired or been revoked, unless said certificate shall have been renewed or reissued. [1995 c 356 § 4; 1991 c 19 § 5; 1959 c 297 § 4; 1947 c 283 § 10; Rem. Supp. 1947 § 8306-27. Prior: 1935 c 167 §§ 8, 13; RRS § 8306-8, 13.]

Effective date—1995 c 356: See note following RCW 18.43.020.

18.43.075 Retired status certificate. The board may adopt rules under this section authorizing a retired status certificate. An individual certificated under this chapter who has reached the age of sixty-five years and has retired from the active practice of engineering and land surveying may, upon application and at the discretion of the board, be exempted from payment of annual renewal fees thereafter. [1995 c 356 § 5.]

Effective date—1995 c 356: See note following RCW 18.43.020.

18.43.080 Expiration and renewals of certificates—Fees. Certificates of registration, and certificates of authorization and renewals thereof shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the administrator of the division of professional licensing to notify every person, firm or corporation registered under this chapter, of the date of the expiration of his certificate and the amount of the renewal fee that shall be required for its renewal for one year. Such notice shall be mailed at least thirty days before the end of December of each year. Renewal may be effected during the month of December by the payment of a fee determined by the director as provided in RCW 43.24.086. In case any professional engineer and/or land surveyor registered under this chapter shall fail to pay the renewal fee hereinabove provided for, within ninety days from the date when the same shall become due, the renewal fee shall be the current fee plus an amount equal to one year's fee. [1985 c 7 § 43; 1981 c 260 § 4. Prior: 1975 1st ex.s. c 30 § 47; 1975 c 23 § 1; 1965 ex.s. c 126 § 1; 1961 c 142 § 3; 1959 c 297 § 5; 1947 c 283 § 11; Rem. Supp. 1947 § 8306-28; prior: 1935 c 167 § 10; RRS § 8306-10.]

18.43.100 Registration of out-of-state applicants. The board may, upon application and the payment of a fee determined by the director as provided in RCW 43.24.086, issue a certificate without further examination as a professional engineer or land surveyor to any person who holds a certificate of qualification of registration issued to the applicant following examination by proper authority, of any state or territory or possession of the United States, the District of Columbia, or of any foreign country, provided: (1) That the applicant's qualifications meet the requirements of the chapter and the rules established by the board, and (2) that the applicant is in good standing with the licensing agency in said state, territory, possession, district, or foreign country. [1991 c 19 § 7; 1985 c 7 § 44; 1975 1st ex.s. c 30 § 48; 1959 c 297 § 6; 1947 c 283 § 13; Rem. Supp. 1947 § 8306-30. Prior: 1935 c 167 § 5; RRS § 8306-5.]

18.43.105 "Misconduct or malpractice in the practice of engineering" defined. As used in this chapter

"misconduct or malpractice in the practice of engineering" shall include but not be limited to the following:

(1) Offering to pay, paying or accepting, either directly or indirectly, any substantial gift, bribe, or other consideration to influence the award of professional work;

(2) Being wilfully untruthful or deceptive in any professional report, statement or testimony;

(3) Attempting to injure falsely or maliciously, directly or indirectly, the professional reputation, prospects or business of anyone;

(4) Failure to state separately or to charge separately for professional engineering services or land surveying where other services or work are also being performed in connection with the engineering services;

(5) Conviction in any court of any offense involving moral turpitude;

(6) Violation of any provisions of this chapter;

(7) Conflict of interest—Having a financial interest in bidding for or performance of a contract to supply labor or materials for or to construct a project for which employed or retained as an engineer except with the consent of the client or employer after disclosure of such facts; or allowing an interest in any business to affect a decision regarding engineering work for which retained, employed, or called upon to perform;

(8) Nondisclosure—Failure to promptly disclose to a client or employer any interest in a business which may compete with or affect the business of the client or employer;

(9) Unfair competition—Reducing a fee quoted for prospective employment or retainer as an engineer after being informed of the fee quoted by another engineer for the same employment or retainer;

(10) Improper advertising—Soliciting retainer or employment by advertisement which is undignified, self-laudatory, false or misleading, or which makes or invites comparison between the advertiser and other engineers;

(11) Committing any other act, or failing to act, which act or failure are customarily regarded as being contrary to the accepted professional conduct or standard generally expected of those practicing professional engineering or land surveying. [1961 c 142 § 4; 1959 c 297 § 2.]

18.43.110 Revocations, fines, reprimands, and suspensions. The board shall have the exclusive power to fine and reprimand the registrant and suspend or revoke the certificate of registration of any registrant who is found guilty of:

The practice of any fraud or deceit in obtaining a certificate of registration; or

Any gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered engineer or land surveyor.

Any person may prefer charges of fraud, deceit, gross negligence, incompetency, or misconduct against any registrant. Such charges shall be in writing and shall be sworn to by the person making them and shall be filed with the secretary of the board.

All procedures related to hearings on such charges shall be in accordance with provisions relating to adjudicative

proceedings in chapter 34.05 RCW, the Administrative Procedure Act.

If, after such hearing, a majority of the board vote in favor of finding the accused guilty, the board shall revoke or suspend the certificate of registration of such registered professional engineer or land surveyor.

The board, for reasons it deems sufficient, may reissue a certificate of registration to any person whose certificate has been revoked or suspended, providing a majority of the board vote in favor of such issuance. A new certificate of registration to replace any certificate revoked, lost, destroyed, or mutilated may be issued, subject to the rules of the board, and a charge determined by the director as provided in RCW 43.24.086 shall be made for such issuance.

Any person who shall feel aggrieved by any action of the board in denying or revoking his certificate of registration may appeal therefrom to the superior court of the county in which such person resides, and after full hearing, said court shall make such decree sustaining or revoking the action of the board as it may deem just and proper.

Fines imposed by the board shall not exceed one thousand dollars for each offense.

In addition to the imposition of civil penalties under this section, the board may refer violations of this chapter to the appropriate prosecuting attorney for charges under RCW 18.43.120. [1989 c 175 § 62; 1986 c 102 § 3; 1985 c 7 § 45; 1982 c 37 § 1; 1975 1st ex.s. c 30 § 49; 1947 c 283 § 14; Rem. Supp. 1947 § 8306-31. Prior: 1935 c 167 § 11; RRS § 8306-11.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.43.120 Violations and penalties. Any person who shall practice, or offer to practice, engineering or land surveying in this state without being registered in accordance with the provisions of the chapter, or any person presenting or attempting to use as his own the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration, or any person who shall falsely impersonate any other registrant, or any person who shall attempt to use the expired or revoked certificate of registration, or any person who shall violate any of the provisions of this chapter shall be guilty of a gross misdemeanor.

It shall be the duty of all officers of the state or any political subdivision thereof, to enforce the provisions of this chapter. The attorney general shall act as legal adviser of the board, and render such legal assistance as may be necessary in carrying out the provisions of this chapter. [1986 c 102 § 4; 1947 c 283 § 15; Rem. Supp. 1947 § 8306-32. Prior: 1935 c 167 § 14; RRS § 8306-14.]

Forgery: RCW 9A.60.020.

18.43.130 Excepted services—Fees. This chapter shall not be construed to prevent or affect:

(1) The practice of any other legally recognized profession or trade; or

(2) The practice of a person not a resident and having no established place of business in this state, practicing or offering to practice herein the profession of engineering or land surveying, when such practice does not exceed in the

aggregate more than thirty days in any calendar year: PROVIDED, Such person has been determined by the board to be legally qualified by registration to practice the said profession in his or her own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this chapter. The person shall request such a determination by completing an application prescribed by the board and accompanied by a fee determined by the director. Upon approval of the application, the board shall issue a permit authorizing temporary practice; or

(3) The practice of a person not a resident and having no established place of business in this state, or who has recently become a resident thereof, practicing or offering to practice herein for more than thirty days in any calendar year the profession of engineering or land surveying, if he or she shall have filed with the board an application for a certificate of registration and shall have paid the fee required by this chapter: PROVIDED, That such person is legally qualified by registration to practice engineering or land surveying in his or her own state or country in which the requirements and qualifications of obtaining a certificate of registration are not lower than those specified in this chapter. Such practice shall continue only for such time as the board requires for the consideration of the application for registration; or

(4) The work of an employee or a subordinate of a person holding a certificate of registration under this chapter, or an employee of a person practicing lawfully under provisions of this section: PROVIDED, That such work does not include final design or decisions and is done under the direct responsibility, checking, and supervision of a person holding a certificate of registration under this chapter or a person practicing lawfully under the provisions of this section; or

(5) The work of a person rendering engineering or land surveying services to a corporation, as an employee of such corporation, when such services are rendered in carrying on the general business of the corporation and such general business does not consist, either wholly or in part, of the rendering of engineering services to the general public: PROVIDED, That such corporation employs at least one person holding a certificate of registration under this chapter or practicing lawfully under the provisions of this chapter; or

(6) The practice of officers or employees of the government of the United States while engaged within the state in the practice of the profession of engineering or land surveying for said government; or

(7) Nonresident engineers employed for the purpose of making engineering examinations; or

(8) The practice of engineering in this state by a corporation or joint stock association: PROVIDED, That

(a) Such corporation shall file with the board an application for certificate of authorization upon a form to be prescribed by the board and containing information required to enable the board to determine whether such corporation is qualified in accordance with the provisions of this chapter to practice engineering in this state;

(b) Such corporation shall file with the board a certified copy of a resolution of the board of directors of the corporation which shall designate a person holding a certificate of registration under this chapter as responsible for the practice of engineering by said corporation in this state and shall

provide that full authority to make all final engineering decisions on behalf of said corporation with respect to work performed by the corporation in this state shall be granted and delegated by the board of directors to the person so designated in said resolution: PROVIDED, That the filing of such resolution shall not relieve the corporation of any responsibility or liability imposed upon it by law or by contract;

(c) Such corporation shall file with the board a designation in writing setting forth the name or names of a person or persons holding certificates of registration under this chapter who shall be in responsible charge of each project and each major branch of the engineering activities in which the corporation shall specialize in this state. In the event there shall be a change in the person or persons in responsible charge of any project or major branch of the engineering activities, such changes shall be designated in writing and filed with the board within thirty days after the effective date of such changes;

(d) Upon the filing with the board of the application for certificate for authorization, certified copy of resolution, affidavit and designation of persons specified in subparagraphs (a), (b), and (c) of this section the board shall issue to such corporation a certificate of authorization to practice engineering in this state upon a determination by the board that:

(i) The bylaws of the corporation contain provisions that all engineering decisions pertaining to any project or engineering activities in this state shall be made by the specified engineer in responsible charge, or other responsible engineers under his or her direction or supervision;

(ii) The application for certificate of authorization states the type, or types, of engineering practiced, or to be practiced by such corporation;

(iii) A current certified financial statement accurately reflecting the financial condition of the corporation has been filed with the board and is available for public inspection;

(iv) The applicant corporation has the ability to provide through qualified engineering personnel, professional services or creative work requiring engineering experience, and that with respect to the engineering services which the corporation undertakes or offers to undertake such personnel have the ability to apply special knowledge of the mathematical, physical, and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design, and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects;

(v) The application for certificate of authorization states the professional records of the designated person or persons who shall be in responsible charge of each project and each major branch of engineering activities in which the corporation shall specialize;

(vi) The application for certificate of authorization states the experience of the corporation, if any, in furnishing engineering services during the preceding five year period and states the experience of the corporation, if any, in the furnishing of all feasibility and advisory studies made within the state of Washington;

(vii) The applicant corporation meets such other requirements related to professional competence in the furnishing of engineering services as may be established and promulgated by the board in furtherance of the objectives and provisions of this chapter; and

Upon a determination by the board based upon an evaluation of the foregoing findings and information that the applicant corporation is possessed of the ability and competence to furnish engineering services in the public interest.

The board may in the exercise of its discretion refuse to issue or may suspend and/or revoke a certificate of authorization to a corporation where the board shall find that any of the officers, directors, incorporators, or the stockholders holding a majority of stock of such corporation has committed misconduct or malpractice as defined in RCW 18.43.105 or has been found personally responsible for misconduct or malpractice under the provisions of subsections (f) and (g) hereof.

The certificate of authorization shall specify the major branches of engineering of which the corporation has designated a person or persons in responsible charge as provided in subsection (8)(c) of this section.

(e) In the event a corporation, organized solely by a group of engineers, each holding a certificate of registration under this chapter, applies for a certificate of authorization, the board may, in its discretion, grant a certificate of authorization to such corporation based on a review of the professional records of such incorporators, in lieu of the required qualifications set forth in this subsection. In the event the ownership of such corporation shall be altered, the corporation shall apply for a revised certificate of authorization, based upon the professional records of the owners, if exclusively engineers or, otherwise, under the qualifications required by subparagraphs (a), (b), (c), and (d) hereof.

(f) Any corporation authorized to practice engineering under this chapter, together with its directors and officers for their own individual acts, are responsible to the same degree as an individual registered engineer, and must conduct its business without misconduct or malpractice in the practice of engineering as defined in this chapter.

(g) Any corporation which has been duly certified under the provisions of this chapter and has engaged in the practice of engineering shall have its certificate of authorization either suspended or revoked by the board if, after a proper hearing, the board shall find that the corporation has committed misconduct or malpractice as defined in RCW 18.43.105. In such case any individual engineer holding a certificate of registration under this chapter, involved in such malpractice or misconduct, shall have his or her certificate of registration suspended or revoked also.

(h) All plans, specifications, designs, and reports when issued in connection with work performed by a corporation under its certificate of authorization shall be prepared by or under the responsible charge of and shall be signed by and shall be stamped with the official seal of a person holding a certificate of registration under this chapter.

(i) For each certificate of authorization issued under the provisions of this subsection (8) of this section there shall be paid an initial fee determined by the director as provided in RCW 43.24.086 and an annual renewal fee determined by the director as provided in RCW 43.24.086.

(9) The practice of engineering and/or land surveying in this state by partnership: PROVIDED, That

(a) A majority of the members of the partnership are engineers or architects or land surveyors duly certificated by the state of Washington or by a state, territory, possession, district, or foreign country meeting the reciprocal provisions of RCW 18.43.100: PROVIDED, That at least one of the members is a professional engineer or land surveyor holding a certificate issued by the director under the provisions of RCW 18.43.070; and

(b) Except where all members of the partnership are professional engineers or land surveyors or a combination of professional engineers and land surveyors or where all members of the partnership are either professional engineers or land surveyors in combination with an architect or architects all of which are holding certificates of qualification therefor issued under the laws of the state of Washington, the partnership shall file with the board an instrument executed by a partner on behalf of the partnership designating the persons responsible for the practice of engineering by the partnership in this state and in all other respects such person so designated and such partnership shall meet the same qualifications and shall be subject to the same requirements and the same penalties as those pertaining to corporations and to the responsible persons designated by corporations as provided in subsection (8) of this section.

For each certificate of authorization issued under the provisions of this subsection (9) of this section there shall be paid an initial fee determined by the director as provided in RCW 43.24.086 and an annual renewal fee determined by the director as provided in RCW 43.24.086. [1991 c 19 § 6; 1985 c 7 § 46; 1975 1st ex.s. c 30 § 50; 1965 ex.s. c 126 § 2; 1961 c 142 § 5; 1959 c 297 § 7; 1947 c 283 § 16; Rem. Supp. 1947 § 8306-33. Prior: 1935 c 167 § 2; RRS § 8306-2.]

18.43.140 Injunctive relief, proof—Board's immunity from liability—Prosecutions. The board is authorized to apply for relief by injunction without bond, to restrain a person from the commission of any act which is prohibited by this chapter. In such proceedings, it shall not be necessary to allege or prove either that an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation thereof. The members of the board shall not be personally liable for their action in any such proceeding or in any other proceeding instituted by the board under the provisions of this chapter. The board in any proper case shall cause prosecution to be instituted in any county or counties where any violation of this chapter occurs, and shall aid in the prosecution of the violator. [1959 c 297 § 3.]

18.43.150 Disposition of fees. All fees collected under the provisions of RCW 18.43.050, 18.43.060, 18.43.080, 18.43.100, and 18.43.130 and fines collected under RCW 18.43.110 shall be paid into the professional engineers' account, which account is hereby established in the state treasury to be used to carry out the purposes and provisions of RCW 18.43.050, 18.43.060, 18.43.080, 18.43.100, 18.43.110, 18.43.120, 18.43.130, 18.43.140 and all other duties required for operation and enforcement of

this chapter. [1991 c 277 § 2; 1985 c 57 § 5; 1965 ex.s. c 126 § 3.]

Effective date—1991 c 277: See note following RCW 18.85.220.

Effective date—1985 c 57: See note following RCW 18.04.105.

18.43.160 Certificate of registration or license suspension—Nonpayment or default on educational loan or scholarship. The board shall suspend the certificate of registration or license of any person who has been certified by a lending agency and reported to the board for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's certificate of registration or license shall not be reissued until the person provides the board a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for registration or licensure during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the board may impose. [1996 c 293 § 10.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.43.900 Short title. This chapter shall be known and may be cited as the "Professional Engineers' Registration Act". [1947 c 283 § 19.]

18.43.910 Severability—1947 c 283. If any section of this chapter shall be declared unconstitutional or invalid, such adjudication shall not invalidate any other provision or provisions thereof. [1947 c 283 § 17.]

18.43.920 Severability—1959 c 297. If any section of this act or part thereof shall be declared unconstitutional or invalid, such adjudication shall not invalidate any other provision or provisions thereof. [1959 c 297 § 8.]

18.43.930 Severability—1961 c 142. If any section of this act or part thereof shall be adjudged unconstitutional or invalid, such adjudication shall not invalidate any other provision or provisions thereof. [1961 c 142 § 6.]

Chapter 18.44

ESCROW AGENT REGISTRATION ACT

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18.44.010 Definitions. Unless the context otherwise requires terms used in this chapter shall have the following meanings:

(1) "Department" means the department of financial institutions.

(2) "Director" means the director of financial institutions, or his or her duly authorized representative.

(3) "Escrow" means any transaction wherein any person or persons, for the purpose of effecting and closing the sale, purchase, exchange, transfer, encumbrance, or lease of real or personal property to another person or persons, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by such third person until the happening of a specified event or the performance of a prescribed condition or conditions, when it is then to be delivered by such third

person, in compliance with instructions under which he is to act, to a grantee, grantor, promisee, promisor, obligee, obligor, lessee, lessor, bailee, bailor, or any agent or employee thereof.

(4) "Escrow agent" means any sole proprietorship, firm, association, partnership, or corporation engaged in the business of performing for compensation the duties of the third person referred to in RCW 18.44.010(3) above.

(5) "Certificated escrow agent" means any sole proprietorship, firm, association, partnership, or corporation holding a certificate of registration as an escrow agent under the provisions of this chapter.

(6) "Person" unless a different meaning appears from the context, includes an individual, a firm, association, partnership or corporation, or the plural thereof, whether resident, nonresident, citizen or not.

(7) "Escrow officer" means any natural person handling escrow transactions and licensed as such by the director.

(8) "Escrow commission" means the escrow commission of the state of Washington created by RCW 18.44.208.

(9) "Controlling person" is any person who owns or controls ten percent or more of the beneficial ownership of any escrow agent, regardless of the form of business organization employed and regardless of whether such interest stands in such person's true name or in the name of a nominee. [1995 c 238 § 1; 1985 c 7 § 47; 1979 c 158 § 42; 1977 ex.s. c 156 § 1; 1971 ex.s. c 245 § 1; 1965 c 153 § 1.]

Effective date—1995 c 238: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 238 § 10.]

18.44.020 Registration—Required—Exceptions. It shall be unlawful for any person to engage in business as an escrow agent within this state unless such person possesses a valid certificate of registration issued by the director pursuant to this chapter: PROVIDED, That the registration and licensing requirements of this chapter shall not apply to:

(1) Any person doing business under the law of this state or the United States relating to banks, trust companies, mutual savings banks, savings and loan associations, credit unions, insurance companies, title insurance companies, the duly authorized agents of title insurance companies the business of which agents is exclusively devoted to the title insurance business, or any federally approved agency or lending institution under the National Housing Act.

(2) Any person licensed to practice law in this state while engaged in the performance of his professional duties.

(3) Any company, broker, or agent subject to the jurisdiction of the director while performing acts in the course of or incidental to sales or purchases of real or personal property handled or negotiated by such company, broker, or agent: PROVIDED, HOWEVER, That no compensation is received for escrow services.

(4) Any transaction in which money or other property is paid to, deposited with, or transferred to a joint control agent for disbursement or use in payment of the cost of labor, material, services, permits, fees, or other items of expense incurred in the construction of improvements upon real property.

(5) Any receiver, trustee in bankruptcy, executor, administrator, guardian, or other person acting under the supervision or order of any superior court of this state or of any federal court. [1977 ex.s. c 156 § 2; 1971 ex.s. c 245 § 2; 1967 ex.s. c 76 § 1; 1965 c 153 § 2.]

18.44.030 Registration—Application, requisites. An application for registration as an escrow agent shall be in writing in such form as is prescribed by the director, and shall be verified on oath by the applicant. If the applicant is a corporation, the application shall include a list of the officers and directors of such corporation, and their addresses; if the applicant is a firm or partnership, the application shall include a list of the names and addresses of the partners. The application shall include a consent to service of process, in such form as the director shall prescribe, and payment of the fee required by RCW 18.44.080. [1977 ex.s. c 156 § 3; 1965 c 153 § 3.]

18.44.040 Registration—Filing requirements. Each applicant shall, at the time of applying for registration, file with the director:

(1) The applicant's business form and place of organization.

(2) In the event the applicant is doing business under an assumed name, a certified copy of the certificate of assumed name as filed with the county clerk in the county or counties in which the applicant does business or proposes to do business, as provided in chapter 19.80 RCW.

(3) The qualification and business history including a commercial type credit and character report from a recognized credit reporting bureau satisfactory to the director on the applicant, principal officers, controlling person, or partners.

(4) Such proof as the director may require concerning the honesty, veracity, and good reputation, as well as the identity of the applicant, principal officers, controlling person, or partners. Identification of the applicant, principal officers, or partners shall include but not be limited to fingerprints.

(5) Whether the applicant, principal officers, or partners have been convicted of any crime within the preceding ten years which relate directly to the business or duties of escrow agents, or have suffered a judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion.

(6) The identity of the natural person designated as the escrow officer to supervise the agent's escrow activity.

(7) Any other information the director may reasonably require. [1977 ex.s. c 156 § 4; 1971 ex.s. c 245 § 3; 1965 c 153 § 4.]

18.44.050 Fidelity bond—Errors and omissions policy. At the time of filing an application as an escrow agent, or any renewal or reinstatement thereof, the applicant shall satisfy the director that it has obtained the following as evidence of financial responsibility:

(1) A fidelity bond providing coverage in the aggregate amount of two hundred thousand dollars covering each corporate officer, partner, escrow officer, and employee of the applicant engaged in escrow transactions; and

(2) An errors and omissions policy issued to the escrow agent providing coverage in the minimum aggregate amount of fifty thousand dollars or, alternatively, cash or securities in the principal amount of fifty thousand dollars deposited in an approved depository on condition that they be available for payment of any claim payable under an equivalent errors and omissions policy in that amount and pursuant to rules and regulations adopted by the department for that purpose.

For the purposes of this section, a "fidelity bond" shall mean a primary commercial blanket bond or its equivalent satisfactory to the director and written by an insurer authorized to transact surety business in the state of Washington. Such bond shall provide fidelity coverage for any fraudulent or dishonest acts committed by any one or more of the employees or officers as defined in the bond, acting alone or in collusion with others. Said bond shall be for the sole benefit of the escrow agent and under no circumstances whatsoever shall the bonding company be liable under the bond to any other party. The bond shall name the escrow agent as obligee and shall protect the obligee against the loss of money or other real or personal property belonging to the obligee, or in which the obligee has a pecuniary interest, or for which the obligee is legally liable or held by the obligee in any capacity, whether the obligee is legally liable therefor or not. The bond may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the escrow agent.

For the purposes of this section, an "errors and omissions policy" shall mean a group or individual insurance policy satisfactory to the director and issued by an insurer authorized to transact insurance business in the state of Washington. Such policy shall provide coverage for unintentional errors and omissions of the escrow agent and its employees, and may be canceled by the insurer upon delivery of thirty days' written notice to the director and to the escrow agent.

Except as provided in RCW 18.44.360, the fidelity bond and the errors and omissions policy required by this section shall be kept in full force and effect as a condition precedent to the escrow agent's authority to transact escrow business in this state, and the escrow agent shall supply the director with satisfactory evidence thereof upon request. [1979 c 70 § 1; 1977 ex.s. c 156 § 5; 1971 ex.s. c 245 § 4; 1965 c 153 § 5.]

18.44.060 Cancellation of bond, new bond required.

In the event of cancellation of a bond the director shall require the filing of a new bond. Failure to deposit such new bond after notification by the director that one is required shall be sufficient grounds for the suspension or revocation of the certificate of registration. [1965 c 153 § 6.]

18.44.065 Reference to financial responsibility requirements prohibited. No escrow agent, officer, or employee shall publish or otherwise place before the public any advertisement, announcement, or statement which uses or makes reference to the existence of the financial responsibility requirements of this chapter, including but not limited to references to "bonded" or "insured".

No firm or organization engaged in escrow transactions, whether or not such firm is doing business in a corporate form, shall use in the name of such firm any reference to the financial responsibility requirements of this chapter, including but not limited to "bonded" or "insured". [1977 ex.s. c 156 § 18.]

18.44.067 Change in office location. Notice in writing shall be given to the director and to the insurer providing coverage under RCW 18.44.050 as now or hereafter amended of any change of business location or of branch office location. Upon the surrender of the original registration for the agent or the registration applicable to a branch office and a payment of a fee, the director shall issue a new certificate covering the new location. [1977 ex.s. c 156 § 19.]

18.44.070 Records and accounts—Segregation and disbursements of funds. Every certificated escrow agent shall keep adequate records of all transactions handled by or through the agent including itemization of all receipts and disbursements of each transaction, which records shall be open to inspection by the director or the director's authorized representatives.

Every certificated agent shall keep a separate escrow fund account in a recognized Washington state depository authorized to receive funds, in which shall be kept separate and apart and segregated from the agent's own funds, all funds or moneys of clients which are being held by the agent pending the closing of a transaction and such funds shall be deposited not later than the first banking day following receipt thereof.

An escrow agent, unless exempted by RCW 18.44.020(2), shall not make disbursements on any escrow account without first receiving deposits directly relating to the account in amounts at least equal to the disbursements. An escrow agent shall not make disbursements until the next business day after the business day on which the funds are deposited unless the deposit is made in cash, by interbank electronic transfer, or in a form that permits conversion of the deposit to cash on the same day the deposit is made. The deposits shall be in one of the following forms:

(1) Cash;

(2) Interbank electronic transfers such that the funds are unconditionally received by the escrow agent or the agent's depository;

(3) Checks, negotiable orders of withdrawal, money orders, cashier's checks, and certified checks that are payable in Washington state and drawn on financial institutions located in Washington state; or

(4) Checks, negotiable orders of withdrawal, money orders, and any other item that has been finally paid as described in RCW 62A.4-213 before any disbursement; or

(5) Any depository check, including any cashier's check, certified check, or teller's check, which is governed by the provisions of the Federal Expedited Funds Availability Act, 12 U.S.C. Sec. 4001 et seq.

The word "item" means any instrument for the payment of money even though it is not negotiable, but does not include money.

Violation of this section shall subject an escrow agent to penalties as prescribed in Title 9A RCW and remedies as provided in chapter 19.86 RCW and shall constitute grounds for suspension or revocation of the registration or license of any certified escrow agent. [1990 c 203 § 1; 1988 c 178 § 1; 1977 ex.s. c 156 § 6; 1965 c 153 § 7.]

Severability—1988 c 178: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 178 § 4.]

18.44.080 Fees. The director shall charge and collect the following fees:

(1) For filing an original or a renewal application for registration as an escrow agent, annual fees for the first office or location and for each additional office or location.

(2) For filing an application for a change of address, for each certificate of registration and for each escrow officer license being so changed.

(3) For filing an application for a duplicate of a certificate of registration or of an escrow officer license lost, stolen, destroyed, or for replacement.

(4) For providing administrative support to the escrow commission.

All fees under this chapter shall be set by rule by the director. In fixing these fees, the director shall set the fees at a sufficient level to defray the costs of administering this chapter.

All fees received by the director under this chapter shall be paid into the state treasury to the credit of the banking examination fund. [1995 c 238 § 2; 1985 c 340 § 1; 1977 ex.s. c 156 § 7; 1971 ex.s. c 245 § 5; 1965 c 153 § 8.]

Effective date—1995 c 238: See note following RCW 18.44.010.

18.44.090 Certificate of registration—Issuance.

Upon the filing of the application for registration as an escrow agent on a form provided by the director and satisfying the requirements as set forth in this chapter, the director shall issue and deliver to the applicant a certificate of registration to engage in the business of an escrow agent at the location set forth in the certificate. [1977 ex.s. c 156 § 8; 1965 c 153 § 9.]

18.44.100 Certificate—Duration—Posting. An escrow agent's certificate or [of] registration shall remain in effect until surrendered, revoked, suspended, or until it expires, and shall at all times be kept conspicuously posted in all places of business of the agent. [1965 c 153 § 10.]

18.44.110 Certificate—Expiration and renewal. Each escrow agent's certificate shall expire at noon on the thirty-first day of December of any calendar year. Registration may be renewed by filing an application and paying the annual registration fee for the next succeeding calendar year. [1985 c 340 § 2; 1965 c 153 § 11.]

18.44.120 Certificate—Reinstatement. An escrow agent's certificate which has not been renewed may be reinstated at any time prior to the thirtieth day of January following its expiration, upon the payment to the director of

the annual registration fees then in default and a penalty equal to one-half of the annual registration fees then in default. [1965 c 153 § 12.]

18.44.125 Certificate of registration suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the certificate of registration of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's certificate of registration shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for registration during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 11.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.44.130 Termination of certificate—Effect upon preexisting escrows—Notice to principals. The revocation, suspension, surrender or expiration of an escrow agent's certificate shall not impair or affect preexisting escrows accepted by the agent prior to such revocation, suspension, surrender or expiration: **PROVIDED,** That the escrow agent shall within five work days provide written notice to all principals of such preexisting escrows of the agent's loss of registration. The notice shall include as a minimum the reason for the loss of registration, the estimated date for completing the escrow, and the condition of the agent's bond and whether it is in effect or whether notice of cancellation has been given. The notice shall afford the principals the right to withdraw the escrow without monetary loss. [1977 ex.s. c 156 § 9; 1965 c 153 § 13.]

18.44.140 Engaging in business without certificate—Penalty. Any person required by this chapter to obtain a certificate of registration who engages in business as an escrow agent without applying for and receiving the certificate of registration required by this chapter, or wilfully continues to act as an escrow agent after surrender or revocation of his certificate, is guilty of a misdemeanor punishable by imprisonment for not more than ninety days, or by a fine of not more than two hundred fifty dollars, or by both such fine and imprisonment. [1965 c 153 § 14.]

Date for initial compliance: "All persons doing business within this state as an escrow agent as defined in this act, who may be required by this act to register with the department, shall comply with the provisions hereof not later than December 31, 1965." [1965 c 153 § 15.]

18.44.145 Referral fees prohibited. (1) "Real property lender" as used in this section means a bank, savings bank, savings and loan association, credit union,

mortgage company, or other corporation, association, or partnership that makes loans secured by real property located in this state.

(2) No real property lender, escrow agent, or officer or employee of any escrow agent or real property lender may give or agree to pay or give any money, service, or object of value to any real estate agent or broker, to any real property lender, or to any officer or employee of any agent, broker, or lender in return for the referral of any real estate escrow services. Nothing in this subsection prohibits the payment of fees or other compensation permitted under the federal Real Estate Settlement Procedures Act as amended (12 U.S.C. sections 2601 through 2617).

(3) A violation of this section constitutes a violation of RCW 19.86.020, and any person harmed in his or her business or property is entitled to the remedies provided under RCW 19.86.090. [1988 c 178 § 3.]

Severability—1988 c 178: See note following RCW 18.44.070.

18.44.150 Enforcement officials. The attorney general and the prosecuting attorneys of the several counties shall be responsible for the enforcement of this chapter. [1965 c 153 § 16.]

18.44.160 Remedies—Injunction—Restraining order. Whenever it shall appear that any person, required by this chapter to register with the department, is conducting business as an escrow agent without having applied for and obtained a certificate of registration, or that any certificated escrow agent is conducting business in a manner deemed unsafe or injurious to the public or any party having business relations with such escrow agent as a contracting party to an escrow agreement as defined in RCW 18.44.010, or in violation of any of the provisions of this chapter, the attorney general or the prosecuting attorney of the appropriate county may, after such investigation as may be necessary, apply to the appropriate court for an order enjoining the person from engaging in or continuing to engage in the activity violative of this chapter, and upon a showing that such person has engaged, or is about to engage, in any such activity, a permanent or temporary injunction, restraining order, or other appropriate order may be issued by the court. [1977 ex.s. c 156 § 10; 1965 c 153 § 17.]

18.44.170 Remedies—Affecting corporate franchise. Upon petition by the attorney general, the court may, in its discretion, order the dissolution, or suspension or forfeiture of franchise, of any corporation for repeated or flagrant violation of this chapter or the terms of any order of injunction hereunder. [1965 c 153 § 18.]

18.44.175 Violations—Cease and desist orders—Injunction—Restraining order. If the director determines after notice and hearing that a person has:

- (1) Violated any provision of this chapter; or
- (2) Directly, or through an agent or employee, engaged in any false, deceptive, or misleading
 - (a) advertising or promotional activity, or
 - (b) business practices; or
- (3) Violated any lawful order, rule, or regulation of the director; the director may issue an order requiring the person

to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the director will carry out the purposes of this chapter.

If the director makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the director, whenever possible by telephone or otherwise, shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held to determine whether or not the order becomes permanent.

If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule or order under this chapter, the director, with or without prior administrative proceedings, may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule, regulation, or order under this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall be granted and a receiver or conservator may be appointed. The director shall not be required to post a bond in any court proceedings. [1977 ex.s. c 156 § 20.]

18.44.180 Proof of registration prerequisite to action for fee. No person engaged in the business or acting in the capacity of an escrow agent may bring or maintain any action in any court of this state for the collection or compensation for the performances of any services entered upon after December 31, 1965, for which registration is required under this chapter without alleging and proving that he was a duly certificated escrow agent at the time of commencement of such services. [1965 c 153 § 19.]

18.44.190 Receivership. Upon application by the director or any other interested party and upon a showing that the interest of the creditors so requires, the superior court may appoint a receiver to take over, operate, or liquidate any escrow office in this state. [1971 ex.s. c 245 § 6.]

18.44.200 Escrow officer required for handling transactions—Exceptions—Responsibility of supervising escrow agent. No escrow agent shall engage in the business of handling escrow transactions unless such transactions are supervised by a licensed "escrow officer": PROVIDED, That (1) in the case of a partnership, one licensed partner shall act on behalf of the partnership; (2) in the case of a corporation, one licensed officer thereof shall act on behalf of the corporation; and (3) each branch office shall be required to have at least one licensed escrow officer designated by the escrow agent. Responsibility for the conduct of any escrow agent, escrow officers, or branch escrow officers covered by this chapter shall rest with the escrow officer having direct supervision of such person's escrow activities. The branch escrow officer shall bear responsibility for persons operating under each branch escrow officer's supervision at a branch escrow office. [1977 ex.s. c 156 § 11; 1971 ex.s. c 245 § 7.]

18.44.208 Escrow commission—Members—Terms—Compensation and travel expenses. There is established an escrow commission of the state of Washington, to consist of the director of financial institutions or his or her designee as chairman, and five other members who shall act as advisors to the director as to the needs of the escrow profession, including but not limited to the design and conduct of tests to be administered to applicants for escrow licenses, the schedule of license fees to be applied to the escrow licensees, educational programs, audits and investigations of the escrow profession designed to protect the consumer, and such other matters determined appropriate. The director is hereby empowered to and shall appoint the other members, each of whom shall have been a resident of this state for at least five years and shall have at least five years experience in the practice of escrow as an escrow agent or as a person in responsible charge of escrow transactions.

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

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

Members shall be compensated in accordance with RCW 43.03.240, and shall be reimbursed for their travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060. [1995 c 238 § 3; 1985 c 340 § 3; 1984 c 287 § 36.]

Effective date—1995 c 238: See note following RCW 18.44.010.

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

18.44.215 Compensation and travel expenses of commission members. The escrow commission members shall each be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses as provided for state officials and employees in RCW 43.03.050 and 43.03.060, when called into session by the director or when otherwise engaged in the business of the commission. [1984 c 287 § 37; 1977 ex.s. c 156 § 29.]

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

18.44.220 Escrow officers—Examination—Fee—Qualifications. Any person desiring to be an escrow officer must successfully pass an examination. The person shall make application for an escrow officer examination on a form provided by the director and pay an examination fee. The applicant shall satisfy the director that the applicant is at least eighteen years old and is a resident of the state of

Washington. [1985 c 340 § 4; 1977 ex.s. c 156 § 13; 1971 ex.s. c 245 § 9.]

18.44.240 Escrow officer examination—Subjects—Annual. The escrow officer examination shall encompass the following:

(1) Appropriate knowledge of the English language, including reading, writing, and arithmetic;

(2) An understanding of the principles of real estate conveyancing, the general purposes and legal effects of deeds, mortgages, deeds of trust, contracts of sale, exchanges, rental and optional agreements, leases, earnest money agreements, personal property transfers, and encumbrances;

(3) An understanding of the obligations between principal and agent; and

(4) An understanding of the meaning and nature of encumbrances upon real property.

The examination shall be in such form as prescribed by the director and approved by the commission, and shall be given at least annually. [1977 ex.s. c 156 § 14; 1971 ex.s. c 245 § 11.]

18.44.250 Director—Educational conferences—Examinations. The director shall have the authority to hold educational conferences for the benefit of the industry and shall conduct examinations for licenses as an escrow officer. [1977 ex.s. c 156 § 15; 1971 ex.s. c 245 § 12.]

18.44.260 Actions against registration or license—Grounds. The director may, upon notice to the escrow agent and to the insurer providing coverage under RCW 18.44.050 as now or hereafter amended, by order deny, suspend, or revoke the certificate of registration or license of any escrow agent or escrow officer if he finds that the applicant or any partner, officer, director, controlling person, or employee is guilty of the following:

(1) Obtaining a license or registration by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the director.

(2) Violating any of the provisions of this chapter or any lawful rules or regulations made by the director pursuant thereto.

(3) The commission of a crime against the laws of this or any other state or government, involving moral turpitude or dishonest dealings.

(4) Knowingly committing or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relying upon the word, representation, or conduct of the licensee or agent or any partner, officer, director, controlling person, or employee acts to his injury or damage.

(5) Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title to his own use or to the use of his principal or of any other person, when delivered to him in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract or other evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefor, shall be prima facie evidence of such conversion.

(6) Failing, upon demand, to disclose any information within his knowledge to, or to produce any document, book, or record in his possession for inspection of, the director or his authorized representatives.

(7) Committing any act of fraudulent or dishonest dealing, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter.

(8) Accepting, taking or charging any undisclosed commission, rebate or direct profit on expenditures made for the principal. [1977 ex.s. c 156 § 16; 1971 ex.s. c 245 § 13.]

18.44.270 Application of Administrative Procedure Act. The proceedings for revocation, suspension, or refusal to renew or accept an application for renewal of an escrow agent's registration or escrow officer license, and any appeal therefrom or review thereof shall be governed by the provisions of chapter 34.05 RCW. [1977 ex.s. c 156 § 17; 1971 ex.s. c 245 § 14.]

18.44.280 Investigation of violations—Procedure—Powers of director. The director may:

(1) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule, regulation, or order under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter; or

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the director determines, as to all facts and circumstances concerning the matter to be investigated.

For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him may administer oaths or affirmations, and upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the administrative procedure act, chapter 34.05 RCW. [1977 ex.s. c 156 § 21.]

18.44.290 Escrow officer's license—Application—Form—Timely filing—Proof of moral character, etc. Any person desiring to be an escrow officer shall meet the requirements of RCW 18.44.220 as provided in this chapter. The applicant shall make application endorsed by a certificated escrow agent to the director on a form to be prescribed and furnished by the director. Such application must be

received by the director within one year of passing the escrow officer examination. With this application the applicant shall:

(1) Pay a license fee as set forth by rule; and

(2) Furnish such proof as the director may require concerning his or her honesty, truthfulness, good reputation, and identity, including but not limited to fingerprints. [1995 c 238 § 4; 1977 ex.s. c 156 § 22.]

Effective date—1995 c 238: See note following RCW 18.44.010.

18.44.300 License—Fees—Renewal. Any person desiring to be an escrow officer must include with the application a license fee. Every escrow officer license issued under the provisions of this chapter expires on the date one year from the date of issue which date will henceforth be the renewal date. An annual license renewal fee in the same amount must be paid on or before each renewal date: PROVIDED, That licenses issued or renewed prior to September 21, 1977 shall use the existing renewal date as the date of issue. If the application for a renewal license is not received by the director on or before the renewal date such license is expired. The license may be reinstated at any time prior to the next succeeding renewal date following its expiration upon the payment to the director of the annual renewal fee then in default. Acceptance by the director of an application for renewal after the renewal date shall not be a waiver of the delinquency. Licenses not renewed within one year of the renewal date then in default shall be canceled. A new license may be obtained by satisfying the procedures and qualifications for initial licensing, including where applicable successful completion of examinations. [1985 c 340 § 5; 1977 ex.s. c 156 § 23.]

18.44.310 License—Retention and display by agent—Termination—Inactive licenses. The license of an escrow officer shall be retained and displayed at all times by the certificated escrow agent, and when the officer ceases to represent the agent, the license shall cease to be in force. Notice of such termination shall be given by the next regular business day by the escrow agent to the director and such notice shall be accompanied by and include the surrender of the escrow officer's license. Failure to notify the director of such termination after demand by the affected escrow officer shall work a forfeiture of the escrow agent's certificate of registration.

The director may hold the escrow officer's license inactive upon application of the escrow officer: PROVIDED, That the escrow officer shall pay the annual renewal fee. Such license may be activated upon application of a certificated escrow agent on a form provided by the director and the payment of a fee. The director shall thereupon issue a new license for the unexpired term if such escrow officer is otherwise entitled thereto. An escrow officer's first license shall not be issued inactive. [1989 c 51 § 1; 1985 c 340 § 6; 1977 ex.s. c 156 § 24.]

18.44.320 Rules—Enforcement—Hearings—Actions against registration or licenses—Powers of director. The director may issue rules and regulations to govern the activities of certificated escrow agents and escrow officers. The director shall enforce all laws, rules, and regulations

relative to the registration of escrow agents and licensing of escrow officers. The director may hold hearings and suspend or revoke the registration or licenses of violators and may deny, suspend, or revoke the authority of an escrow officer to act as the designated escrow officer of a person who commits violations of this chapter or of the rules and regulations.

Except as specifically provided in this chapter, the rules adopted and the hearings conducted shall be in accordance with the provisions of chapter 34.05 RCW, the administrative procedure act. [1977 ex.s. c 156 § 25.]

18.44.330 Branch offices—Application to establish—Requirements. An escrow agent shall not operate an escrow business in a location other than the location set forth on the agent's certificate of registration issued by the director. The escrow agent may apply to the director for authority to establish one or more branch offices under the same name as the main office.

Any person desiring to operate a branch escrow office shall make application on a form provided by the director and pay a fee as set forth in this chapter. Such application shall identify the natural person designated as the escrow officer to supervise the agent's escrow activity at the escrow agent branch office.

No escrow agent branch office certificate of registration shall be issued until the applicant has satisfied the director that the escrow activity of said branch meets all financial responsibility requirements governing the conduct of escrow activity. [1977 ex.s. c 156 § 26.]

18.44.340 Branch offices—Issuance of certificate. Upon the filing of the application for an escrow agent branch office and satisfying the requirements of this chapter, the director shall issue and deliver to the applicant a certificate of registration to engage in the business of an escrow agent at the branch location set forth on the certificate. [1977 ex.s. c 156 § 27.]

18.44.350 Certificates and licenses—Form and size—Contents. Each escrow agent and escrow agent branch office certificate of registration and each escrow officer license, when issued, shall be in the form and size prescribed by the director and shall state in addition to any other matter required by the director:

- (1) The name of the licensee or registrant;
- (2) The name under which the applicant will do business;
- (3) The address at which the applicant will do business;
- (4) The expiration date of the license or registration; and
- (5) In the case of a corporation, partnership, or branch office, the name of the natural person who is designated to act as the escrow officer on behalf thereof. [1977 ex.s. c 156 § 28.]

18.44.360 Waiver of bond or policy where not reasonably available—Determination procedure—Waiver period. The director shall, within thirty days after the written request of the escrow commission, hold a public hearing to determine whether the fidelity bond and/or the errors and omissions policy specified in RCW 18.44.050 as

now or hereafter amended is reasonably available to a substantial number of certificated escrow agents. If the director determines and the insurance commissioner concurs that such bond and/or policy is not reasonably available, the director shall waive the requirements for such bond and/or policy for a fixed period of time. [1988 c 178 § 2; 1977 ex.s. c 156 § 30.]

Severability—1988 c 178: See note following RCW 18.44.070.

18.44.370 Mutual corporation for insuring where bond or policy not reasonably available. After a written determination by the director, with the consent of the insurance commissioner, that the fidelity bond and/or the errors and omissions policy required under RCW 18.44.050 as now or hereafter amended is cost-prohibitive, or after a determination as provided in RCW 18.44.360 that such bond or policy is not reasonably available, upon the request of an association comprised of certificated escrow agents, the director, with the consent of the insurance commissioner, may authorize such association to organize a mutual corporation pursuant to chapter 24.06 RCW, exempt from the provisions of Title 48 RCW, for the purpose of insuring or self-insuring against claims arising out of escrow transactions, if, in the director's judgment, there is a substantial likelihood that the corporation will operate for the benefit of the public and if the corporation shall have established rules, procedures, and reserves which satisfy the director that it will operate in a financially responsible manner which provides a substantial probability that it shall be able to pay any claims made against the corporation, up to the limits of financial responsibility as provided in RCW 18.44.050, as now or hereafter amended. The director, with the consent of the insurance commissioner, may limit the authority of the corporation to the insuring or self-insuring of claims which would be within the coverage specified in RCW 18.44.050. The director, with the consent of the insurance commissioner, may revoke the authority of the corporation to transact insurance or self-insurance if he determines, pursuant to chapter 34.05 RCW, that the corporation is not acting in a financially responsible manner or for the benefit of the public. [1987 c 471 § 4; 1977 ex.s. c 156 § 31.]

Severability—1987 c 471: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 471 § 11.]

Effective date—1987 c 471: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 471 § 13.]

18.44.375 Waiver of errors and omissions policy requirement—Criteria. The following criteria will be considered by the director when deciding whether to grant a licensed escrow agent a waiver from the errors and omissions policy requirement under RCW 18.44.050:

(1) Whether the director has determined pursuant to RCW 18.44.360 that an errors and omissions policy is not reasonably available to a substantial number of licensed escrow agents;

(2) Whether purchasing an errors and omissions policy would be cost-prohibitive for the licensed escrow agent requesting the exemption;

(3) Whether a licensed escrow agent has wilfully violated the provisions of chapter 18.44 RCW, which violation thereby resulted in the termination of the agent's certificate, or engaged in any other conduct resulting in the termination of the escrow certificate;

(4) Whether a licensed escrow agent has paid claims directly or through an errors and omissions carrier, exclusive of costs and attorney fees, in excess of ten thousand dollars in the calendar year preceding the year for which the waiver is requested;

(5) Whether a licensed escrow agent has paid claims directly or through an errors or omissions insurance carrier, exclusive of costs and attorney fees, totaling in excess of twenty thousand dollars in the three calendar years preceding the calendar year for which the exemption is requested; and

(6) Whether the licensed escrow agent has been convicted of a crime involving honesty or moral turpitude.

These criteria are not intended to be a wholly inclusive list of factors to be applied by the director when considering the merits of a licensed escrow agent's request for a waiver of the required errors and omissions policy. [1987 c 471 § 5.]

Effective date—Severability—1987 c 471: See notes following RCW 18.44.370.

18.44.380 Waiver—Affidavit. A request for a waiver of the required errors and omissions policy may be accomplished under the statute by submitting to the director an affidavit that substantially addresses the following:

REQUEST FOR WAIVER OF ERRORS AND OMISSIONS POLICY

I,, residing at, City of, County of, State of Washington, declare the following:

(1) The state escrow commission has determined that an errors and omissions policy is not reasonably available to a substantial number of licensed escrow officers; and

(2) Purchasing an errors and omissions policy is cost-prohibitive at this time; and

(3) I have not engaged in any conduct that resulted in the termination of my escrow certificate; and

(4) I have not paid, directly or through an errors and omissions policy, claims in excess of ten thousand dollars, exclusive of costs and attorneys' fees, during the calendar year preceding submission of this affidavit; and

(5) I have not paid, directly or through an errors and omissions policy, claims, exclusive of costs and attorneys' fees, totaling in excess of twenty thousand dollars in the three calendar years immediately preceding submission of this affidavit; and

(6) I have not been convicted of a crime involving honesty or moral turpitude during the calendar year preceding submission of this application.

THEREFORE, in consideration of the above, I,, respectfully request that the director of financial institutions grant this request for a waiver of the requirement that I purchase and maintain an errors and omissions policy covering my activities as an escrow agent licensed by the state of Washington for the period from, 19. . ., to, 19. . .

Submitted this day of day of, 19. . .

.....
(signature)

State of Washington, }
County of } ss.

I certify that I know or have satisfactory evidence that, signed this instrument and acknowledged it to be free and voluntary act for the uses and purposes mentioned in the instrument.

Dated
Signature of
Notary Public
(Seal or stamp) Title
My appointment expires

[1995 c 238 § 5; 1987 c 471 § 10.]

Effective date—1995 c 238: See note following RCW 18.44.010.

Effective date—Severability—1987 c 471: See notes following RCW 18.44.370.

18.44.385 Waiver—Determination. The director shall, within thirty days following submission of a written petition for waiver of the insurance requirements found in RCW 18.44.050, issue a written determination granting or rejecting an applicant's request for waiver. [1987 c 471 § 6.]

Effective date—Severability—1987 c 471: See notes following RCW 18.44.370.

18.44.390 Waiver—Certificate of waiver. Upon granting a waiver of insurance requirements found in RCW 18.44.050, the director shall issue a certificate of waiver, which certificate shall be mailed to the escrow agent who requested the waiver. [1987 c 471 § 7.]

Effective date—Severability—1987 c 471: See notes following RCW 18.44.370.

18.44.395 Waiver—Denial. Upon determining that a licensed escrow agent is to be denied a waiver of the errors and omissions policy requirements of RCW 18.44.050, the director shall within thirty days of the denial of an escrow agent's request for same, provide to the escrow agent a written explanation of the reasons for the director's decision to deny the requested waiver. [1987 c 471 § 8.]

Effective date—Severability—1987 c 471: See notes following RCW 18.44.370.

18.44.398 Waiver—Application by escrow license applicant. Nothing in RCW 18.44.050 and 18.44.375 through 18.44.395 shall be construed as prohibiting a person applying for an escrow license from applying for a certificate of waiver of the errors and omissions policy requirement when seeking an escrow license. [1987 c 471 § 9.]

Effective date—Severability—1987 c 471: See notes following RCW 18.44.370.

18.44.900 Construction—1965 c 153. Nothing in this chapter shall be so construed as to authorize any escrow agent, or his employees or agents, to engage in the practice of law, and nothing in this chapter shall be so construed as to impose any additional liability on any depository autho-

rized by this chapter and the receipt or acquittance of the persons so paid by such depository shall be a valid and sufficient release and discharge of such depository. [1965 c 153 § 20.]

18.44.910 Short title. This chapter shall be known and cited as the "Escrow Agent Registration Act". [1965 c 153 § 21.]

18.44.920 Severability—1971 ex.s. c 245. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 245 § 15.]

18.44.921 Severability—1977 ex.s. c 156. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 156 § 33.]

18.44.922 Severability—1979 c 70. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 70 § 2.]

Chapter 18.45

FURNITURE AND BEDDING INDUSTRY

Sections

- 18.45.010 Definitions.
- 18.45.020 Administration of chapter.
- 18.45.440 Inspection of premises, records, materials—Powers of secretary.
- 18.45.450 Condemnation of articles, materials—Grounds—Disposition.
- 18.45.470 Condemned articles—Failure to relinquish—Penalty.

18.45.010 Definitions.

Reviser's note: RCW 18.45.010 was amended by 1979 c 141 § 27 without reference to its repeal by 1979 c 99 § 1, effective June 30, 1982. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.45.020 Administration of chapter.

Reviser's note: RCW 18.45.020 was amended by 1979 c 141 § 28 without reference to its repeal by 1979 c 99 § 51, effective June 30, 1982. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.45.440 Inspection of premises, records, materials—Powers of secretary.

Reviser's note: RCW 18.45.440 was amended by 1979 c 141 § 29 without reference to its repeal by 1979 c 99 § 51, effective June 30, 1982. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.45.450 Condemnation of articles, materials—Grounds—Disposition.

Reviser's note: RCW 18.45.450 was amended by 1979 c 141 § 30 without reference to its repeal by 1979 c 99 § 51, effective June 30, 1982. It has been decodified for publication purposes pursuant to RCW 1.12.025.

18.45.470 Condemned articles—Failure to relinquish—Penalty.

Reviser's note: RCW 18.45.470 was amended by 1979 c 141 § 31 without reference to its repeal by 1979 c 99 § 51, effective June 30, 1982. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Chapter 18.46

MATERNITY HOMES

Sections

- 18.46.005 Purpose.
- 18.46.010 Definitions.
- 18.46.020 License required.
- 18.46.030 Application for license—Fee.
- 18.46.040 License—Issuance—Renewal—Limitations—Display.
- 18.46.050 Actions against license.
- 18.46.055 License suspension—Nonpayment or default on educational loan or scholarship.
- 18.46.060 Rules.
- 18.46.070 Rules—Time for compliance.
- 18.46.080 Inspections—Approval of new facilities.
- 18.46.090 Information confidential.
- 18.46.110 Fire protection—Duties of chief of the Washington state patrol.
- 18.46.120 Operating without license—Penalty.
- 18.46.130 Operating without license—Injunction.
- 18.46.140 Application of chapter to homes operated by certain religious organizations.
- 18.46.900 Severability—1951 c 168.

Abortion: Chapter 9.02 RCW.

Crimes relating to pregnancy and childbirth: RCW 9A.32.060.

Filing certificate of birth: RCW 70.58.080.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

18.46.005 Purpose. The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of maternity homes, which, in the light of advancing knowledge, will promote safe and adequate care and treatment of the individuals therein. [1951 c 168 § 1.]

18.46.010 Definitions. (1) "Maternity home" means any home, place, hospital or institution in which facilities are maintained for the care of four or more women, not related by blood or marriage to the operator, during pregnancy or during or within ten days after delivery: PROVIDED, HOWEVER, That this chapter shall not apply to any hospital approved by the American College of Surgeons, American Osteopathic Association or its successor.

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

(3) "Department" means the state department of health. [1991 c 3 § 100; 1985 c 213 § 8; 1979 c 141 § 32; 1951 c 168 § 2. Prior: 1943 c 214 § 1; Rem. Supp. 1943 § 6130-47.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

18.46.020 License required. After July 1, 1951 no person shall operate a maternity home in this state without a license under this chapter. [1951 c 168 § 3. Prior: 1943 c 214 § 2; Rem. Supp. 1943 § 6130-48.]

18.46.030 Application for license—Fee. An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires, which may include affirmative evidence of ability to comply with rules and regulations as are lawfully prescribed hereunder. Each application for license or renewal of license shall be accompanied by a license fee as established by the department under RCW 43.20B.110: PROVIDED, That no fee shall be required of charitable or nonprofit or government-operated institutions. [1987 c 75 § 4; 1982 c 201 § 5; 1951 c 168 § 4.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

18.46.040 License—Issuance—Renewal—Limitations—Display. Upon receipt of an application for a license and the license fee, the licensing agency shall issue a license if the applicant and the maternity home facilities meet the requirements established under this chapter. A license, unless suspended or revoked, shall be renewable annually. Applications for renewal shall be on forms provided by the department and shall be filed in the department not less than ten days prior to its expiration. Each application for renewal shall be accompanied by a license fee as established by the department under RCW 43.20B.110. Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises. [1987 c 75 § 5; 1982 c 201 § 6; 1951 c 168 § 5. Prior: 1943 c 214 § 3; Rem. Supp. 1943 § 6130-49.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

18.46.050 Actions against license. The department may deny, suspend, or revoke a license in any case in which it finds that there has been failure or refusal to comply with the requirements established under this chapter or the rules adopted under it.

RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1991 c 3 § 101; 1989 c 175 § 63; 1985 c 213 § 9; 1951 c 168 § 6.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

18.46.055 License suspension—Nonpayment or default on educational loan or scholarship. The department shall suspend the license of any person who has been certified by a lending agency and reported to the department for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license shall not be reissued until the person provides the department a written release issued by the lending agency stating that

the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the department may impose. [1996 c 293 § 12.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.46.060 Rules. The department, after consultation with representatives of maternity home operators, state medical association, Washington Osteopathic Association, state nurses association, state hospital association, and any other representatives as the department may deem necessary, shall adopt, amend, and promulgate such rules and regulations with respect to all maternity homes in the promotion of safe and adequate medical and nursing care of inmates in the maternity home and the sanitary, hygienic and safe condition of the maternity home in the interest of the health, safety and welfare of the people. [1985 c 213 § 10; 1951 c 168 § 7.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

18.46.070 Rules—Time for compliance. Any maternity home which is in operation at the time of promulgation of any applicable rules or regulations under this chapter shall be given a reasonable time, under the particular circumstances, not to exceed three months from the date of such promulgation, to comply with the rules and regulations established under this chapter. [1951 c 168 § 8.]

18.46.080 Inspections—Approval of new facilities. The department shall make or cause to be made an inspection and investigation of all maternity homes, and every inspection may include an inspection of every part of the premises. The department may make an examination of all records, methods of administration, the general and special dietary and the stores and methods of supply. The board may prescribe by regulation that any licensee or applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall before commencing such alterations, addition, or new construction submit plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to compliance with regulations and standards herein authorized. Necessary conferences and consultations may be provided. [1951 c 168 § 9. Prior: 1943 c 214 § 4; Rem. Supp. 1943 § 6130-50.]

18.46.090 Information confidential. All information received by the department through filed reports, inspection, or as otherwise authorized under this chapter shall not be disclosed publicly in any manner as to identify individuals or maternity homes except in a proceeding involving the question of licensure. [1951 c 168 § 10.]

18.46.110 Fire protection—Duties of chief of the Washington state patrol. Fire protection with respect to all maternity homes to be licensed hereunder, shall be the responsibility of the chief of the Washington state patrol,

through the director of fire protection, who shall adopt by reference, such recognized standards as may be applicable to nursing homes, places of refuge, and maternity homes for the protection of life against the cause and spread of fire and fire hazards. The department upon receipt of an application for a license, shall submit to the chief of the Washington state patrol, through the director of fire protection, in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make an inspection of the maternity home to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the chief of the Washington state patrol, through the director of fire protection, he or she shall promptly make a written report to the department as to the manner in which the premises may qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department, applicant or licensee shall notify the chief of the Washington state patrol, through the director of fire protection, upon completion of any requirements made by him or her, and the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make a reinspection of such premises. Whenever the maternity home to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, he or she shall submit to the department, a written report approving same with respect to fire protection before a license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall make or cause to be made such inspection of such maternity homes as he or she deems necessary.

In cities which have in force a comprehensive building code, the regulation of which is equal to the minimum standards of the code for maternity homes adopted by the chief of the Washington state patrol, through the director of fire protection, the building inspector and the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection and shall approve the premises before a license can be issued.

In cities where such building codes are in force, the chief of the Washington state patrol, through the director of fire protection, may, upon request by the chief fire official, or the local governing body, or of a taxpayer of such city, assist in the enforcement of any such code pertaining to maternity homes. [1995 c 369 § 5; 1986 c 266 § 82; 1951 c 168 § 12.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

State fire protection: Chapter 48.48 RCW.

18.46.120 Operating without license—Penalty. Any person operating or maintaining any maternity home without a license under this chapter shall be guilty of a misdemeanor. Each day of a continuing violation after conviction shall be considered a separate offense. [1951 c 168 § 13.]

18.46.130 Operating without license—Injunction. Notwithstanding the existence or use of any other remedy, the department may in the manner provided by law, upon the

advice of the attorney general who shall represent the department in all proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the operation or maintenance of a maternity home not licensed under this chapter. [1951 c 168 § 14.]

Injunctions: Chapter 7.40 RCW.

18.46.140 Application of chapter to homes operated by certain religious organizations. Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial and nursing care of residents or patients in any maternity home as defined in this chapter, conducted for or by members of a recognized religious sect, denomination, or organization which in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion, nor shall the existence of any of the above conditions militate against the licensing of such home or institution. [1951 c 168 § 15.]

18.46.900 Severability—1951 c 168. If any provision of this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1951 c 168 § 17.]

Chapter 18.48

ADULT FAMILY HOMES

Sections

- 18.48.010 Definitions.
- 18.48.020 Registration.
- 18.48.030 Application of uniform disciplinary act.
- 18.48.040 Multiple facility operators—Registration.

Licensing of adult family homes by department of social and health services: Chapter 70.128 RCW.

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

(1) "Secretary" means the secretary of the department of health.

(2) "Adult family home" means a regular family abode of a person or persons who provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

(3) "Resident manager" means a person who is employed or otherwise is contracted with by the provider to manage the adult family home.

(4) "Provider" means any person who is licensed under chapter 70.128 RCW to operate an adult family home. For the purposes of this section, "person" means any individual, partnership, corporation, association, or limited liability company. [1996 c 81 § 2; 1995 c 260 § 7.]

Effective date—1996 c 81: See note following RCW 70.128.120.

Effective date—1995 c 260 §§ 7-11: "Sections 7 through 11 of this act shall take effect July 1, 1996." [1995 1st sp.s. c 18 § 116; 1995 c 260 § 12.]

18.48.020 Registration. (1) The secretary shall register adult family home providers and resident managers.

(2) The secretary, by policy or rule, shall define terms and establish forms and procedures for registration applications, including the payment of registration fees pursuant to RCW 43.70.250. An application for an adult family home resident manager or provider registration shall include at least the following information:

(a) Name and address; and

(b) If the provider is a corporation, copies of its articles of incorporation and current bylaws, together with the names and addresses of its officers and directors.

(3) The secretary shall adopt policies or rules to establish the registration periods, fees, and procedures. If the adult family home is sold or ownership or management is transferred, the registration shall be voided and the provider and resident manager shall apply for a new registration. [1996 c 81 § 4; 1995 c 260 § 8.]

Effective date—1996 c 81: See note following RCW 70.128.120.

Effective date—1995 c 260 §§ 7-11: See note following RCW 18.48.010.

18.48.030 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, shall govern the issuance and denial of registration and the discipline of persons registered under this chapter. The secretary shall be the disciplinary authority under this chapter. [1995 c 260 § 9.]

Effective date—1995 c 260 §§ 7-11: See note following RCW 18.48.010.

18.48.040 Multiple facility operators—Registration. A provider who operates more than one adult family home must register for each separate location. [1996 c 81 § 3.]

Effective date—1996 c 81: See note following RCW 70.128.120.

**Chapter 18.50
MIDWIFERY**

Sections

- 18.50.003 Regulation of health care professions—Criteria.
- 18.50.005 Definitions.
- 18.50.010 Practicing midwifery defined—Gratuitous services—Duty to consult with physician.
- 18.50.020 License required.
- 18.50.030 Exemptions—Practice of religion—Treatment by prayer.
- 18.50.032 Exemptions—Registered nurses and nurse midwives.
- 18.50.034 Exemptions—Persons enrolled in midwifery programs.
- 18.50.040 Candidates for examination—Application—Eligibility—Student midwife permits.
- 18.50.045 Midwifery education programs—Accreditation.
- 18.50.050 Compliance with secretary's determination.
- 18.50.060 Examinations—Times and places—Subjects—Issuance of license.
- 18.50.065 Credentialing by endorsement.
- 18.50.102 Registration—Renewal fee.
- 18.50.105 Inform patient of qualifications of midwife—Form.
- 18.50.108 Written plan for consultation, emergency transfer, and transport.
- 18.50.115 Administration of drugs and medications—Rules.
- 18.50.126 Application of uniform disciplinary act.

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- 18.50.130 "Certificate" and "license" synonymous.
- 18.50.135 Rules.
- 18.50.140 Midwifery advisory committee—Generally.
- 18.50.150 Midwifery advisory committee—Advice and recommendations—Transmittal to legislature.
- 18.50.900 Repeal and saving.

Abortion: Chapter 9.02 RCW.

Actions for injuries resulting from health care: Chapter 7.70 RCW.

Crimes relating to pregnancy and childbirth: RCW 9A.32.060.

Filing certificate of birth: RCW 70.58.080.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.50.003 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

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

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of health.

(3) "Midwife" means a midwife licensed under this chapter.

(4) "Physician" means a physician licensed under chapter 18.57 or 18.71 RCW. [1991 c 3 § 102; 1987 c 467 § 1; 1981 c 53 § 2.]

Effective date—1981 c 53: "Sections 1, 2, 5, 6, 8, 9, 10, 11, and 13 through 17 of this act shall take effect January 15, 1982." [1981 c 53 § 19.] For codification of 1981 c 53, see Codification Tables, Volume 0.

18.50.010 Practicing midwifery defined—Gratuitous services—Duty to consult with physician. Any person shall be regarded as practicing midwifery within the meaning of this chapter who shall render medical aid for a fee or compensation to a woman during prenatal, intrapartum, and postpartum stages or who shall advertise as a midwife by signs, printed cards, or otherwise. Nothing shall be construed in this chapter to prohibit gratuitous services. It shall be the duty of a midwife to consult with a physician whenever there are significant deviations from normal in either the mother or the infant. [1991 c 3 § 103; 1987 c 467 § 2; 1981 c 53 § 5; 1917 c 160 § 8; RRS § 10181. Formerly RCW 18.50.010, 18.50.030, part, and 18.50.090.]

Effective date—1981 c 53: See note following RCW 18.50.005.

18.50.020 License required. Any person who shall practice midwifery in this state after July 1, 1917, shall first obtain from the secretary a license so to do, and the said secretary is authorized to grant such license after examination of the applicant as hereinafter provided. [1991 c 3 § 104; 1917 c 160 § 1; RRS § 10174.]

18.50.030 Exemptions—Practice of religion—Treatment by prayer. This chapter shall not be construed to interfere in any way with the practice of religion, nor be held to apply to or regulate any kind of treatment by prayer. [1917 c 160 § 12; RRS § 10185. FORMER PART OF

SECTION: 1917 c 160 § 8, part; RRS § 10181, part, now codified in RCW 18.50.010.]

Gratuitous services exempted: RCW 18.50.010.

18.50.032 Exemptions—Registered nurses and nurse midwives. Registered nurses and nurse midwives certified by the nursing care quality assurance commission under chapter 18.79 RCW shall be exempt from the requirements and provisions of this chapter. [1994 sp.s. c 9 § 704; 1981 c 53 § 10.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—1981 c 53: See note following RCW 18.50.005.

18.50.034 Exemptions—Persons enrolled in midwifery programs. Nothing in this chapter shall be construed to apply to or interfere in any way with the practice of midwifery by a person who is enrolled in a program of midwifery approved and accredited by the secretary: PROVIDED, That the performance of such services is only pursuant to a regular course of instruction or assignment from the student's instructor, and that such services are performed only under the supervision and control of a person licensed in the state of Washington to perform services encompassed under this chapter. [1991 c 3 § 105; 1981 c 53 § 11.]

Effective date—1981 c 53: See note following RCW 18.50.005.

18.50.040 Candidates for examination—Application—Eligibility—Student midwife permits. (1) Any person seeking to be examined shall present to the secretary, at least forty-five days before the commencement of the examination, a written application on a form or forms provided by the secretary setting forth under affidavit such information as the secretary may require and proof the candidate has received a high school degree or its equivalent; that the candidate is twenty-one years of age or older; that the candidate has received a certificate or diploma from a midwifery program accredited by the secretary and licensed under chapter 28C.10 RCW, when applicable, or a certificate or diploma in a foreign institution on midwifery of equal requirements conferring the full right to practice midwifery in the country in which it was issued. The diploma must bear the seal of the institution from which the applicant was graduated. Foreign candidates must present with the application a translation of the foreign certificate or diploma made by and under the seal of the consulate of the country in which the certificate or diploma was issued.

(2) The candidate shall meet the following conditions:

(a) Obtaining a minimum period of midwifery training for at least three years including the study of the basic nursing skills that the department shall prescribe by rule. However, if the applicant is a registered nurse or licensed practical nurse under chapter 18.79 RCW, or has had previous nursing education or practical midwifery experience, the required period of training may be reduced depending upon the extent of the candidate's qualifications as determined under rules adopted by the department. In no case shall the training be reduced to a period of less than two years.

(b) Meeting minimum educational requirements which shall include studying obstetrics; neonatal pediatrics; basic sciences; female reproductive anatomy and physiology; behavioral sciences; childbirth education; community care; obstetrical pharmacology; epidemiology; gynecology; family planning; genetics; embryology; neonatology; the medical and legal aspects of midwifery; nutrition during pregnancy and lactation; breast feeding; nursing skills, including but not limited to injections, administering intravenous fluids, catheterization, and aseptic technique; and such other requirements prescribed by rule.

(c) For a student midwife during training, undertaking the care of not less than fifty women in each of the prenatal, intrapartum, and early postpartum periods, but the same women need not be seen through all three periods. A student midwife may be issued a permit upon the satisfactory completion of the requirements in (a), (b), and (c) of this subsection and the satisfactory completion of the licensure examination required by RCW 18.50.060. The permit permits the student midwife to practice under the supervision of a midwife licensed under this chapter, a physician or a certified nurse-midwife licensed under the authority of chapter 18.79 RCW. The permit shall expire within one year of issuance and may be extended as provided by rule.

(d) Observing an additional fifty women in the intrapartum period before the candidate qualifies for a license.

(3) Notwithstanding subsections (1) and (2) of this section, the department shall adopt rules to provide credit toward the educational requirements for licensure before July 1, 1988, of nonlicensed midwives, including rules to provide:

(a) Credit toward licensure for documented deliveries;

(b) The substitution of relevant experience for classroom time; and

(c) That experienced lay midwives may sit for the licensing examination without completing the required course work.

The training required under this section shall include training in either hospitals or alternative birth settings or both with particular emphasis on learning the ability to differentiate between low-risk and high-risk pregnancies. [1994 sp.s. c 9 § 705; 1991 c 3 § 106; 1987 c 467 § 3; 1986 c 299 § 24; 1981 c 53 § 6; 1917 c 160 § 2; RRS § 10175.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—Effective date—1986 c 299: See RCW 28C.10.900 and 28C.10.902.

Effective date—1981 c 53: See note following RCW 18.50.005.

18.50.045 Midwifery education programs—Accreditation. The secretary shall promulgate standards by rule under chapter 34.05 RCW for accrediting midwifery educational programs. The standards shall cover the provision of adequate clinical and didactic instruction in all subjects and noncurriculum matters under this section including, but not limited to, staffing and teacher qualifications. In developing the standards, the secretary shall be advised by and receive the recommendations of the midwifery advisory committee. [1991 c 3 § 107; 1981 c 53 § 7.]

18.50.050 Compliance with secretary's determination. Applicants shall comply with administrative proce-

dures, administrative requirements, and fees determined by the secretary as provided by RCW 43.70.250 and 43.70.280. [1996 c 191 § 24; 1991 c 3 § 108; 1985 c 7 § 48; 1975 1st ex.s. c 30 § 51; 1917 c 160 § 3; RRS § 10176.]

Limitation on increases in midwifery fees: RCW 43.24.086.

18.50.060 Examinations—Times and places—Subjects—Issuance of license. (1) The secretary is hereby authorized and empowered to execute the provisions of this chapter and shall offer examinations in midwifery at least twice a year at such times and places as the secretary may select. The examinations shall be written and shall be in the English language.

(2) The secretary, with the assistance of the midwifery advisory committee, shall develop or approve a licensure examination in the subjects that the secretary determines are within the scope of and commensurate with the work performed by a licensed midwife. The examination shall be sufficient to test the scientific and practical fitness of candidates to practice midwifery. All application papers shall be deposited with the secretary and there retained for at least one year, when they may be destroyed.

(3) If the examination is satisfactorily completed, the secretary shall issue to such candidate a license entitling the candidate to practice midwifery in the state of Washington. [1991 c 3 § 109; 1987 c 467 § 4; 1981 c 53 § 8; 1979 c 158 § 43; 1917 c 160 § 4; RRS § 10177.]

Effective date—1981 c 53: See note following RCW 18.50.005.

18.50.065 Credentialing by endorsement. An applicant holding a credential in another state may be credentialed to practice in this state without examination if the secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1991 c 332 § 32.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

18.50.102 Registration—Renewal fee. Every person licensed to practice midwifery shall register with the secretary and pay a renewal fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 25; 1991 c 3 § 110; 1985 c 7 § 49; 1981 c 53 § 13.]

Effective date—1981 c 53: See note following RCW 18.50.005.

Limitation on increases in midwifery fees: RCW 43.24.086.

18.50.105 Inform patient of qualifications of midwife—Form. The secretary, with the advice of the midwifery advisory committee, shall develop a form to be used by a midwife to inform the patient of the qualifications of a licensed midwife. [1991 c 3 § 111; 1981 c 53 § 12.]

18.50.108 Written plan for consultation, emergency transfer, and transport. Every licensed midwife shall develop a written plan for consultation with other health care providers, emergency transfer, transport of an infant to a newborn nursery or neonatal intensive care nursery, and transport of a woman to an appropriate obstetrical department or patient care area. The written plan shall be submit-

ted annually together with the license renewal fee to the department. [1981 c 53 § 14.]

Effective date—1981 c 53: See note following RCW 18.50.005.

18.50.115 Administration of drugs and medications—Rules. A midwife licensed under this chapter may obtain and administer prophylactic ophthalmic medication, postpartum oxytocic, vitamin K, Rho immune globulin (human), and local anesthetic and may administer such other drugs or medications as prescribed by a physician. A pharmacist who dispenses such drugs to a licensed midwife shall not be liable for any adverse reactions caused by any method of use by the midwife.

The secretary, after consultation with representatives of the midwife advisory committee, the board of pharmacy, and the medical quality assurance commission, may adopt rules that authorize licensed midwives to purchase and use legend drugs and devices in addition to the drugs authorized in this chapter. [1994 sp.s. c 9 § 707; 1991 c 3 § 112; 1987 c 467 § 6.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.50.126 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 31; 1986 c 259 § 75.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.50.130 "Certificate" and "license" synonymous. The words "certificate" and "license" shall be known as interchangeable terms in this chapter. [1917 c 160 § 11; RRS § 10184.]

18.50.135 Rules. The secretary shall promulgate rules under chapter 34.05 RCW as are necessary to carry out the purposes of this chapter. [1991 c 3 § 113; 1981 c 53 § 15.]

Effective date—1981 c 53: See note following RCW 18.50.005.

18.50.140 Midwifery advisory committee—Generally. The midwifery advisory committee is created.

The committee shall be composed of one physician who is a practicing obstetrician; one practicing physician, one certified nurse midwife licensed under chapter 18.79 RCW; three midwives licensed under this chapter; and one public member, who shall have no financial interest in the rendering of health services. The committee may seek other consultants as appropriate, including persons trained in childbirth education and perinatology or neonatology.

The members are appointed by the secretary and serve at the pleasure of the secretary but may not serve more than five years consecutively. The terms of office shall be staggered. Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [1994 sp.s. c 9 § 706; 1991 c 3 § 114; 1987 c 467 § 5; 1981 c 53 § 3.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.50.150 Midwifery advisory committee—Advice and recommendations—Transmittal to legislature. The midwifery advisory committee shall advise and make recommendations to the secretary on issues including, but not limited to, continuing education, mandatory reexamination, and peer review. The secretary shall transmit the recommendations to the social and health services committee of the senate and the human services committee of the house of representatives on an annual basis. [1991 c 3 § 115; 1981 c 53 § 4.]

18.50.900 Repeal and saving. All acts or parts of acts inconsistent with the provisions of this chapter may be and the same are hereby repealed: PROVIDED, This chapter shall not repeal the provisions of the vital statistics laws of the state, but shall be deemed as additional and cumulative provisions. [1917 c 160 § 10.]

Chapter 18.51 NURSING HOMES

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18.51.005 Purpose. The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of nursing homes, which, in the light of advancing knowledge, will promote safe and adequate care and treatment of the individuals therein. An important secondary purpose is the improvement of nursing home practices by educational methods so that such practices eventually exceed the minimum requirements of the basic law and its original standards. [1951 c 117 § 1.]

18.51.007 Legislative intent. It is the intent of the legislature in enacting *this 1975 amendatory act to establish (1) a system for the imposition of prompt and effective sanctions against nursing homes in violation of the laws and regulations of this state relating to patient care; (2) an inspection and reporting system to insure that nursing homes are in compliance with state statutes and regulations pertaining to patient care; and (3) a mechanism to insure that licenses are issued to or retained by only those nursing homes that meet state standards for resident health and safety. [1981 1st ex.s. c 2 § 14; 1975 1st ex.s. c 99 § 3.]

***Reviser's note:** "This 1975 amendatory act" [1975 1st ex.s. c 99] consisted of RCW 18.51.007, 18.51.055, 18.51.065, and 18.51.190 through 18.51.290, amendments to RCW 18.51.050 and 18.51.060, and the repeal of RCW 18.51.090, 18.51.120, and 18.51.130.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.009 Resident rights. RCW 70.129.007, 70.129.105, and 70.129.150 through 70.129.170 apply to this chapter and persons regulated under this chapter. [1994 c 214 § 22.]

Severability—Conflict with federal requirements—Captions not law—1994 c 214: See RCW 70.129.900 through 70.129.902.

18.51.010 Definitions. (1) "Nursing home" means any home, place or institution which operates or maintains facilities providing convalescent or chronic care, or both, for a period in excess of twenty-four consecutive hours for three or more patients not related by blood or marriage to the operator, who by reason of illness or infirmity, are unable properly to care for themselves. Convalescent and chronic care may include but not be limited to any or all procedures commonly employed in waiting on the sick, such as administration of medicines, preparation of special diets, giving of bedside nursing care, application of dressings and bandages, and carrying out of treatment prescribed by a duly licensed practitioner of the healing arts. It may also include care of mentally incompetent persons. It may also include community-based care. Nothing in this definition shall be construed to include general hospitals or other places which provide care and treatment for the acutely ill and maintain and operate facilities for major surgery or obstetrics, or both. Nothing in this definition shall be construed to include any boarding home, guest home, hotel or related institution which is held forth to the public as providing, and which is operated to give only board, room and laundry to persons not in need of medical or nursing treatment or supervision except in the case of temporary acute illness. The mere designation by the operator of any place or institution as a hospital, sanitarium, or any other similar name, which does not provide care for the acutely ill and maintain and operate facilities for major surgery or obstetrics, or both, shall not exclude such place or institution from the provisions of this chapter: PROVIDED, That any nursing home providing psychiatric treatment shall, with respect to patients receiving such treatment, comply with the provisions of RCW 71.12.560 and 71.12.570.

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

(3) "Secretary" means the secretary of the department of social and health services.

(4) "Department" means the state department of social and health services.

(5) "Community-based care" means but is not limited to the following:

- (a) Home delivered nursing services;
- (b) Personal care;
- (c) Day care;
- (d) Nutritional services, both in-home and in a communal dining setting;
- (e) Habilitation care; and
- (f) Respite care. [1983 c 236 § 1; 1981 1st ex.s. c 2 § 15; 1973 1st ex.s. c 108 § 1; 1953 c 160 § 1; 1951 c 117 § 2.]

Construction—1983 c 236: "Nothing in this 1983 act affects the provisions of chapter 70.38 RCW." [1983 c 236 § 3.] This applies to the 1983 c 236 amendments to RCW 18.51.010 and 18.51.091.

Severability—1981 1st ex.s. c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 1st ex.s. c 2 § 28.]

Effective dates—1981 1st ex.s. c 2: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions. Sections 1, 2, 3, and 10 through 26 of this act shall take effect on July 1, 1981. Section

4 of this act shall take effect on July 1, 1983. Sections 5 through 9 of this act shall take effect on July 1, 1984." [1981 1st ex.s. c 2 § 27.]

The above two annotations apply to 1981 1st ex.s. c 2. For codification of that act, see Codification Tables, Volume 0.

18.51.030 License required. After July 1, 1951 no person shall operate or maintain a nursing home in this state without a license under this chapter. [1951 c 117 § 4.]

18.51.040 Application for license. An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires, which may include affirmative evidence of ability to comply with the rules and regulations as are lawfully prescribed hereunder. [1953 c 160 § 3; 1951 c 117 § 5.]

18.51.050 License—Issuance, renewal—Fee—Display. Upon receipt of an application for license, the department shall issue a license if the applicant and the nursing home facilities meet the requirements established under this chapter, except that the department shall issue a temporary license to a court-appointed receiver for a period not to exceed six months from the date of appointment. Prior to the issuance or renewal of the license, the licensee shall pay a license fee as established by the department. No fee shall be required of government operated institutions or court-appointed receivers. All licenses issued under the provisions of this chapter shall expire on a date to be set by the department, but no license issued pursuant to this chapter shall exceed thirty-six months in duration. When a change of ownership occurs, the entity becoming the licensed operating entity of the facility shall pay a fee established by the department at the time of application for the license. The previously determined date of license expiration shall not change. The department shall establish license fees at an amount adequate to reimburse the department in full for all costs of its licensing activities for nursing homes, adjusted to cover the department's cost of reimbursing such fees through medicaid.

All applications and fees for renewal of the license shall be submitted to the department not later than thirty days prior to the date of expiration of the license. All applications and fees for change of ownership licenses shall be submitted to the department not later than sixty days before the date of the proposed change of ownership. Each license shall be issued only to the operating entity and those persons named in the license application. The license is valid only for the operation of the facility at the location specified in the license application. Licenses are not transferable or assignable. Licenses shall be posted in a conspicuous place on the licensed premises. [1991 sp.s. c 8 § 1; 1989 c 372 § 1; 1985 c 284 § 4; 1981 2nd ex.s. c 11 § 2; 1981 1st ex.s. c 2 § 17; 1975 1st ex.s. c 99 § 1; 1971 ex.s. c 247 § 2; 1953 c 160 § 4; 1951 c 117 § 6.]

Effective date—1991 sp.s. c 8: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 8 § 21.]

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.054 Denial of license. The department may deny a license to any applicant if the department finds that the applicant or any partner, officer, director, managerial employee, or owner of five percent or more of the applicant:

(1) Operated a nursing home without a license or under a revoked or suspended license; or

(2) Knowingly or with reason to know made a false statement of a material fact (a) in an application for license or any data attached thereto, or (b) in any matter under investigation by the department; or

(3) Refused to allow representatives or agents of the department to inspect (a) all books, records, and files required to be maintained or (b) any portion of the premises of the nursing home; or

(4) Willfully prevented, interfered with, or attempted to impede in any way (a) the work of any authorized representative of the department or (b) the lawful enforcement of any provision of this chapter or chapter 74.42 RCW; or

(5) Has a history of significant noncompliance with federal or state regulations in providing nursing home care. In deciding whether to deny a license under this section, the factors the department considers shall include the gravity and frequency of the noncompliance. [1989 c 372 § 7; 1985 c 284 § 1.]

18.51.060 Penalties—Grounds. (1) In any case in which the department finds that a licensee, or any partner, officer, director, owner of five percent or more of the assets of the nursing home, or managing employee failed or refused to comply with the requirements of this chapter or of chapter 74.42 RCW, or the standards, rules and regulations established under them or, in the case of a Medicaid contractor, failed or refused to comply with the Medicaid requirements of Title XIX of the social security act, as amended, and regulations promulgated thereunder, the department may take any or all of the following actions:

(a) Suspend, revoke, or refuse to renew a license;

(b) Order stop placement;

(c) Assess monetary penalties of a civil nature;

(d) Deny payment to a nursing home for any Medicaid resident admitted after notice to deny payment. Residents who are Medicaid recipients shall not be responsible for payment when the department takes action under this subsection;

(e) Appoint temporary management as provided in subsection (7) of this section.

(2) The department may suspend, revoke, or refuse to renew a license, assess monetary penalties of a civil nature, or both, in any case in which it finds that the licensee, or any partner, officer, director, owner of five percent or more of the assets of the nursing home, or managing employee:

(a) Operated a nursing home without a license or under a revoked or suspended license; or

(b) Knowingly or with reason to know made a false statement of a material fact in his application for license or any data attached thereto, or in any matter under investigation by the department; or

(c) Refused to allow representatives or agents of the department to inspect all books, records, and files required to be maintained or any portion of the premises of the nursing home; or

(d) Willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter or of chapter 74.42 RCW; or

(e) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or of chapter 74.42 RCW or the standards, rules, and regulations adopted under them; or

(f) Failed to report patient abuse or neglect in violation of chapter 70.124 RCW; or

(g) Fails to pay any civil monetary penalty assessed by the department pursuant to this chapter within ten days after such assessment becomes final.

(3) The department shall deny payment to a nursing home having a Medicaid contract with respect to any Medicaid-eligible individual admitted to the nursing home when:

(a) The department finds the nursing home not in compliance with the requirements of Title XIX of the social security act, as amended, and regulations promulgated thereunder, and the facility has not complied with such requirements within three months; in such case, the department shall deny payment until correction has been achieved; or

(b) The department finds on three consecutive standard surveys that the nursing home provided substandard quality of care; in such case, the department shall deny payment for new admissions until the facility has demonstrated to the satisfaction of the department that it is in compliance with Medicaid requirements and that it will remain in compliance with such requirements.

(4)(a) Civil penalties collected under this section or under chapter 74.42 RCW shall be deposited into a special fund administered by the department to be applied to the protection of the health or property of residents of nursing homes found to be deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(b) Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day a nursing home is or was out of compliance. Civil monetary penalties shall not exceed three thousand dollars per violation. Each day upon which the same or a substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.

(c) Any civil penalty assessed under this section or chapter 74.46 RCW shall be a nonreimbursable item under chapter 74.46 RCW.

(5)(a) The department shall order stop placement on a nursing home, effective upon oral or written notice, when the department determines:

(i) The nursing home no longer substantially meets the requirements of chapter 18.51 or 74.42 RCW, or in the case of Medicaid contractors, the requirements of Title XIX of the social security act, as amended, and any regulations promulgated under such statutes; and

(ii) The deficiency or deficiencies in the nursing home: (A) Jeopardize the health and safety of the residents, or

(B) Seriously limit the nursing home's capacity to provide adequate care.

(b) When the department has ordered a stop placement, the department may approve a readmission to the nursing home from a hospital when the department determines the readmission would be in the best interest of the individual seeking readmission.

(c) The department shall terminate the stop placement when:

(i) The provider states in writing that the deficiencies necessitating the stop placement action have been corrected; and

(ii) The department staff confirms in a timely fashion not to exceed fifteen working days that:

(A) The deficiencies necessitating stop placement action have been corrected, and

(B) The provider exhibits the capacity to maintain adequate care and service.

(d) A nursing home provider shall have the right to an informal review to present written evidence to refute the deficiencies cited as the basis for the stop placement. A request for an informal review must be made in writing within ten days of the effective date of the stop placement.

(e) A stop placement shall not be delayed or suspended because the nursing home requests a hearing pursuant to chapter 34.05 RCW or an informal review. The stop placement shall remain in effect until:

(i) The department terminates the stop placement; or

(ii) The stop placement is terminated by a final agency order, after a hearing, pursuant to chapter 34.05 RCW.

(6) If the department determines that an emergency exists as a result of a nursing home's failure or refusal to comply with requirements of this chapter or, in the case of a Medicaid contractor, its failure or refusal to comply with Medicaid requirements of Title XIX of the social security act, as amended, and rules adopted thereunder, the department may suspend the nursing home's license and order the immediate closure of the nursing home, the immediate transfer of residents, or both.

(7) If the department determines that the health or safety of residents is immediately jeopardized as a result of a nursing home's failure or refusal to comply with requirements of this chapter or, in the case of a Medicaid contractor, its failure or refusal to comply with Medicaid requirements of Title XIX of the social security act, as amended, and rules adopted thereunder, the department may appoint temporary management to:

(a) Oversee the operation of the facility; and

(b) Ensure the health and safety of the facilities residents while:

(i) Orderly closure of the facility occurs; or

(ii) The deficiencies necessitating temporary management are corrected.

(8) The department shall by rule specify criteria as to when and how the sanctions specified in this section shall be applied. Such criteria shall provide for the imposition of incrementally more severe penalties for deficiencies that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of the residents. [1989 c 372 § 8; 1987 c 476 § 23; 1981 1st ex.s. c 2 § 18; 1979 ex.s. c 228 § 10; 1975 1st ex.s. c 99 § 2; 1953 c 160 § 5; 1951 c 117 § 7.]

(1996 Ed.)

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.065 Penalties—Hearing (as amended by 1989 c 175). (~~All orders of the department denying, suspending, or revoking the license or assessing a monetary penalty shall become final twenty days after the same has been served upon the applicant or licensee unless a hearing is requested. All hearings hereunder and judicial review of such determinations shall be in accordance with the administrative procedure act, chapter 34.04 RCW.~~) RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. RCW 43.20A.215 governs notice of a civil fine and provides the right to an adjudicative proceeding. [1989 c 175 § 64; 1981 1st ex.s. c 2 § 19; 1975 1st ex.s. c 99 § 16.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.51.065 Penalties—Hearing (as amended by 1989 c 372). (1) All orders of the department denying, suspending, or revoking the license or assessing a monetary penalty shall become final twenty days after the same has been served upon the applicant or licensee unless a hearing is requested. All orders of the department imposing stop placement, temporary management, emergency closure, emergency transfer, or license suspension, shall be effective immediately upon notice. Orders of the department imposing denial of payment shall become final twenty days after the same has been served, unless a hearing is requested, except that such orders shall be effective immediately upon notice and pending any hearing when the department determines the deficiencies jeopardize the health and safety of the residents or seriously limit the nursing home's capacity to provide adequate care. All hearings hereunder and judicial review of such determinations shall be in accordance with the administrative procedure act, chapter ~~((34.04))~~ 34.05 RCW, except that all orders of the department imposing stop placement, temporary management, emergency closure, emergency transfer, or license suspension shall be effective pending any hearing, and except that chapter 34.05 RCW shall have no application to receivership, which is instituted by direct petition to superior court as provided for in RCW 18.51.410 through 18.51.520. [1989 c 372 § 9; 1981 1st ex.s. c 2 § 19; 1975 1st ex.s. c 99 § 16.]

Reviser's note: RCW 18.51.065 was amended twice during the 1989 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.070 Rules. The department, after consultation with the nursing home advisory council and the board of health, shall adopt, amend, and promulgate such rules, regulations, and standards with respect to all nursing homes to be licensed hereunder as may be designed to further the accomplishment of the purposes of this chapter in promoting safe and adequate medical and nursing care of individuals in nursing homes and the sanitary, hygienic and safe conditions of the nursing home in the interest of public health, safety, and welfare. [1979 ex.s. c 211 § 64; 1951 c 117 § 8.]

Effective date—1979 ex.s. c 211: "Section 64 of this 1979 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [May 30, 1979]." [1979 ex.s. c 211 § 71.] "Section 64 of this 1979 act" is the 1979 ex.s. c 211 amendment to RCW 18.51.070.

18.51.091 Inspection of nursing homes and community-based services—Notice of violations—Approval of alterations or new facilities. The department shall make or cause to be made at least one inspection of each nursing home prior to license renewal and shall inspect community-based services as part of the licensing renewal survey. The inspection shall be made without providing advance notice of it. Every inspection may include an inspection of every

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part of the premises and an examination of all records, methods of administration, the general and special dietary and the stores and methods of supply. Those nursing homes that provide community-based care shall establish and maintain separate and distinct accounting and other essential records for the purpose of appropriately allocating costs of the providing of such care: PROVIDED, That such costs shall not be considered allowable costs for reimbursement purposes under chapter 74.46 RCW. Following such inspection or inspections, written notice of any violation of this law or the rules and regulations promulgated hereunder, shall be given the applicant or licensee and the department. The notice shall describe the reasons for the facility's noncompliance. The department may prescribe by regulations that any licensee or applicant desiring to make specified types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, submit its plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. [1987 c 476 § 24; 1983 c 236 § 2; 1981 2nd ex.s. c 11 § 3; 1979 ex.s. c 211 § 63.]

Construction—1983 c 236: See note following RCW 18.51.010.

Effective date—1979 ex.s. c 211: See RCW 74.42.920.

Nursing home standards: Chapter 74.42 RCW.

18.51.140 Fire protection—Duties of chief of the Washington state patrol. Standards for fire protection and the enforcement thereof, with respect to all nursing homes to be licensed hereunder, shall be the responsibility of the chief of the Washington state patrol, through the director of fire protection, who shall adopt such recognized standards as may be applicable to nursing homes for the protection of life against the cause and spread of fire and fire hazards. The department upon receipt of an application for a license, shall submit to the chief of the Washington state patrol, through the director of fire protection, in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make an inspection of the nursing home to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the chief of the Washington state patrol, through the director of fire protection, he or she shall promptly make a written report to the nursing home and the department as to the manner and time allowed in which the premises must qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department, applicant or licensee shall notify the chief of the Washington state patrol, through the director of fire protection, upon completion of any requirements made by him or her, and the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make a reinspection of such premises. Whenever the nursing home to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, he or she shall submit to the department, a written report approving same with respect to fire protection before a full license can be issued.

The chief of the Washington state patrol, through the director of fire protection, shall make or cause to be made inspections of such nursing homes at least every eighteen months.

In cities which have in force a comprehensive building code, the provisions of which are determined by the chief of the Washington state patrol, through the director of fire protection, to be equal to the minimum standards of the code for nursing homes adopted by the chief of the Washington state patrol, through the director of fire protection, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the chief of the Washington state patrol, through the director of fire protection, or his or her deputy and they shall jointly approve the premises before a full license can be issued. [1995 1st sp.s. c 18 § 43; 1995 c 369 § 6; 1986 c 266 § 83; 1953 c 160 § 9; 1951 c 117 § 15.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

State fire protection: Chapter 48.48 RCW.

18.51.145 Building inspections—Authority of chief of the Washington state patrol. Inspections of nursing homes by local authorities shall be consistent with the requirements of chapter 19.27 RCW, the state building code. Findings of a serious nature shall be coordinated with the department and the chief of the Washington state patrol, through the director of fire protection, for determination of appropriate actions to ensure a safe environment for nursing home residents. The chief of the Washington state patrol, through the director of fire protection, shall have exclusive authority to determine appropriate corrective action under this section. [1995 c 369 § 7; 1986 c 266 § 84; 1983 1st ex.s. c 67 § 45; 1981 1st ex.s. c 2 § 16.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1983 1st ex.s. c 67: See RCW 74.46.905.

Effective dates—1983 1st ex.s. c 67: See note following RCW 74.46.901.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

Conflict with federal requirements and this section: RCW 74.46.840.

18.51.150 Operating without license—Penalty. Any person operating or maintaining any nursing home without a license under this chapter shall be guilty of a misdemeanor and each day of a continuing violation after conviction shall be considered a separate offense. [1951 c 117 § 16.]

18.51.160 Operating without license—Injunction. Notwithstanding the existence or use of any other remedy, the department, may, in the manner provided by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the operation or maintenance of a nursing home without a license under this chapter. [1951 c 117 § 17.]

Injunctions: Chapter 7.40 RCW.

18.51.170 Application of chapter to homes or institutions operated by certain religious organizations. Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any nursing home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination, or for any nursing home or institution operated for the exclusive care of members of a convent as defined in RCW 84.36.800 or rectory, monastery, or other institution operated for the care of members of the clergy. [1977 c 48 § 1; 1951 c 117 § 21.]

18.51.180 Out-patient services—Authorized—Defined. A nursing home may, pursuant to rules and regulations adopted by the department of social and health services, offer out-patient services to persons who are not otherwise patients at such nursing home. Any certified nursing home offering out-patient services may receive payments from the federal medicare program for such services as are permissible under that program.

Out-patient services may include any health or social care needs, except surgery, that could feasibly be offered on an out-patient basis. [1973 1st ex.s. c 71 § 1.]

18.51.185 Out-patient services—Cost studies—Vendor rates. The department of social and health services shall assist the nursing home industry in researching the costs of out-patient services allowed under RCW 18.51.180. Such cost studies shall be utilized by the department in the determination of reasonable vendor rates for nursing homes offering such services to insure an adequate return to the nursing homes and a cost savings to the state as compared to the cost of institutionalization. [1973 1st ex.s. c 71 § 2.]

18.51.190 Complaint of violation—Request for inspection—Notice—Confidentiality. Any person may request an inspection of any nursing home subject to licensing under this chapter in accordance with the provisions of this chapter by giving notice to the department of an alleged violation of applicable requirements of state law. The complainant shall be encouraged to submit a written, signed complaint following a verbal report. The substance of the complaint shall be provided to the licensee no earlier than at the commencement of the inspection. Neither the substance of the complaint provided the licensee nor any copy of the complaint or record published, released, or otherwise made available to the licensee shall disclose the name of any individual complainant or other person mentioned in the complaint, except the name or names of any duly authorized officer, employee, or agent of the department conducting the investigation or inspection pursuant to this chapter, unless such complainant specifically requests the release of such name or names. [1981 1st ex.s. c 2 § 20; 1975 1st ex.s. c 99 § 4.]

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.200 Preliminary review of complaint—On-site investigation. Upon receipt of a complaint, the department shall make a preliminary review of the complaint. Unless the department determines that the complaint is wilfully intended to harass a licensee or is without any reasonable basis, or unless the department has sufficient information that corrective action has been taken, it shall make an on-site investigation within a reasonable time after the receipt of the complaint or otherwise ensure complaints are responded to. In either event, the complainant shall be promptly informed of the department's proposed course of action. If the complainant requests the opportunity to do so, the complainant or his representative, or both, may be allowed to accompany the inspector to the site of the alleged violations during his tour of the facility, unless the inspector determines that the privacy of any patient would be violated thereby. [1981 1st ex.s. c 2 § 21; 1975 1st ex.s. c 99 § 5.]

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.210 Authority to enter and inspect nursing home—Advance notice—Defense. (1) Any duly authorized officer, employee, or agent of the department may enter and inspect any nursing home, including, but not limited to, interviewing residents and reviewing records, at any time to enforce any provision of this chapter. Inspections conducted pursuant to complaints filed with the department shall be conducted in such a manner as to ensure maximum effectiveness. No advance notice shall be given of any inspection conducted pursuant to this chapter unless previously and specifically authorized by the secretary or required by federal law.

(2) Any public employee giving such advance notice in violation of this section shall be suspended from all duties without pay for a period of not less than five nor more than fifteen days.

(3) In any hearing held pursuant to this chapter, it shall be a defense to a violation relating to the standard of care to be afforded public patients to show that the department does not provide reasonable funds to meet the cost of reimbursement standard allegedly violated. [1981 1st ex.s. c 2 § 22; 1975 1st ex.s. c 99 § 6.]

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.220 Retaliation or discrimination against complainant prohibited, penalty—Presumption. (1) No licensee shall discriminate or retaliate in any manner against a patient or employee in its nursing home on the basis or for the reason that such patient or employee or any other person has initiated or participated in any proceeding specified in this chapter. A licensee who violates this section is subject to a civil penalty of not more than three thousand dollars.

(2) Any attempt to expel a patient from a nursing home, or any type of discriminatory treatment of a patient by whom, or upon whose behalf, a complaint has been submitted to the department or any proceeding instituted under or related to this chapter within one year of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the

licensee in retaliation for the filing of the complaint. [1987 c 476 § 25; 1975 1st ex.s. c 99 § 7.]

18.51.230 General inspection before license renewal—Required—Advance notice prohibited. The department shall, in addition to any inspections conducted pursuant to complaints filed pursuant to RCW 18.51.190, conduct at least one general inspection prior to license renewal of all nursing homes in the state without providing advance notice of such inspection. Periodically, such inspection shall take place in part between the hours of 7 p.m. and 5 a.m. or on weekends. [1981 2nd ex.s. c 11 § 4; 1975 1st ex.s. c 99 § 10.]

18.51.240 Alterations or additions—Preliminary inspection and approval. The department may prescribe by regulations that any licensee or applicant desiring to make specific types of alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, submit its plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to compliance with the regulations and standards herein authorized. [1981 1st ex.s. c 2 § 23; 1975 1st ex.s. c 99 § 11.]

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.250 Nursing homes without violations—Public agencies notified—Priority. On or before February 1st of each year, the department shall notify all public agencies which refer patients to nursing homes of all of the nursing homes in the area found upon inspection within the previous twelve-month period to be without violations. Public agencies shall give priority to such nursing homes in referring publicly assisted patients. [1975 1st ex.s. c 99 § 12.]

18.51.260 Posting citations for violation of RCW 18.51.060. Each citation for a violation specified in RCW 18.51.060 which is issued pursuant to this section and which has become final, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the director, until the violation is corrected to the satisfaction of the department up to a maximum of one hundred twenty days. The citation or copy shall be posted in a place or places in plain view of the patients in the nursing home, persons visiting those patients, and persons who inquire about placement in the facility. [1987 c 476 § 26; 1975 1st ex.s. c 99 § 13.]

18.51.270 Annual report of citations—Publication—Contents. The department shall annually publish a report listing all licensees by name and address, indicating (1) the number of citations and the nature of each citation issued to each licensee during the previous twelve-month period and the status of any action taken pursuant to each citation, including penalties assessed, and (2) the nature and status of action taken with respect to each uncorrected violation for which a citation is outstanding.

The report shall be available to the public, at cost, at all offices of the department. [1975 1st ex.s. c 99 § 14.]

18.51.280 Chapter cumulative. The remedies provided by this chapter are cumulative, and shall not be construed as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party, and no judgment under this chapter shall preclude any party from obtaining additional relief based upon the same facts. [1975 1st ex.s. c 99 § 8.]

18.51.290 Writings as public records. Any writing received, owned, used, or retained by the department in connection with the provisions of this chapter is a public record and, as such, is open to public inspection. Copies of such records provided for public inspection shall comply with RCW 42.17.260(1). The names of duly authorized officers, employees, or agents of the department shall be included. [1980 c 184 § 4; 1975 1st ex.s. c 99 § 9.]

Conflict with federal requirements—1980 c 184: See RCW 74.42.630.

18.51.300 Retention and preservation of records of patients. Unless specified otherwise by the department, a nursing home shall retain and preserve all records which relate directly to the care and treatment of a patient for a period of no less than eight years following the most recent discharge of the patient; except the records of minors, which shall be retained and preserved for a period of no less than three years following attainment of the age of eighteen years, or ten years following such discharge, whichever is longer.

If a nursing home ceases operations, it shall make immediate arrangements, as approved by the department, for preservation of its records.

The department shall by regulation define the type of records and the information required to be included in the records to be retained and preserved under this section; which records may be retained in photographic form pursuant to chapter 5.46 RCW. [1995 1st sp.s. c 18 § 44; 1981 1st ex.s. c 2 § 24; 1975 1st ex.s. c 175 § 2.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

18.51.310 Comprehensive plan for utilization review—Licensing standards—Regulations. (1) The department shall establish, in compliance with federal and state law, a comprehensive plan for utilization review as necessary to safeguard against unnecessary utilization of care and services and to assure quality care and services provided to nursing facility residents.

(2) The department shall adopt licensing standards suitable for implementing the civil penalty system authorized under this chapter and chapter 74.46 RCW.

(3) No later than July 1, 1981, the department shall adopt all those regulations which meet all conditions necessary to fully implement the civil penalty system authorized by this chapter, chapter 74.42 RCW, and chapter 74.46 RCW. [1991 sp.s. c 8 § 2; 1981 2nd ex.s. c 11 § 5;

1981 1st ex.s. c 2 § 12; 1980 c 184 § 5; 1979 ex.s. c 211 § 67; 1977 ex.s. c 244 § 1.]

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

Conflict with federal requirements—1980 c 184: See RCW 74.42.630.

Effective date—1979 ex.s. c 211: See RCW 74.42.920.

18.51.320 Contact with animals—Rules. (1) A nursing home licensee shall give each patient a reasonable opportunity to have regular contact with animals. The licensee may permit appropriate animals to live in the facilities and may permit appropriate animals to visit if the animals are properly supervised.

(2) The department shall adopt rules for the care, type, and maintenance of animals in nursing home facilities. [1984 c 127 § 2.]

Intent—1984 c 127: "The legislature finds that the senior citizens of this state, particularly those living in low-income public housing or in nursing homes, often lead lonely and harsh lives. The legislature recognizes that the warmth and companionship provided by pets can significantly improve the quality of senior citizens' lives. This legislation is intended to insure that senior citizens and persons in nursing homes will not be deprived of access to pets." [1984 c 127 § 1.]

18.51.350 Conflict with federal requirements. If any part of this chapter is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this chapter. [1981 2nd ex.s. c 11 § 1.]

18.51.400 Receivership—Legislative findings. The legislature finds that the closure of a nursing home can have devastating effects on residents and, under certain circumstances, courts should consider placing nursing homes in receivership. As receivership has long existed as a remedy to preserve assets subject to litigation and to reorganize troubled affairs, the legislature finds that receivership is to be used to correct problems associated with either the disregard of residents' health, safety, or welfare or with the possible closure of the nursing home for any reason. [1987 c 476 § 9.]

18.51.410 Receivership—Petition to establish—Grounds. A petition to establish a receivership shall allege that one or more of the following conditions exist and that the current operator has demonstrated an inability or unwillingness to take actions necessary to immediately correct the conditions alleged:

(1) The facility is operating without a license;

(2) The facility has not given the department prior written notice of its intent to close and has not made arrangements within thirty days before closure for the orderly transfer of its residents: PROVIDED, That if the facility has given the department prior written notice but the department has not acted with all deliberate speed to transfer the facility's residents, this shall bar the filing of a petition under this subsection;

(3) The health, safety, or welfare of the facility's residents is immediately jeopardized;

(4) The facility demonstrates a pattern and practice of violating chapter 18.51 or 74.42 RCW and rules adopted thereunder such that the facility has demonstrated a repeated inability to maintain minimum patient care standards; or

(5) The facility demonstrates a pattern or practice of violating a condition level as defined by the federal government under the authority of Title XIX of the social security act.

The department may file a petition in the superior court in the county in which the nursing home is located or in the superior court of Thurston county. The current or former operator or licensee and the owner of the nursing home, if different than the operator or licensee, shall be made a party to the action. The court shall grant the petition if it finds, by a preponderance of the evidence, that one or more of the conditions listed in subsections (1) through (5) of this section exists and, subject to RCW 18.51.420, that the current operator is unable or unwilling to take actions necessary to immediately correct the conditions. [1989 c 372 § 10; 1987 c 476 § 10.]

18.51.420 Receivership—Defenses to petition. It shall be a defense to the petition to establish a receivership that the conditions alleged do not in fact exist. It shall not be a defense to the petition to allege that the respondent did not possess knowledge of the alleged condition or could not have been reasonably expected to know about the alleged condition. In a petition that alleges that the health, safety, or welfare of the residents of the facility is at issue, it shall not be a defense to the petition that the respondent had not been afforded a reasonable opportunity to correct the alleged condition. [1987 c 476 § 11.]

18.51.430 Receivership—Persons qualified to act as receiver. A petition for receivership shall include the name of the candidate for receiver. The department shall maintain a list of qualified persons to act as receivers, however, no person may be considered to be qualified to be a receiver who:

(1) Is the owner, licensee, or administrator of the facility;

(2) Is affiliated with the facility;

(3) Has a financial interest in the facility at the time the receiver is appointed; or

(4) Has owned or operated a nursing home that has been ordered into receivership.

If a receiver is appointed, he or she may be drawn from the list but need not be, but an appointee shall have experience in providing long-term health care and a history of satisfactory operation of a nursing home. Preference may be granted to persons expressing an interest in permanent operation of the facility. [1989 c 372 § 3; 1987 c 476 § 12.]

18.51.440 Receivership—Judicial hearing. Upon receipt of a petition for receivership, the court shall hear the matter within fourteen days. Temporary relief may be obtained under chapter 7.40 RCW and other applicable laws. In all actions arising under RCW 18.51.410 through 18.51.530, the posting of a certified copy of the summons

and petition in a conspicuous place in the nursing home shall constitute service of those documents upon the respondent. [1989 c 372 § 11; 1987 c 476 § 13.]

18.51.450 Receivership—Appointment of receiver. Upon agreement of the candidate for receiver to the terms of the receivership and any special instructions of the court, the court may appoint that person as receiver of the nursing home if the court determines it is likely that a permanent operator will be found or conditions will be corrected without undue risk of harm to the patients. Appointment of a receiver may be in lieu of or in addition to temporary removal of some or all of the patients in the interests of their health, security, or welfare. A receiver shall be appointed for a term not to exceed six months, but a term may be extended for good cause shown. [1987 c 476 § 14.]

18.51.460 Receivership—Termination—Conditions. (1) The receivership shall terminate:

(a) When all deficiencies have been eliminated and the court determines that the facility has the management capability to ensure continued compliance with all requirements; or

(b) When all residents have been transferred and the facility closed.

(2) Upon the termination of a receivership, the court may impose conditions to assure the continued compliance with chapters 18.51 and 74.42 RCW, and, in the case of medicaid contractors, continued compliance with Title XIX of the social security act, as amended, and regulations promulgated thereunder. [1989 c 372 § 12; 1987 c 476 § 15.]

18.51.470 Receivership—Accounting of acts and expenditures by receiver. The receiver shall render to the court an accounting of acts performed and expenditures made during the receivership. Nothing in this section relieves a court-appointed receiver from the responsibility of making all reports and certifications to the department required by law and regulation relating to the receiver's operation of the nursing home, the care of its residents, and participation in the medicaid program, if any. [1987 c 476 § 16.]

18.51.480 Receivership—Compensation, liability—Revision of medicaid reimbursement rate. If a receiver is appointed, the court shall set reasonable compensation for the receiver to be paid from operating revenues of the nursing home. The receiver shall be liable in his or her personal capacity only for negligent acts, intentional acts, or a breach of a fiduciary duty to either the residents of the facility or the current or former licensee or owner of the facility.

The department may revise the nursing home's medicaid reimbursement rate, consistent with reimbursement principles in chapter 74.46 RCW and rules adopted under that chapter, if revision is necessary to cover the receiver's compensation and other reasonable costs associated with the receivership and transition of control. Rate revision may also be granted if necessary to cover start-up costs and costs of repairs, replacements, and additional staff needed for patient health,

security, or welfare. The property return on investment components of the medicaid rate shall be established for the receiver consistent with reimbursement principles in chapter 74.46 RCW. The department may also expedite the issuance of necessary licenses, contracts, and certifications, temporary or otherwise, necessary to carry out the purposes of receivership. [1987 c 476 § 17.]

18.51.490 Receivership—Powers of receiver. Upon appointment of a receiver, the current or former licensee or operator and managing agent, if any, shall be divested of possession and control of the nursing home in favor of the receiver who shall have full responsibility and authority to continue operation of the home and the care of the residents. The receiver may perform all acts reasonably necessary to carry out the purposes of receivership, including, but not limited to:

(1) Protecting the health, security, and welfare of the residents;

(2) Remediating violations of state and federal law and regulations governing the operation of the home;

(3) Hiring, directing, managing, and discharging all consultants and employees for just cause; discharging the administrator of the nursing home; recognizing collective bargaining agreements; and settling labor disputes;

(4) Receiving and expending in a prudent manner all revenues and financial resources of the home; and

(5) Making all repairs and replacements needed for patient health, security, and welfare: PROVIDED, That expenditures for repairs or replacements in excess of five thousand dollars shall require approval of the court which shall expedite approval or disapproval for such expenditure.

Upon order of the court, a receiver may not be required to honor leases, mortgages, secured transactions, or contracts if the rent, price, or rate of interest was not a reasonable rent, price, or rate of interest at the time the contract was entered into or if a material provision of the contract is unreasonable. [1987 c 476 § 18.]

18.51.500 Receivership—Financial assistance—Use of revenues and proceeds of facility. Upon order of the court, the department shall provide emergency or transitional financial assistance to a receiver not to exceed thirty thousand dollars. The receiver shall file with the court an accounting for any money expended. Any emergency or transitional expenditure made by the department on behalf of a nursing home not certified to participate in the Medicaid Title XIX program shall be recovered from revenue generated by the facility which revenue is not obligated to the operation of the facility. An action to recover such sums may be filed by the department against the former licensee or owner at the time the expenditure is made, regardless of whether the facility is certified to participate in the Medicaid Title XIX program or not.

In lieu of filing an action, the department may file a lien on the facility or on the proceeds of the sale of the facility. Such a lien shall take priority over all other liens except for liens for wages to employees. The owner of the facility shall be entitled to the proceeds of the facility or the sale of the facility to the extent that these exceed the liabilities of the facility, including liabilities to the state, receiver,

employees, and contractors, at the termination of the receivership.

Revenues relating to services provided by the current or former licensee, operator, or owner and available operating funds belonging to such licensee, operator, or owner shall be under the control of the receiver. The receiver shall consult the court in cases of extraordinary or questionable debts incurred prior to his or her appointment and shall not have the power to close the home or sell any assets of the home without prior court approval.

Priority shall be given to debts and expenditures directly related to providing care and meeting the needs of patients. Any payment made to the receiver shall discharge the obligation of the payor to the owner of the facility. [1989 c 372 § 4; 1987 c 476 § 19.]

18.51.510 Receivership—State medical assistance.

If the nursing home is providing care to recipients of state medical assistance, the receiver shall become the medicaid contractor for the duration of the receivership period and shall assume all reporting and other responsibilities required by applicable laws and regulations. The receiver shall be responsible for the refund of medicaid rate payments in excess of costs during the period of the receivership. [1987 c 476 § 20.]

18.51.520 Receivership—Foreclosures and seizures not allowed. No seizure, foreclosure, or interference with nursing home revenues, supplies, real property, improvements, or equipment may be allowed for the duration of the receivership without prior court approval. [1987 c 476 § 21.]

18.51.530 Notice of change of ownership or management. At least sixty days before the effective date of any change of ownership, change of operating entity, or change of management of a nursing home, the current operating entity shall notify separately and in writing, each resident of the home or the resident's guardian of the proposed change. The notice shall include the identity of the proposed new owner, operating entity, or managing entity and the names, addresses, and telephone numbers of departmental personnel to whom comments regarding the change may be directed. If the proposed new owner, operating entity, or managing entity is a corporation, the notice shall include the names of all officers and the registered agent in the state of Washington. If the proposed new owner, operating entity, or managing entity is a partnership, the notice shall include the names of all general partners. This section shall apply regardless of whether the current operating entity holds a medicaid provider contract with the department and whether the operating entity intends to enter such a contract. [1987 c 476 § 22.]

18.51.540 Cost disclosure to attending physicians.

(1) The legislature finds that the spiraling costs of nursing home care continue to surmount efforts to contain them, increasing at approximately twice the inflationary rate. The causes of this phenomenon are complex. By making nursing home facilities and care providers more aware of the cost consequences of care services for consumers, these providers

may be inclined to exercise more restraint in providing only the most relevant and cost-beneficial services and care, with a potential for reducing the utilization of those services. The requirement of the nursing home to inform physicians, consumers, and other care providers of the charges of the services that they order may have a positive effect on containing health costs.

(2) All nursing home administrators in facilities licensed under this chapter shall be required to develop and maintain a written procedure for disclosing patient charges to attending physicians with admitting privileges. The nursing home administrator shall have the capability to provide an itemized list of the charges for all health care services that may be ordered by a physician. The information shall be made available on request of consumers, or the physicians or other appropriate health care providers responsible for prescribing care. [1993 c 492 § 268.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

18.51.900 Severability—1951 c 117. If any provision of this act or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable. [1951 c 117 § 22.]

18.51.910 Nursing home advisory council—Termination. The nursing home advisory council and its powers and duties shall be terminated on June 30, 1992, as provided in RCW 18.51.911. [1990 c 297 § 3; 1988 c 288 § 4; 1986 c 270 § 3; 1983 c 197 § 24. Formerly RCW 43.131.301.]

18.51.911 Nursing home advisory council—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1993:

(1) Section 11, chapter 117, Laws of 1951, section 1, chapter 85, Laws of 1971 ex. sess., section 65, chapter 211, Laws of 1979 ex. sess., section 39, chapter 287, Laws of 1984 and RCW 18.51.100; and

(2) Section 12, chapter 117, Laws of 1951, section 66, chapter 211, Laws of 1979 ex. sess. and RCW 18.51.110. [1990 c 297 § 4; 1988 c 288 § 5; 1986 c 270 § 4; 1983 c 197 § 50. Formerly RCW 43.131.302.]

Chapter 18.52

NURSING HOME ADMINISTRATORS

Sections

18.52.010	Short title—Intent.
18.52.020	Definitions.
18.52.025	Authority of secretary of health.
18.52.030	Management and supervision of nursing homes by licensed administrators required.
18.52.040	Board of nursing home administrators—Created—Membership.
18.52.050	Board—Generally.

- 18.52.061 Board—Authority.
- 18.52.066 Application of uniform disciplinary act.
- 18.52.071 Qualifications of licensees.
- 18.52.110 License renewal.
- 18.52.130 Recognition of out-of-state licensees.
- 18.52.140 Penalty for unlicensed acts.
- 18.52.160 Examinations—Times and places—Meetings of board.
- 18.52.900 Severability—1970 ex.s. c 57.

Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.

18.52.010 Short title—Intent. This chapter shall be known as the "Nursing Home Administrator Licensing Act" and is intended to establish and provide for the enforcement of standards for the licensing of nursing home administrators. The legislature finds that the quality of patient care in nursing homes is directly related to the competence of the nursing home administrators. It is the intent of this chapter that licensed nursing home administrators continually maintain (1) the suitable character required and (2) the capacity to consider the available resources and personnel of the facility subject to their authority and come to reasonable decisions implementing patient care. [1977 ex.s. c 243 § 1; 1970 ex.s. c 57 § 1.]

18.52.020 Definitions. When used in this chapter, unless the context otherwise clearly requires:

(1) "Board" means the state board of nursing home administrators representative of the professions and institutions concerned with the care of the chronically ill and infirm aged patients.

(2) "Secretary" means the secretary of health or the secretary's designee.

(3) "Nursing home" means any facility or portion thereof licensed under state law as a nursing home.

(4) "Nursing home administrator" means an individual qualified by education, experience, training, and examination to administer a nursing home. A nursing home administrator administering a nursing home must be in active administrative charge as defined by the board. Nothing in this definition or this chapter shall be construed to prevent any person, so long as he or she is otherwise qualified, from obtaining and maintaining a license even though he or she has not administered or does not continue to administer a nursing home. [1992 c 53 § 1; 1991 c 3 § 116; 1979 c 158 § 44; 1970 ex.s. c 57 § 2.]

18.52.025 Authority of secretary of health. In addition to any other authority provided by law, the secretary shall have the following authority:

(1) To set all fees required in this chapter in accordance with RCW 43.70.250 which may include fees for approval of continuing competency, supervision of practical experience, all applications, verification, renewal, examination, and late penalties;

(2) To establish forms necessary to administer this chapter;

(3) To issue a license to any applicant who has met the education, training, and examination requirements for licensure and deny a license to applicants who do not meet the minimum qualifications for licensure, except that proceedings concerning the denial of licenses based on

unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(4) To employ clerical, administrative, and investigative staff as needed to implement and administer this chapter and to employ individuals including those licensed under this chapter to serve as examiners or consultants as necessary to implement and administer this chapter; and

(5) To maintain the official department record of all applicants and licensees. [1992 c 53 § 2.]

18.52.030 Management and supervision of nursing homes by licensed administrators required. Nursing homes operating within this state shall be under the active, overall administrative charge and supervision of an on-site full-time administrator licensed as provided in this chapter. No person acting in any capacity, unless the holder of a nursing home administrator's license issued under this chapter, shall be charged with the overall responsibility to make decisions or direct actions involved in managing the internal operation of a nursing home, except as specifically delegated in writing by the administrator to identify a responsible person to act on the administrator's behalf when the administrator is absent. The administrator shall review the decisions upon the administrator's return and amend the decisions if necessary. The board shall define by rule the parameters for on-site full-time administrators in nursing homes with small resident populations and nursing homes in rural areas, or separately licensed facilities collocated on the same campus, as well as provide for the administrative requirements for nursing homes that are temporarily without administrators. [1992 c 53 § 3; 1970 ex.s. c 57 § 3.]

18.52.040 Board of nursing home administrators—Created—Membership. The state board of nursing home administrators shall consist of nine members appointed by the governor. Four members shall be persons licensed under this chapter who have at least four years actual experience in the administration of a licensed nursing home in this state immediately preceding appointment to the board and who are not employed by the state or federal government.

Four members shall be representatives of the health care professions providing medical or nursing services in nursing homes who are privately or self-employed; or shall be persons employed by educational institutions who have special knowledge or expertise in the field of health care administration, health care education or long-term care or both, or care of the aged and chronically ill.

One member shall be a resident of a nursing home or a family member of a resident or a person eligible for medicare. No member who is a nonadministrator representative shall have any direct or family financial interest in nursing homes while serving as a member of the board. The governor shall consult with and seek the recommendations of the appropriate state-wide business and professional organizations and societies primarily concerned with long term health care facilities in the course of considering his appointments to the board. Board members currently serving shall continue to serve until the expiration of their appointments. [1992 c 53 § 4; 1975 1st ex.s. c 97 § 1; 1970 ex.s. c 57 § 4.]

18.52.050 Board—Generally. Members of the board shall be citizens of the United States and residents of this state. All administrator members of the board shall be holders of licenses under this chapter. The terms of all members shall be five years. Any board member may be removed for just cause including a finding of fact of unprofessional conduct or impaired practice. The governor may appoint a new member to fill any vacancy on the board for the remainder of the unexpired term. No board member may serve more than two consecutive terms, whether full or partial. Board members shall serve until their successors are appointed. Board members shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. The board may elect annually a chair and vice-chair to direct the meetings of the board. The board shall meet at least four times each year and may hold additional meetings as called by the secretary or the chair. [1992 c 53 § 5; 1970 ex.s. c 57 § 5.]

18.52.061 Board—Authority. In addition to any authority provided by law, the board shall have the following authority:

- (1) To adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;
- (2) To prepare and administer or approve the preparation and administration of examinations for licensure;
- (3) To conduct a hearing on an appeal of a denial of license based on the applicant's failure to meet the minimum qualifications for licensure. The hearing shall be conducted pursuant to chapter 34.05 RCW;
- (4) To establish by rule the procedures for an appeal of an examination failure;
- (5) To adopt rules implementing a continuing competency program;
- (6) To issue subpoenas, statements of charges, statements of intent to deny licenses, and orders, and to delegate in writing to a designee to issue subpoenas; and
- (7) To issue temporary license permits under circumstances defined by the board. [1992 c 53 § 6.]

18.52.066 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 32.]

Severability—1987 c 150: See RCW 18.122.901.

18.52.071 Qualifications of licensees. The department shall issue a license to any person applying for a nursing home administrator's license who meets the following requirements:

- (1) Successful completion of the requirements for a baccalaureate degree from a recognized institution of higher learning and any federal requirements;
- (2) Successful completion of a practical experience requirement as determined by the board;
- (3) Successful completion of examinations administered or approved by the board, or both, which shall be designed to test the candidate's competence to administer a nursing home;

(4) At least twenty-one years of age; and

(5) Not having engaged in unprofessional conduct as defined in RCW 18.130.180 or being unable to practice with reasonable skill and safety as defined in RCW 18.130.170. The board shall establish by rule what constitutes adequate proof of meeting the above requirements.

A limited license indicating the limited extent of authority to administer institutions conducted by and for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination shall be issued to individuals demonstrating membership in such church or denomination. However, nothing in this chapter shall be construed to require an applicant employed by such institution to demonstrate proficiency in any medical techniques or to meet any medical educational qualifications or medical standards not in accord with the remedial care and treatment provided in such institutions. [1996 c 271 § 1; 1992 c 53 § 7.]

18.52.110 License renewal. (1) Every holder of a nursing home administrator's license shall renew that license by fulfilling the continuing competency requirement and by complying with administrative procedures, administrative requirements, and fees as determined according to RCW 43.70.250 and 43.70.280. The board may prescribe rules for maintenance of a license for temporary or permanent withdrawal or retirement from the active practice of nursing home administration.

(2) A condition of renewal shall be the presentation of proof by the applicant that the board requirement for continuing competency related to the administration of nursing homes has been met. [1996 c 191 § 26; 1992 c 53 § 8; 1991 c 3 § 120; 1984 c 279 § 69; 1975 1st ex.s. c 30 § 54; 1971 ex.s. c 266 § 9; 1970 ex.s. c 57 § 11.]

Severability—1984 c 279: See RCW 18.130.901.

18.52.130 Recognition of out-of-state licensees. The secretary may issue a nursing home administrator's license to anyone who holds a current administrator's license from another jurisdiction upon receipt of an application and complying with administrative procedures, administrative requirements, and fees determined according to RCW 43.70.250 and 43.70.280, if the standards for licensing in such other jurisdiction are substantially equivalent to those prevailing in this state, and that the applicant is otherwise qualified as determined by the board. [1996 c 191 § 27; 1992 c 53 § 9; 1991 c 3 § 121; 1985 c 7 § 50; 1975 1st ex.s. c 30 § 55; 1970 ex.s. c 57 § 13.]

18.52.140 Penalty for unlicensed acts. It shall be unlawful and constitute a gross misdemeanor for any person to act or serve in the capacity of a nursing home administrator unless he or she is the holder of a nursing home administrator's license issued in accordance with the provisions of this chapter: **PROVIDED HOWEVER,** That persons carrying out functions and duties delegated by a licensed administrator as defined in RCW 18.52.030 shall not be construed to be committing any unlawful act under this chapter. [1992 c 53 § 10; 1970 ex.s. c 57 § 14.]

18.52.160 Examinations—Times and places—Meetings of board. The board shall meet as often as may be necessary to carry out the duties of the board under this chapter. Examinations shall be administered at intervals not less than semiannually and at such times and places as may be determined by the board. There shall not be a limit upon the number of times a candidate may take the required examination. [1984 c 279 § 71; 1970 ex.s. c 57 § 17.]

Severability—1984 c 279: See RCW 18.130.901.

18.52.900 Severability—1970 ex.s. c 57. If any provision of this 1970 act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1970 ex.s. c 57 § 20.]

Chapter 18.52C NURSING POOLS

Sections

- 18.52C.010 Legislative intent.
- 18.52C.020 Definitions.
- 18.52C.030 Registration required.
- 18.52C.040 Duties of nursing pool—Application of uniform disciplinary act.
- 18.52C.050 Registration prerequisite to state reimbursement.

18.52C.010 Legislative intent. The legislature intends to protect the public's right to high quality health care by assuring that nursing pools employ, procure or refer competent and qualified nursing personnel, and that such nursing personnel are provided to health care facilities in a way to meet the needs of residents and patients. [1988 c 243 § 1.]

18.52C.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Secretary" means the secretary of the department of health.

(2) "Health care facility" means a nursing home, hospital, hospice care facility, home health care agency, hospice agency, or other entity for the delivery of health care services.

(3) "Nursing home" means any nursing home facility licensed pursuant to chapter 18.52 RCW.

(4) "Nursing pool" means any person engaged in the business of providing, procuring, or referring health care personnel for temporary employment in health care facilities, such as licensed nurses or practical nurses, and nursing assistants. "Nursing pool" does not include an individual who only engages in providing his or her own services.

(5) "Person" includes an individual, firm, corporation, partnership, or association. [1991 c 3 § 130; 1988 c 243 § 2.]

18.52C.030 Registration required. A person who operates a nursing pool shall register the pool with the secretary. Each separate location of the business of a nursing pool shall have a separate registration.

The secretary shall establish administrative procedures, administrative requirements, and fees as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 28; 1991 c 3 § 131; 1988 c 243 § 3.]

18.52C.040 Duties of nursing pool—Application of uniform disciplinary act. (1) The nursing pool shall document that each temporary employee or referred independent contractor provided or referred to health care facilities currently meets the minimum state credentialing requirements.

(2) The nursing pool shall not require, as a condition of employment or referral, that employees or independent contractors of the nursing pool recruit new employees or independent contractors for the nursing pool from among the permanent employees of the health care facility to which the nursing pool employee or independent contractor has been assigned or referred.

(3) The nursing pool shall carry professional and general liability insurance to insure against any loss or damage occurring, whether professional or otherwise, as the result of the negligence of its employees, agents or independent contractors for acts committed in the course of their employment with the nursing pool: PROVIDED, That a nursing pool that only refers self-employed, independent contractors to health care facilities shall carry professional and general liability insurance to cover its own liability as a nursing pool which refers self-employed, independent contractors to health care facilities: AND PROVIDED FURTHER, That it shall require, as a condition of referral, that self-employed, independent contractors carry professional and general liability insurance to insure against loss or damage resulting from their own acts committed in the course of their own employment by a health care facility.

(4) The uniform disciplinary act, chapter 18.130 RCW, shall govern the issuance and denial of registration and the discipline of persons registered under this chapter. The secretary shall be the disciplinary authority under this chapter. [1991 c 3 § 132; 1988 c 243 § 4.]

18.52C.050 Registration prerequisite to state reimbursement. No state agency shall allow reimbursement for the use of temporary health care personnel from nursing pools that are not registered pursuant to this chapter: PROVIDED, That individuals directly retained by a health care facility without intermediaries may be reimbursed. [1988 c 243 § 5.]

Chapter 18.53 OPTOMETRY

Sections

- 18.53.003 Regulation of health care professions—Criteria.
- 18.53.005 Legislative finding and declaration.
- 18.53.010 Definition—Scope of practice.
- 18.53.021 License required.
- 18.53.030 Temporary permit—When issued.
- 18.53.035 Credentialing by endorsement.
- 18.53.040 Exemptions—Exceptions—Limitation.
- 18.53.050 License renewal.
- 18.53.060 License applicants—Eligibility—Qualifications—Examinations—Exception.

- 18.53.070 Licensing—Procedures, requirements, fees.
- 18.53.100 Disciplinary action—Grounds.
- 18.53.101 Application of uniform disciplinary act.
- 18.53.140 Unlawful acts.
- 18.53.145 Unlawful advertising of indemnity benefits.
- 18.53.150 Violations generally—Penalty.
- 18.53.160 Public aid ocular services—Discrimination prohibited.
- 18.53.165 Discrimination prohibited—Legislative finding and declaration.
- 18.53.170 Discrimination prohibited—Acceptance of services by state agencies and subdivisions.
- 18.53.175 Discrimination prohibited—State agencies and subdivisions—Officials and employees.
- 18.53.180 Discrimination prohibited—Agreements or contracts by state and subdivisions.
- 18.53.185 Discrimination prohibited—Costs immaterial.
- 18.53.190 Discrimination prohibited—Application of law.
- 18.53.200 Privileged communications.
- 18.53.900 Short title—1919 c 144.
- 18.53.901 Severability—1973 c 48.
- 18.53.910 Severability—1919 c 144.
- 18.53.911 Severability—1975 1st ex.s. c 69.
- 18.53.912 Severability—1981 c 58.
- 18.53.920 Repeal—1919 c 144.

Reviser's note: Certain powers and duties of the department of licensing and the director of licensing transferred to the department of health and the secretary of health. See RCW 43.70.220.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Homeless person vision services: RCW 43.20A.800 through 43.20A.850.

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

18.53.003 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.53.005 Legislative finding and declaration. The legislature finds and declares that the practice of optometry is a learned profession and affects the health, welfare and safety of the people of this state, and should be regulated in the public interest and limited to qualified persons licensed and authorized to practice under the provisions of chapters 18.53 and 18.54 RCW. [1981 c 58 § 1; 1975 1st ex.s. c 69 § 1.]

18.53.010 Definition—Scope of practice. (1) The practice of optometry is defined as the examination of the human eye, the examination and ascertaining any defects of the human vision system and the analysis of the process of vision. The practice of optometry may include, but not necessarily be limited to, the following:

(a) The employment of any objective or subjective means or method including the use of drugs topically applied to the eye for diagnostic and therapeutic purposes by those licensed under this chapter and who meet the requirements of subsections (2) and (3) of this section, and the use of any diagnostic instruments or devices for the examination or analysis of the human vision system, the measurement of the powers or range of human vision, or the determination of the refractive powers of the human eye or its functions in general; and

(b) The prescription and fitting of lenses, prisms, therapeutic or refractive contact lenses and the adaption or adjustment of frames and lenses used in connection therewith; and

(c) The prescription and provision of visual therapy, therapeutic aids and other optical devices, and the treatment with topically applied drugs by those licensed under this chapter and who meet the requirements of subsections (2) and (3) of this section; and

(d) The ascertainment of the perceptive, neural, muscular or pathological condition of the visual system; and

(e) The adaptation of prosthetic eyes.

(2) Those persons using drugs for diagnostic purposes in the practice of optometry shall have a minimum of sixty hours of didactic and clinical instruction in general and ocular pharmacology as applied to optometry, and for therapeutic purposes, an additional minimum of seventy-five hours of didactic and clinical instruction as established by the board, and certification from an institution of higher learning, accredited by those agencies recognized by the United States office of education or the council on postsecondary accreditation to qualify for certification by the optometry board of Washington to use drugs for diagnostic and therapeutic purposes. Such course or courses shall be the fiscal responsibility of the participating and attending optometrist.

(3) The board shall establish a schedule of drugs for diagnostic and treatment purposes limited to the practice of optometry, and no person licensed pursuant to this chapter shall prescribe, dispense, purchase, possess, or administer drugs except as authorized and to the extent permitted by the board.

(4) The board shall develop a means of identification and verification of optometrists certified to use therapeutic drugs for the purpose of issuing prescriptions as authorized by this section. [1989 c 36 § 1; 1981 c 58 § 2; 1975 1st ex.s. c 69 § 2; 1919 c 144 § 1; RRS § 10147. Prior: 1909 c 235 § 1.]

18.53.021 License required. It is a violation of RCW 18.130.190 for any person to practice optometry in this state without first obtaining a license from the secretary of health. [1991 c 3 § 133; 1987 c 150 § 38.]

Severability—1987 c 150: See RCW 18.122.901.

18.53.030 Temporary permit—When issued. The board may at its discretion, issue a permit to practice optometry during the interim between examinations, to any person who has filed an application for examination which has been accepted by the board as admitting the applicant to the next examination. Such permit shall be valid only until the date of the next examination and shall not be issued sooner than thirty days following any regular examination, and no permit shall be issued to any person who has failed before the board, nor where a certificate has been revoked. [1986 c 259 § 80; 1919 c 144 § 8; RRS § 10153.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.53.035 Credentialing by endorsement. An applicant holding a credential in another state may be credentialed to practice in this state without examination if the board determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1991 c 332 § 30.]

Application to scope of practice—Captions not law—1991 c 332:
See notes following RCW 18.130.010.

18.53.040 Exemptions—Exceptions—Limitation.

Nothing in this chapter shall be construed to pertain in any manner to the practice of any regularly qualified oculist or physician, who is regularly licensed to practice medicine in the state of Washington, or to any person who is regularly licensed to practice as a dispensing optician in the state of Washington, nor to any person who in the regular course of trade, sells or offers for sale, spectacles or eyeglasses as regular merchandise without pretense of adapting them to the eyes of the purchaser, and not in evasion of this chapter: PROVIDED, That any such regularly qualified oculist or physician or other person shall be subject to the provisions of subdivisions (10) through (15) of RCW 18.53.140, in connection with the performance of any function coming within the definition of the practice of optometry as defined in this chapter: PROVIDED FURTHER, HOWEVER, That in no way shall this section be construed to permit a dispensing optician to practice optometry as defined in *this 1975 amendatory act. [1975 1st ex.s. c 69 § 15; 1937 c 155 § 3; 1919 c 144 § 15; Rem. Supp. 1937 § 10159. Prior: 1909 c 235 § 13.]

*Reviser's note: "This 1975 amendatory act" [1975 1st ex.s. c 69] consists of RCW 18.53.005, 18.53.155, 18.53.200, 18.53.911, amendments to RCW 18.53.010, 18.53.020, 18.53.040, 18.53.060, 18.53.070, 18.53.100, 18.53.140, 18.53.190, 18.54.050, 18.54.070, 18.54.080, 18.54.140 and the repeal of RCW 18.53.090.

18.53.050 License renewal. Every licensed optometrist shall renew his or her license by complying with administrative procedures, administrative requirements, and fees determined according to RCW 43.70.250 and 43.70.280. [1996 c 191 § 29; 1991 c 3 § 134; 1985 c 7 § 51; 1983 c 168 § 8; 1981 c 277 § 8; 1975 1st ex.s. c 30 § 56; 1971 ex.s. c 266 § 10; 1955 c 275 § 1; 1919 c 144 § 13; RRS § 10158.]

Severability—1983 c 168: See RCW 18.120.910.

18.53.060 License applicants—Eligibility—Qualifications—Examinations—Exception. From and after January 1, 1940, in order to be eligible for examination for registration, a person shall be a citizen of the United States of America, who shall have a preliminary education of or equal to four years in a state accredited high school and has completed a full attendance course in a regularly chartered school of optometry maintaining a standard which is deemed sufficient and satisfactory by the optometry board, who is a person of good moral character, who has a visual acuity in at least one eye, of a standard known as 20/40 under correction: PROVIDED, That from and after January 1, 1975, in order to be eligible for examination for a license, a person shall have the following qualifications:

- (1) Be a graduate of a state accredited high school or its equivalent;
- (2) Have a diploma or other certificate of completion from an accredited college of optometry or school of optometry, maintaining a standard which is deemed sufficient and satisfactory by the optometry board, conferring its degree of doctor of optometry or its equivalent, maintaining a course of four scholastic years in addition to

preprofessional college level studies, and teaching substantially all of the following subjects: General anatomy, anatomy of the eyes, physiology, physics, chemistry, pharmacology, biology, bacteriology, general pathology, ocular pathology, ocular neurology, ocular myology, psychology, physiological optics, optometrical mechanics, clinical optometry, visual field charting and orthoptics, general laws of optics and refraction and use of the ophthalmoscope, retinoscope and other clinical instruments necessary in the practice of optometry; and

(3) Be of good moral character.

Such person shall file an application for an examination and license with said board at any time thirty days prior to the time fixed for such examination, or at a later date if approved by the board, and such application must be on forms approved by the board, and properly attested, and if found to be in accordance with the provisions of this chapter shall entitle the applicant upon payment of the proper fee, to take the examination prescribed by the board. Such examination shall not be out of keeping with the established teachings and adopted textbooks of the recognized schools of optometry, and shall be confined to such subjects and practices as are recognized as essential to the practice of optometry. All candidates without discrimination, who shall successfully pass the prescribed examination, shall be registered by the board and shall, upon payment of the proper fee, be issued a license. Any license to practice optometry in this state issued by the secretary, and which shall be in full force and effect at the time of passage of *this 1975 amendatory act, shall be continued. [1995 c 198 § 6; 1991 c 3 § 135; 1975 1st ex.s. c 69 § 4; 1937 c 155 § 1; 1919 c 144 § 5; Rem. Supp. 1937 § 10150. Prior: 1909 c 235 § 7. Formerly RCW 18.53.060 and 18.53.080.]

*Reviser's note: "This 1975 amendatory act," see note following RCW 18.53.040.

18.53.070 Licensing—Procedures, requirements, fees. Administrative procedures, administrative requirements, and fees for issuing a license shall be determined as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 30; 1991 c 3 § 136; 1985 c 7 § 52; 1981 c 260 § 5. Prior: 1975 1st ex.s. c 69 § 5; 1975 1st ex.s. c 30 § 57; 1919 c 144 § 9; RRS § 10151; prior: 1909 c 235 § 7.]

18.53.100 Disciplinary action—Grounds. The following constitutes grounds for disciplinary action under chapter 18.130 RCW:

- (1) Any form of fraud or deceit used in securing a license; or
- (2) Any unprofessional conduct, of a nature likely to deceive or defraud the public; or
- (3) The employing either directly or indirectly of any person or persons commonly known as "cappers" or "steerers" to obtain business; or
- (4) To employ any person to solicit from house to house, or to personally solicit from house to house; or
- (5) Advertisement in any way in which untruthful, improbable or impossible statements are made regarding treatments, cures or values; or
- (6) The use of the term "eye specialist" in connection with the name of such optometrist; or

(7) Inability to demonstrate, in a manner satisfactory to the secretary or the board of optometry, their practical ability to perform any function set forth in RCW 18.53.010 which they utilize in their practice. [1991 c 3 § 137; 1986 c 259 § 81; 1975 1st ex.s. c 69 § 6; 1919 c 144 § 11; RRS § 10156. Prior: 1909 c 235 §§ 11, 12.]

Savings—1986 c 259 §§ 81, 85: "The repeal of RCW 18.53.020 and the amendment of RCW 18.53.100 by this act shall not be construed as affecting any rights and duties which matured, penalties which were incurred, and proceedings which were begun before June 11, 1986." [1986 c 259 § 86.]

Severability—1986 c 259: See note following RCW 18.130.010.

Alcoholism, intoxication, and drug addiction treatment: Chapter 70.96A RCW.

False advertising: Chapter 9.04 RCW.

Violation of Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.53.101 Application of uniform disciplinary act.

The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter and chapter 18.54 RCW. [1987 c 150 § 36; 1986 c 259 § 78.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.53.140 Unlawful acts. It shall be unlawful for any person:

(1) To sell or barter, or offer to sell or barter any license issued by the secretary; or

(2) To purchase or procure by barter any license with the intent to use the same as evidence of the holder's qualification to practice optometry; or

(3) To alter with fraudulent intent in any material regard such license; or

(4) To use or attempt to use any such license which has been purchased, fraudulently issued, counterfeited or materially altered as a valid license; or

(5) To practice optometry under a false or assumed name, or as a representative or agent of any person, firm or corporation with which the licensee has no connection: PROVIDED, Nothing in this chapter nor in the optometry law shall make it unlawful for any lawfully licensed optometrist or association of lawfully licensed optometrists to practice optometry under the name of any lawfully licensed optometrist who may transfer by inheritance or otherwise the right to use such name; or

(6) To practice optometry in this state either for him or herself or any other individual, corporation, partnership, group, public or private entity, or any member of the licensed healing arts without having at the time of so doing a valid license issued by the secretary of health; or

(7) To in any manner barter or give away as premiums either on his own account or as agent or representative for any other purpose, firm or corporation, any eyeglasses, spectacles, lenses or frames; or

(8) To use drugs in the practice of optometry, except those topically applied for diagnostic or therapeutic purposes; or

(9) To use advertising whether printed, radio, display, or of any other nature, which is misleading or inaccurate in any material particular, nor shall any such person in any way

misrepresent any goods or services (including but without limitation, its use, trademark, grade, quality, size, origin, substance, character, nature, finish, material, content, or preparation) or credit terms, values, policies, services, or the nature or form of the business conducted; or

(10) To advertise the "free examination of eyes," "free consultation," "consultation without obligation," "free advice," or any words or phrases of similar import which convey the impression to the public that eyes are examined free or of a character tending to deceive or mislead the public, or in the nature of "bait advertising;" or

(11) To use an advertisement of a frame or mounting which is not truthful in describing the frame or mounting and all its component parts. Or advertise a frame or mounting at a price, unless it shall be depicted in the advertisement without lenses inserted, and in addition the advertisement must contain a statement immediately following, or adjacent to the advertised price, that the price is for frame or mounting only, and does not include lenses, eye examination and professional services, which statement shall appear in type as large as that used for the price, or advertise lenses or complete glasses, viz.: frame or mounting with lenses included, at a price either alone or in conjunction with professional services; or

(12) To use advertising, whether printed, radio, display, or of any other nature, which inaccurately lays claim to a policy or continuing practice of generally underselling competitors; or

(13) To use advertising, whether printed, radio, display or of any other nature which refers inaccurately in any material particular to any competitors or their goods, prices, values, credit terms, policies or services; or

(14) To use advertising whether printed, radio, display, or of any other nature, which states any definite amount of money as "down payment" and any definite amount of money as a subsequent payment, be it daily, weekly, monthly, or at the end of any period of time. [1991 c 3 § 138; 1989 c 36 § 2; 1986 c 259 § 82; 1981 c 58 § 3; 1979 c 158 § 47; 1975 1st ex.s. c 69 § 7; 1945 c 78 § 1; 1935 c 134 § 1; 1919 c 144 § 7; Rem. Supp. 1945 § 10152. Cf. 1909 c 235 § 5.]

Severability—1986 c 259: See note following RCW 18.130.010.

False advertising: Chapter 9.04 RCW.

Violation of Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.53.145 Unlawful advertising of indemnity

benefits. It shall be unlawful for any licensee subject to the provisions of chapter 18.53 RCW to advertise to the effect that benefits in the form of indemnity will accrue to subscribers of health care service contracts for services performed by the licensee for a subscriber when the licensee is neither a health care service contractor nor a participant. A violation of this section shall be punishable as provided in RCW 18.53.140(10). [1969 c 143 § 2.]

18.53.150 Violations generally—Penalty. Any person violating this chapter is guilty of a misdemeanor. [1986 c 259 § 83; 1919 c 144 § 22; RRS § 10163. Prior: 1909 c 235 § 12.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.53.160 Public aid ocular services—Discrimination prohibited. All agencies of the state and its subdivisions, and all commissions, clinics and boards administering relief, public assistance, public welfare assistance, social security, health insurance, or health service under the laws of this state, shall accept the services of licensed optometrists for any service covered by their licenses relating to any person receiving benefits from said agencies or subdivisions and shall pay for such services in the same way as practitioners of other professions may be paid for similar services. None of the said governmental agencies, or agents, officials or employees thereof, including the public schools, in the performance of their duties shall in any way show discrimination among licensed ocular practitioners. [1949 c 149 § 1; Rem. Supp. 1949 § 9991a.]

18.53.165 Discrimination prohibited—Legislative finding and declaration. The legislature finds and declares that the costs of health care to the people are rising disproportionately to other costs and that there is a paramount concern that the right of the people to obtain access to health care in all its facets is being impaired thereby. For this reason, the reliance on the mechanism of insurance, whether profit or nonprofit, is the only effective manner in which the large majority of the people can attain access to quality health care, and it is therefore declared to be in the public interest that health care insurance be regulated to assure that all the people have access to health care rendered by whatever means, and to the greatest extent possible. RCW 18.53.165 through 18.53.190 and 18.53.901, prohibiting discrimination against the legally recognized and licensed profession of optometrists, is necessary in the interest of the public health, welfare and safety. [1973 c 48 § 1.]

18.53.170 Discrimination prohibited—Acceptance of services by state agencies and subdivisions. Notwithstanding any other provision of law, the state and its political subdivisions shall accept the services of licensed optometrists for any service covered by their licenses with relation to any person receiving benefits, salaries, wages, or any other type of compensation from the state, its agencies or subdivisions. [1973 c 48 § 2.]

18.53.175 Discrimination prohibited—State agencies and subdivisions—Officials and employees. The state and its political subdivisions, and all officials, agents, employees, or representatives thereof, are prohibited from in any way discriminating against licensed optometrists in performing and receiving compensation for services covered by their licenses. [1973 c 48 § 3.]

18.53.180 Discrimination prohibited—Agreements or contracts by state and subdivisions. Notwithstanding any other provision of law, the state and its political subdivisions, and all officials, agents, employees, or representatives thereof, are prohibited from entering into any agreement or contract with any individual, group, association, or corporation which in any way, directly or indirectly, discriminates against licensed optometrists in performing and receiving compensation for services covered by their licenses. [1973 c 48 § 4.]

18.53.185 Discrimination prohibited—Costs immaterial. Notwithstanding any other provision of law, for the purpose of RCW 18.53.165 through 18.53.180 and 18.53.190 it is immaterial whether the cost of any policy, plan, agreement, or contract be deemed additional compensation for services, or otherwise. [1973 c 48 § 5.]

18.53.190 Discrimination prohibited—Application of law. RCW 18.53.165 through 18.53.185 shall apply to all agreements, renewals, or contracts issued on or after June 7, 1973.

Health care service contracts having a participant agreement with a majority of the licensed optometrists within its service area may provide benefits to persons or groups of persons through contracts which allow a subscriber to utilize on an equal participation basis the services of any participant provided in the contract, and such contracts shall not be discriminatory. [1975 1st ex.s. c 69 § 8; 1973 c 48 § 6.]

18.53.200 Privileged communications. The information and records of a licensed optometrist pertaining to a patient shall be privileged communications, the same as now or hereafter may exist in the relationship of physician and patient and shall not be released or subjected to disclosure without the consent of the patient or as otherwise required by law. [1975 1st ex.s. c 69 § 14.]

Privileged communications—Physician and patient: RCW 5.60.060.

18.53.900 Short title—1919 c 144. This act shall be known, and may be referred to as, "The Optometry Law". [1919 c 144 § 20.]

18.53.901 Severability—1973 c 48. If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 c 48 § 7.]

18.53.910 Severability—1919 c 144. Any question of unconstitutionality arising concerning any of the sections or provisions of this act shall in no wise affect any other section or provision of the act. [1919 c 144 § 18.]

18.53.911 Severability—1975 1st ex.s. c 69. If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 69 § 17.]

18.53.912 Severability—1981 c 58. If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 58 § 4.]

18.53.920 Repeal—1919 c 144. All acts and parts of acts inconsistent with this act are hereby repealed. [1919 c 144 § 19.]

Chapter 18.54
OPTOMETRY BOARD

Sections

18.54.005	Regulation of health care professions—Criteria.
18.54.010	Definitions.
18.54.020	Examining committee reconstituted as optometry board.
18.54.030	Composition—Appointments—Qualifications—Terms—Vacancies.
18.54.040	Officers.
18.54.050	Meetings.
18.54.060	Quorum.
18.54.070	Powers and duties—Examinations—Rules.
18.54.076	Application of uniform disciplinary act.
18.54.090	Administrative procedures—Minimum fees.
18.54.130	Compensation and travel expenses of members.
18.54.140	Board may draw from health professions account.
18.54.150	Devolution of powers relating to revocation of certificates.
18.54.900	Short title.
18.54.910	Severability—1963 c 25.
18.54.920	RCW 43.24.060, 43.24.110, and 43.24.120 not applicable to optometry.

Reviser's note: Powers and duties of the department of licensing and the director of licensing transferred to the department of health and the secretary of health. See RCW 43.70.220.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.54.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.54.010 Definitions. Unless the context clearly indicates otherwise, the terms used in this chapter take their meanings as follows:

- (1) "Board" means the optometry board;
- (2) "License" means a certificate or permit to practice optometry as provided in *RCW 18.53.020 as amended from time to time;
- (3) "Members" means members of the optometry board. [1963 c 25 § 1.]

*Reviser's note: RCW 18.53.020 was repealed by 1986 c 259 § 85.

18.54.020 Examining committee reconstituted as optometry board. The examining committee, heretofore created pursuant to RCW 43.24.060, is reorganized and reconstituted as the optometry board. [1963 c 25 § 2.]

RCW 43.24.060, 43.24.110, and 43.24.120 not applicable to optometry: RCW 18.54.920.

18.54.030 Composition—Appointments—Qualifications—Terms—Vacancies. The initial composition of the optometry board includes the three members of the examining committee for optometry plus two more optometrists to be appointed by the governor.

The governor must make all appointments to the optometry board. Only optometrists who are citizens of the United States, residents of this state, having been licensed to practice and practicing optometry in this state for a period of at least four years immediately preceding the effective date of appointment, and who have no connection with any school or college embracing the teaching of optometry or with any optical supply business may be appointed.

The governor may set the terms of office of the initial board at his discretion, to establish the following perpetual succession: The terms of the initial board include one position for one year, two for two years and two for three years; and upon the expiration of the terms of the initial board, all appointments are for three years.

In addition to the members specified in this section, the governor shall appoint a consumer member of the board, who shall serve for a term of three years.

In the event that a vacancy occurs on the board in the middle of an appointee's term, the governor must appoint a successor for the unexpired portion of the term only. [1984 c 279 § 54; 1963 c 25 § 3.]

Severability—1984 c 279: See RCW 18.130.901.

18.54.040 Officers. The board must elect a chairman and secretary from its members, to serve for a term of one year or until their successors are elected and qualified. [1963 c 25 § 4.]

18.54.050 Meetings. The board must meet at least once yearly or more frequently upon call of the chairman or the secretary of health at such times and places as the chairman or the secretary of health may designate by giving three days' notice or as otherwise required by RCW 42.30.075. [1991 c 3 § 139; 1989 c 175 § 65; 1979 c 158 § 48; 1975 1st ex.s. c 69 § 9; 1963 c 25 § 5.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1975 1st ex.s. c 69: See RCW 18.53.911.

18.54.060 Quorum. Three members constitute a quorum for the transaction of business of the board. [1963 c 25 § 6.]

18.54.070 Powers and duties—Examinations—Rules. The board has the following powers and duties:

(1) To develop and administer, or approve, or both, a licensure examination. The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities.

(2) The board shall adopt rules and regulations to promote safety, protection and the welfare of the public, to carry out the purposes of this chapter, to aid the board in the performance of its powers and duties, and to govern the practice of optometry. [1995 c 198 § 7; 1991 c 3 § 140; 1986 c 259 § 84; 1979 c 158 § 49; 1975 1st ex.s. c 69 § 10; 1963 c 25 § 7.]

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1975 1st ex.s. c 69: See RCW 18.53.911.

18.54.076 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter and chapter 18.53 RCW. [1987 c 150 § 37; 1986 c 259 § 79.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.54.090 Administrative procedures—Minimum fees. The board is an administrative agency of the state of

Washington, and the provisions of the administrative procedure act, chapter 34.05 RCW as amended from time to time, govern the conduct and proceedings of the board. Nothing in this chapter shall be construed to give the board the power to set or recommend a minimum schedule of fees to be charged by licensed optometrist. [1963 c 25 § 9.]

18.54.130 Compensation and travel expenses of members. Members of the board are entitled to receive their travel expenses in accordance with RCW 43.03.050 and 43.03.060. Each member of the board will also be compensated in accordance with RCW 43.03.240. [1984 c 287 § 41; 1975-'76 2nd ex.s. c 34 § 39; 1967 c 188 § 3; 1963 c 25 § 13.]

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

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

18.54.140 Board may draw from health professions account. Notwithstanding any other provisions of law, rule or regulation, the board may draw from the health professions account on vouchers approved by the secretary of health, so much money as is necessary to carry into effect, to administer, and to enforce the provisions of this chapter. [1991 c 3 § 141; 1983 c 168 § 9; 1979 c 158 § 50; 1975 1st ex.s. c 69 § 12; 1963 c 25 § 14.]

Severability—1983 c 168: See RCW 18.120.910.

Severability—1975 1st ex.s. c 69: See RCW 18.53.911.

Health professions account: RCW 43.70.320.

18.54.150 Devolution of powers relating to revocation of certificates. All powers previously vested in the director of licenses under the provisions of RCW 18.53.100 are vested in the optometry board. [1963 c 25 § 15.]

18.54.900 Short title. This act may be known and cited as the "optometry board act." [1963 c 25 § 16.]

18.54.910 Severability—1963 c 25. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1963 c 25 § 17.]

18.54.920 RCW 43.24.060, 43.24.110, and 43.24.120 not applicable to optometry. The provisions of RCW 43.24.060, 43.24.110 and 43.24.120 are not applicable to the licensing and regulation of the practice of optometry. [1963 c 25 § 18.]

Examining committee reconstituted as optometry board: RCW 18.54.020.

Chapter 18.55 OCULARISTS

Sections

- 18.55.005 Regulation of health care professions—Criteria.
- 18.55.007 License required.
- 18.55.010 Licensing—Exemptions—Limitations.
- 18.55.015 Intent.

- 18.55.020 Definitions.
- 18.55.030 Licenses—Renewal.
- 18.55.040 License applicants—Qualifications—Examination.
- 18.55.045 Examination.
- 18.55.050 Licenses or registrations—Renewal.
- 18.55.060 Apprentices.
- 18.55.066 Application of uniform disciplinary act.
- 18.55.075 Scope of practice.
- 18.55.085 Unprofessional conduct.
- 18.55.095 Authority of secretary.
- 18.55.105 Out-of-state applicants.
- 18.55.900 Severability—1980 c 101.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Health professions advisory committee: RCW 18.138.120.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.55.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.55.007 License required. No person may practice or represent himself or herself as an ocularist without first having a valid license to do so. [1987 c 150 § 40.]

Severability—1987 c 150: See RCW 18.122.901.

18.55.010 Licensing—Exemptions—Limitations. (1) Nothing in this chapter shall:

(a) Be construed to limit or restrict a duly licensed physician or employees working under the personal supervision of a duly licensed physician from the practices enumerated in this chapter;

(b) Be construed to prohibit an unlicensed person from performing mechanical work upon inert matter in an ocularist's office or laboratory;

(c) Be construed to authorize or permit a licensee under this chapter to hold himself or herself out as being able to, or to offer to, or to undertake to attempt, by any manner of means, to examine or exercise eyes, or diagnose, treat, correct, relieve, operate, or prescribe for disease or any visual deficiency.

(2) Each practitioner duly licensed pursuant to chapters 18.53, 18.57, and 18.71 RCW shall have all the rights and privileges which may accrue under this chapter to ocularists licensed under this chapter. [1980 c 101 § 1.]

18.55.015 Intent. The legislature finds it necessary to regulate the practice of ocularist to protect the public health, safety, and welfare. The legislature intends that only individuals who meet and maintain minimum standards of competence and conduct may provide service to the public. [1991 c 180 § 1.]

18.55.020 Definitions. The terms defined in this section shall have the meaning ascribed to them wherever appearing in this chapter, unless a different meaning is specifically used to such term in such statute.

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of health.

(3) "Ocularist" means a person licensed under this chapter.

(4) "Apprentice" means a person designated an apprentice in the records of the secretary to receive from a licensed

ocularist training and direct supervision in the work of an ocularist.

(5) "Stock-eye" means an ocular stock prosthesis that has not been originally manufactured or altered by the ocularist or service provider selling or fitting, or both, said prosthesis to a patient or customer. "Altered" means either taking away or adding materials, or colorization, or otherwise changing the prosthesis' appearance, function, or fit in the socket or on the implant of the patient or customer.

(6) "Modified stock-eye" means a stock-eye that has been altered in some manner by the ocularist or service provider selling or fitting, or both, said prosthesis to a patient or customer. "Altered" is as defined in subsection (5) of this section. A modified stock-eye cannot be defined as either a "custom" or "impression-fitted" eye or prosthesis by adding material that incorporates an impression-surface of the patient or customer socket or implant surfaces.

(7) "Custom-eye" means an original, newly manufactured eye or prosthesis that has been specifically crafted by an ocularist or authorized service provider for the patient or customer to whom it is sold or provided. The "custom-eye" may be either an impression-fitted eye (an impression of the socket or implant surfaces) or an empirical/wax pattern-fitted method eye, or a combination of either, as delineated in the ocularist examination. [1994 sp.s. c 9 § 504; 1991 c 180 § 2; (1991 c 3 § 142 repealed by 1991 sp.s. c 11 § 2); 1980 c 101 § 2.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.55.030 Licenses—Renewal. The secretary shall determine administrative procedures, administrative requirements, and fees for licenses and renewals as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 31; 1991 c 3 § 143; 1980 c 101 § 3.]

18.55.040 License applicants—Qualifications—Examination. No applicant shall be licensed under this chapter until the applicant complies with administrative procedures, administrative requirements, and fees determined by the secretary according to RCW 43.70.250 and 43.70.280. Qualifications must require that the applicant:

- (1) Is eighteen years or more of age;
- (2) Has graduated from high school or has received a general equivalency degree;
- (3) Is of good moral character; and
- (4)(a) Had at least ten thousand hours of apprenticeship training under the direct supervision of a licensed ocularist; or
- (b) Successfully completed a prescribed course in ocularist training programs approved by the secretary; or
- (c) Has had at least ten thousand hours of apprenticeship training under the direct supervision of a practicing ocularist, or has the equivalent experience as a practicing ocularist, or any combination of training and supervision, not in the state of Washington; and
- (5) Successfully passes an examination conducted or approved by the secretary. [1996 c 191 § 32; 1991 c 180 § 4; (1991 c 3 § 144 repealed by 1991 sp.s. c 11 § 2); 1985 c 7 § 53; 1980 c 101 § 4.]

18.55.045 Examination. The secretary may approve an examination prepared or administered by a private testing agency or association of licensing authorities. The examination shall determine if the applicant has a thorough knowledge of the principles governing the practice of an ocularist. [1991 c 180 § 5.]

18.55.050 Licenses or registrations—Renewal. Every individual licensed or registered under this chapter shall comply with administrative procedures, administrative requirements, and fees determined by the secretary, as provided by RCW 43.70.250 and 43.70.280 to renew his or her license. [1996 c 191 § 33; 1991 c 180 § 6; (1991 c 3 § 145 repealed by 1991 sp.s. c 11 § 2); 1985 c 7 § 54; 1980 c 101 § 7.]

18.55.060 Apprentices. (1) A person wishing to work as an apprentice ocularist shall submit to the secretary the registration fee and completed application form signed by the applicant and the licensed ocularist who shall be responsible for the acts of the apprentice in the performance of his or her work in the apprenticeship program.

(2) Apprentices shall complete their ten thousand hours of apprenticeship within eight years and shall not work longer as an apprentice unless the secretary determines, after a hearing, that the apprentice was prevented by causes beyond his or her control from completing the apprenticeship and becoming a licensee hereunder in eight years.

(3) No licensee under this chapter may have more than two apprentices in training at one time. [1991 c 180 § 7; 1991 c 3 § 146; 1980 c 101 § 5.]

Reviser's note: This section was amended by 1991 c 3 § 146 and by 1991 c 180 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

18.55.066 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 39; 1986 c 259 § 89.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.55.075 Scope of practice. An ocularist designs, fabricates, and fits ocular prosthetic appliances. An ocularist is authorized to perform the necessary procedures to provide an ocular prosthetic service for the patient in the ocularist's office or laboratory on referral of a physician. A referral is not required for the replacement of an ocular prosthetic appliance. The ocularist is authorized to make judgment on the needed care, replacement, and use of an ocular prosthetic appliance. The ocularist is authorized to design, fabricate, and fit human prosthetics in the following categories:

- (1) Stock and custom prosthetic eyes;
- (2) Stock and custom therapeutic scleral shells;
- (3) Stock and custom therapeutic painted iris shells;
- (4) External orbital and facial prosthetics; and
- (5) Ocular conformers: PROVIDED, That nothing herein shall be construed to allow the fitting or fabricating of contact lenses. [1991 c 180 § 3.]

18.55.085 Unprofessional conduct. An ocularist or authorized service provider shall explain to patients or customers exactly which type of prosthesis or service they are receiving or purchasing. Failure to do so, or misrepresentation of said services, constitutes unprofessional conduct under this chapter and chapter 18.130 RCW. [1991 c 180 § 9.]

18.55.095 Authority of secretary. In addition to any other authority provided by law, the secretary may:

(1) Adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;

(2) Establish forms necessary to administer this chapter;

(3) Issue a license to any applicant who has met the education, training, and examination requirements for licensure and deny a license to applicants who do not meet the minimum qualifications for licensure. Proceedings concerning the denial of licenses based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(4) Employ clerical, administrative, and investigative staff as needed to implement and administer this chapter and hire individuals, including those licensed under this chapter, to serve as examiners or consultants as necessary to implement and administer this chapter;

(5) Maintain the official departmental record of all applicants and licensees;

(6) Determine the minimum education and experience requirements for licensure, including but not limited to approval of educational programs;

(7) Prepare and administer or approve the preparation and administration of examinations for licensure; and

(8) Establish and implement by rule a continuing competency program. [1991 c 180 § 8.]

18.55.105 Out-of-state applicants. An applicant holding a credential in another state may be credentialed to practice in this state without examination if the secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1991 c 180 § 12.]

18.55.900 Severability—1980 c 101. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1980 c 101 § 11.]

Chapter 18.57

OSTEOPATHY—OSTEOPATHIC MEDICINE AND SURGERY

Sections

18.57.001	Definitions.
18.57.002	Regulation of health care professions—Criteria.
18.57.003	State board of osteopathic medicine and surgery— Membership—Qualifications—Officers—Meetings— Compensation and travel expenses—Removal.
18.57.005	Powers and duties of board.
18.57.011	Application of uniform disciplinary act.
18.57.020	Licenses—Application requirements.
18.57.031	License required.

18.57.035	Postgraduate training licenses.
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18.57.050	Renewal of licenses—Continuing education requirements.
18.57.080	Examinations.
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18.57.160	Unlawful practices—Penalty.
18.57.174	Duty to report unprofessional conduct—Exceptions.
18.57.245	Insurer's report of malpractice payments.
18.57.250	Physician members of committees to evaluate credentials and qualifications of physicians—Immunity from civil suit.
18.57.260	Physicians filing charges or presenting evidence before committees, boards, or hospitals—Immunity from civil suit.
18.57.270	Records of medical society or hospital committee or board not subject to civil process.
18.57.900	Interchangeable terms.
18.57.910	Repeal.
18.57.915	Severability—1979 c 117.

Actions against, limitation of: RCW 4.16.350.

Crimes relating to pregnancy and childbirth: RCW 9A.32.060.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Lien of doctors: Chapter 60.44 RCW.

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

18.57.001 Definitions. As used in this chapter:

(1) "Board" means the Washington state board of osteopathic medicine and surgery;

(2) "Department" means the department of health;

(3) "Secretary" means the secretary of health; and

(4) "Osteopathic medicine and surgery" means the use of any and all methods in the treatment of disease, injuries, deformities, and all other physical and mental conditions in and of human beings, including the use of osteopathic manipulative therapy. [1996 c 178 § 2; 1991 c 160 § 1; 1991 c 3 § 147; 1979 c 117 § 1.]

Effective date—1996 c 178: See note following RCW 18.35.110.

18.57.002 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.57.003 State board of osteopathic medicine and surgery—Membership—Qualifications—Officers—Meetings—Compensation and travel expenses—Removal. There is hereby created an agency of the state of Washington, consisting of seven individuals appointed by the governor to be known as the Washington state board of osteopathic medicine and surgery.

On expiration of the term of any member, the governor shall appoint for a period of five years a qualified individual to take the place of such member. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been appointed and shall have qualified. Initial appointments shall be made and vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor.

Each member of the board shall be a citizen of the United States and must be an actual resident of this state. One member shall be a consumer who has neither a financial

nor a fiduciary relationship to a health care delivery system, and every other member must have been in active practice as a licensed osteopathic physician and surgeon in this state for at least five years immediately preceding appointment.

The board shall elect a chairperson, a secretary, and a vice-chairperson from its members. Meetings of the board shall be held at least four times a year and at such place as the board shall determine and at such other times and places as the board deems necessary.

An affirmative vote of a simple majority of the members present at a meeting or hearing shall be required for the board to take any official action. The board may not take any action without a quorum of the board members present. A simple majority of the board members currently serving constitutes a quorum of the board.

Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

Any member of the board may be removed by the governor for neglect of duty, misconduct, malfeasance or misfeasance in office, or upon written request of two-thirds of the physicians licensed under this chapter and in active practice in this state. [1991 c 160 § 2; 1984 c 287 § 42; 1979 c 117 § 2.]

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

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.57.005 Powers and duties of board. The board shall have the following powers and duties:

(1) To administer examinations to applicants for licensure under this chapter;

(2) To make such rules and regulations as are not inconsistent with the laws of this state as may be deemed necessary or proper to carry out the purposes of this chapter;

(3) To establish and administer requirements for continuing professional education as may be necessary or proper to insure the public health and safety as a prerequisite to granting and renewing licenses under this chapter: PROVIDED, That such rules shall not require a licensee under this chapter to engage in continuing education related to or provided by any specific branch, school, or philosophy of medical practice or its political and/or professional organizations, associations, or societies;

(4) To keep an official record of all its proceedings, which record shall be evidence of all proceedings of the board which are set forth therein. [1986 c 259 § 94; 1979 c 117 § 3.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.57.011 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 41; 1986 c 259 § 92.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.57.020 Licenses—Application requirements. A license shall be issued by the secretary authorizing the holder to practice osteopathic medicine and surgery. In order to procure a license to practice osteopathic medicine and surgery, the applicant must provide the board evidence that a diploma has been issued to the applicant by an accredited school of osteopathic medicine and surgery, approved by the board. The application shall be made upon a form prepared by the secretary, with the approval of the board, and it shall contain such information concerning said osteopathic medical instruction and the preliminary education of the applicant as the board may by rule provide. Applicants who have failed to meet the requirements must be rejected.

An applicant for a license to practice osteopathic medicine and surgery must furnish evidence satisfactory to the board that he or she has served for not less than one year in a postgraduate training program approved by the board.

In addition, the applicant may be required to furnish evidence satisfactory to the board that he or she is physically and mentally capable of safely carrying on the practice of osteopathic medicine and surgery. The board may require any applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical and/or mental capability to safely practice osteopathic medicine and surgery. The applicant shall also show that he or she has not been guilty of any conduct which would constitute grounds for denial, suspension, or revocation of such license under the laws of the state of Washington.

Nothing in this section shall be construed as prohibiting the board from requiring such additional information from applicants as it deems necessary.

Nothing in this chapter shall be construed to require any applicant for licensure, or any licensee, as a requisite of retaining or renewing licensure under this chapter, to be a member of any political and/or professional organization. [1991 c 160 § 3; (1991 c 3 § 148 repealed by 1991 sp.s. c 11 § 2); 1979 c 117 § 11; 1959 c 110 § 1; 1919 c 4 § 4; RRS § 10056. Cf. 1909 c 192 § 6. Formerly RCW 18.57.020, 18.57.060, 18.57.070, and 18.57.090.]

18.57.031 License required. No person may practice or represent himself or herself as an osteopathic physician and surgeon without first having a valid license to do so. [1987 c 150 § 42.]

Severability—1987 c 150: See RCW 18.122.901.

18.57.035 Postgraduate training licenses. The board may grant approval to issue without examination a license to an osteopathic physician and surgeon in a board-approved postgraduate training program in this state if the applicant files an application and meets all the requirements for licensure set forth in RCW 18.57.020 except for completion of one year of postgraduate training. The secretary shall issue a postgraduate osteopathic medicine and surgery license that permits the physician in postgraduate training to practice osteopathic medicine and surgery only in connection with his or her duties as a physician in postgraduate training and does not authorize the physician to engage in any other form of practice. Each physician in postgraduate training shall practice osteopathic medicine and surgery only under the supervision of a physician licensed in this state under

this chapter or chapter 18.71 RCW, but such supervision shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered.

All persons licensed under this section shall be subject to the jurisdiction of the board of osteopathic medicine and surgery as set forth in this chapter and chapter 18.130 RCW.

Persons applying for licensure pursuant to this section shall comply with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. Any person who obtains a license pursuant to this section may, apply for licensure under this chapter, but shall submit a new application form and comply with all other licensing requirements of this chapter. [1996 c 191 § 34; 1991 c 160 § 9.]

18.57.040 Licensing exemptions. Nothing in this chapter shall be construed to prohibit:

- (1) Service in the case of emergency;
- (2) The domestic administration of family remedies;
- (3) The practice of midwifery as permitted under chapter 18.50 RCW;
- (4) The practice of osteopathic medicine and surgery by any commissioned medical officer in the United States government or military service or by any osteopathic physician and surgeon employed by a federal agency, in the discharge of his or her official duties;
- (5) Practice by a dentist licensed under chapter 18.32 RCW when engaged exclusively in the practice of dentistry;
- (6) Practice by any osteopathic physician and surgeon from any other state or territory in which he or she resides: PROVIDED, That such practitioner shall not open an office or appoint a place of meeting patients or receive calls within the limits of this state;
- (7) Practice by a person who is a student enrolled in an accredited school of osteopathic medicine and surgery approved by the board: PROVIDED, That the performance of such services be only pursuant to a course of instruction or assignments from his or her instructor or school, and such services are performed only under the supervision of a person licensed pursuant to this chapter or chapter 18.71 RCW;
- (8) Practice by an osteopathic physician and surgeon serving a period of clinical postgraduate medical training in a postgraduate program approved by the board: PROVIDED, That the performance of such services be only pursuant to a course of instruction in said program, and said services are performed only under the supervision and control of a person licensed pursuant to this chapter or chapter 18.71 RCW; or
- (9) Practice by a person who is enrolled in a physician assistant program approved by the board who is performing such services only pursuant to a course of instruction in said program: PROVIDED, That such services are performed only under the supervision and control of a person licensed pursuant to this chapter or chapter 18.71 RCW.

This chapter shall not be construed to apply in any manner to any other system or method of treating the sick or afflicted or to apply to or interfere in any way with the practice of religion or any kind of treatment by prayer. [1991 c 160 § 5; 1919 c 4 § 19; RRS § 10071. FORMER

PART OF SECTION: 1921 c 82 § 1, part; 1919 c 4 § 17, part; RRS § 10069, part, now codified in RCW 18.57.130.]
Midwifery: Chapter 18.50 RCW.

18.57.045 Inactive licenses. A licensed osteopathic physician and surgeon who desires to leave the active practice of osteopathic medicine and surgery in this state may secure from the secretary an inactive license. The administrative procedures, administrative requirements, and fees for an inactive license shall be determined as provided in RCW 43.70.250 and 43.70.280. The holder of an inactive license may reactivate his or her license to practice osteopathic medicine and surgery in accordance with rules adopted by the board. [1996 c 191 § 35; 1991 c 160 § 4.]

18.57.050 Renewal of licenses—Continuing education requirements. The board may establish rules and regulations governing mandatory continuing education requirements which shall be met by physicians applying for renewal of licenses. Administrative procedures, administrative requirements, and fees for applications and renewals shall be established as provided in RCW 43.70.250 and 43.70.280. The board shall determine prerequisites for relicensing. [1996 c 191 § 36; 1991 c 160 § 6; (1991 c 3 § 149 repealed by 1991 sp.s. c 11 § 2); 1985 c 7 § 55; 1979 c 117 § 12; 1975 1st ex.s. c 30 § 58; 1971 ex.s. c 266 § 11; 1919 c 4 § 6; RRS § 10058. Cf. 1909 c 192 § 7. Formerly RCW 18.57.050 and 18.57.120.]

18.57.080 Examinations. Applicants for a license to practice osteopathic medicine and surgery must successfully complete an examination prepared or approved by the board. The examination shall be conducted in the English language, shall determine the applicant's fitness to practice osteopathic medicine and surgery, and may be in whole or in part in writing or by practical application on those general subjects and topics of which knowledge is commonly and generally required of applicants who have obtained the doctor of osteopathic medicine and surgery conferred by accredited schools of osteopathic medicine and surgery approved by the board. If an examination does not encompass the subject of osteopathic principles and practice, the applicant shall be required to complete the board-administered examination. The board may prepare and administer or approve preparation and administration of examinations on such subjects as the board deems advisable. The examination papers of any examination administered by the board shall form a part of the applicant's records and shall be retained as determined by the secretary for a period of not less than one year. All applicants for examination or reexamination shall comply with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 37; 1991 c 160 § 7; (1991 c 3 § 150 repealed by 1991 sp.s. c 11 § 2); 1979 c 117 § 13; 1919 c 4 § 5; RRS § 10057. Cf. 1909 c 192 § 6. Formerly RCW 18.57.080 and 18.57.090, part.]

18.57.130 Persons licensed by other states—Requirements—Fees. Any person who meets the requirements of RCW 18.57.020 as now or hereafter amended and has been examined and licensed to practice osteopathic

medicine and surgery by a state board of examiners of another state or the duly constituted authorities of another state authorized to issue licenses to practice osteopathic medicine and surgery upon examination, shall upon approval of the board be entitled to receive a license to practice osteopathic medicine and surgery in this state upon complying with administrative procedures, administrative requirements, and paying a fee determined as provided in RCW 43.70.250 and 43.70.280 and filing a copy of his or her license in such other state, duly certified by the authorities granting the license to be a full, true, and correct copy thereof, and certifying also that the standard of requirements adopted by such authorities as provided by the law of such state is substantially equal to that provided for by the provisions of this chapter: PROVIDED, That no license shall issue without examination to any person who has previously failed in an examination held in this state: PROVIDED, FURTHER, That all licenses herein mentioned may be revoked for unprofessional conduct, in the same manner and upon the same grounds as if issued under this chapter: PROVIDED, FURTHER, That no one shall be permitted to practice surgery under this chapter who has not a license to practice osteopathic medicine and surgery. [1996 c 191 § 38. Prior: 1991 c 160 § 10; 1991 c 3 § 151; 1985 c 7 § 56; 1979 c 117 § 15; 1975 1st ex.s. c 30 § 59; 1921 c 82 § 1; 1919 c 4 § 17; RRS § 10069. Formerly RCW 18.57.010, 18.57.040, part, and 18.57.130.]

18.57.140 Advertising regulations. On all cards, signs, letterheads, envelopes and billheads used by those licensed by this chapter to practice osteopathic medicine and surgery the word "osteopathic" shall always immediately precede the word "physician" and if the word "surgeon" is used in connection with said name, the word "osteopathic" shall also immediately precede said word "surgeon." [1996 c 178 § 3; 1919 c 4 § 20; RRS § 10072.]

Effective date—1996 c 178: See note following RCW 18.35.110.

18.57.145 Use of designations in combination with name. No provision of this chapter or of any other law shall prevent any person who holds a valid, unrevoked certificate to practice osteopathic medicine and surgery from using in combination with his or her name the designation "Osteopathic Physician and Surgeon" or the abbreviation of his or her professional degree, Doctor of Osteopathy (D.O.), provided he or she hold such professional degree, or any combination thereof upon his or her stationery, in any professional lists or directories or in other places where the same may properly appear as permitted within the canons of ethics approved by the board. [1991 c 160 § 8; 1959 c 110 § 2.]

18.57.150 Applicability of health regulations. All persons granted licenses or certificates under this chapter shall be subject to the state and municipal regulations relating to the control of contagious diseases, the reporting and certifying to births and deaths, and all matters pertaining to public health; and all such reports shall be accepted as legal. [1919 c 4 § 18; RRS § 10070.]

Vital statistics: Chapter 70.58 RCW.

18.57.160 Unlawful practices—Penalty. Every person falsely claiming himself to be the person named in a certificate issued to another, or falsely claiming himself to be the person entitled to the same, shall be guilty of a felony, and, upon conviction thereof, shall be subject to such penalties as are provided by the laws of this state for the crime of forgery. [1981 c 277 § 9; 1919 c 4 § 15; RRS § 10067. Cf. 1909 c 192 § 15.]

Forgery: RCW 9A.60.020.

18.57.174 Duty to report unprofessional conduct—Exceptions. [(1)] A health care professional licensed under chapter 18.57 RCW shall report to the board when he or she has personal knowledge that a practicing osteopathic physician has either committed an act or acts which may constitute statutorily defined unprofessional conduct or that a practicing osteopathic physician may be unable to practice osteopathic medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any impairing mental or physical conditions.

(2) Reporting under this section is not required by:

(a) An appropriately appointed peer review committee member of a licensed hospital or by an appropriately designated professional review committee member of an osteopathic medical society during the investigative phase of their respective operations if these investigations are completed in a timely manner; or

(b) A treating licensed health care professional of an osteopathic physician currently involved in a treatment program as long as the physician patient actively participates in the treatment program and the physician patient's impairment does not constitute a clear and present danger to the public health, safety, or welfare.

(3) The board may impose disciplinary sanctions, including license suspension or revocation, on any health care professional subject to the jurisdiction of the board who has failed to comply with this section. [1986 c 300 § 9.]

Legislative findings—1986 c 300: "(1) The legislature finds that medical malpractice will be reduced if hospitals establish coordinated medical malpractice prevention programs and provide greater scrutiny of physicians prior to granting or renewing hospital privileges.

(2) The legislature also finds that physician disciplinary boards can reduce medical malpractice if they have access to additional information on health care providers who are incompetent or impaired." [1986 c 300 § 1.]

Severability—1986 c 300: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 300 § 12.]

18.57.245 Insurer's report of malpractice payments. Every institution or organization providing professional liability insurance to osteopathic physicians shall send a complete report to the board of all malpractice settlements, awards, or payments in excess of twenty thousand dollars as a result of a claim or action for damages alleged to have been caused by an insured physician's incompetency or negligence in the practice of osteopathic medicine. Such institution or organization shall also report the award, settlement, or payment of three or more claims during a year as the result of the alleged physician's incompetence or negligence in the practice of medicine regardless of the dollar amount of the award or payment.

Reports required by this section shall be made within sixty days of the date of the settlement or verdict. Failure to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars. [1986 c 300 § 10.]

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.174.

18.57.250 Physician members of committees to evaluate credentials and qualifications of physicians—Immunity from civil suit. See RCW 4.24.240.

18.57.260 Physicians filing charges or presenting evidence before committees, boards, or hospitals—Immunity from civil suit. See RCW 4.24.250, 4.24.260.

18.57.270 Records of medical society or hospital committee or board not subject to civil process. See RCW 4.24.250.

18.57.900 Interchangeable terms. The words "certificates" and "licenses" shall be known as interchangeable terms in this chapter. [1919 c 4 § 21; RRS § 10073.]

18.57.910 Repeal. All acts and parts of acts in conflict herewith are hereby repealed. [1919 c 4 § 22.]

18.57.915 Severability—1979 c 117. If any provision of this 1979 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1979 c 117 § 19.]

Chapter 18.57A

OSTEOPATHIC PHYSICIANS' ASSISTANTS

Sections

- 18.57A.005 Regulation of health care professions—Criteria.
- 18.57A.010 Definitions.
- 18.57A.020 Rules fixing qualifications and restricting practice—Applications—Discipline.
- 18.57A.025 Application of uniform disciplinary act.
- 18.57A.030 Limitations on practice.
- 18.57A.040 Practice arrangements.
- 18.57A.050 Osteopathic physician's liability, responsibility.
- 18.57A.060 Limitations on health care services.
- 18.57A.070 Acupuncture.

Reviser's note: Certain powers and duties of the department of licensing and the director of licensing transferred to the department of health and the secretary of health. See RCW 43.70.220.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.57A.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.57A.010 Definitions. (1) "Osteopathic physician's assistant" means a person who has satisfactorily completed a board-approved training program designed to prepare persons to practice osteopathic medicine to a limited extent;

(2) "Board" means the board of osteopathic medicine and surgery; and

(3) "Practice medicine" shall have the meaning defined in RCW 18.57.001. [1979 c 117 § 17; 1971 ex.s. c 30 § 7.]

Severability—1979 c 117: See RCW 18.57.915.

Severability—1971 ex.s. c 30: See note following RCW 18.71A.010.

18.57A.020 Rules fixing qualifications and restricting practice—Applications—Discipline. (1) The board shall adopt rules fixing the qualifications and the educational and training requirements for licensure as an osteopathic physician assistant or for those enrolled in any physician assistant training program. The requirements shall include completion of an accredited physician assistant training program approved by the board and eligibility to take an examination approved by the board, providing such examination tests subjects substantially equivalent to the curriculum of an accredited physician assistant training program.

(2)(a) The board shall adopt rules governing the extent to which:

(i) Physician assistant students may practice medicine during training; and

(ii) Physician assistants may practice after successful completion of a training course.

(b) Such rules shall provide:

(i) That the practice of an osteopathic physician assistant shall be limited to the performance of those services for which he or she is trained; and

(ii) That each osteopathic physician assistant shall practice osteopathic medicine only under the supervision and control of an osteopathic physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physicians at the place where services are rendered. The board may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW.

(3) Applicants for licensure shall file an application with the board on a form prepared by the secretary with the approval of the board, detailing the education, training, and experience of the physician assistant and such other information as the board may require. The application shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. Each applicant shall furnish proof satisfactory to the board of the following:

(a) That the applicant has completed an accredited physician assistant program approved by the board and is eligible to take the examination approved by the board;

(b) That the applicant is of good moral character; and

(c) That the applicant is physically and mentally capable of practicing osteopathic medicine as an osteopathic physician assistant with reasonable skill and safety. The board may require any applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical and/or mental capability to safely practice as an osteopathic physician assistant.

(4) The board may approve, deny, or take other disciplinary action upon the application for a license as provided in the uniform disciplinary act, chapter 18.130 RCW. The license shall be renewed as determined under RCW 43.70.250 and 43.70.280. [1996 c 191 § 39; 1993 c 28 § 1; 1992 c 28 § 1; 1971 ex.s. c 30 § 8.]

Severability—1971 ex.s. c 30: See note following RCW 18.71A.010.

18.57A.025 Application of uniform disciplinary act.

The uniform disciplinary act, chapter 18.130 RCW, governs the approval or disapproval of applications and the discipline of persons authorized to practice under this chapter. [1986 c 259 § 93.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.57A.030 Limitations on practice. An osteopathic physician assistant as defined in this chapter may practice osteopathic medicine in this state only with the approval of the practice arrangement plan by the board and only to the extent permitted by the board. An osteopathic physician assistant who has received a license but who has not received board approval of the practice arrangement plan under RCW 18.57A.040 may not practice. An osteopathic physician assistant shall be subject to discipline by the board under the provisions of chapter 18.130 RCW. [1993 c 28 § 2; 1986 c 259 § 95; 1971 ex.s. c 30 § 9.]

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1971 ex.s. c 30: See note following RCW 18.71A.010.

18.57A.040 Practice arrangements. (1) No osteopathic physician assistant practicing in this state shall be employed or supervised by an osteopathic physician or physician group without the approval of the board.

(2) Prior to commencing practice, an osteopathic physician assistant licensed in this state shall apply to the board for permission to be employed or supervised by an osteopathic physician or physician group. The practice arrangement plan shall be jointly submitted by the osteopathic physician or physician group and osteopathic physician assistant. The secretary may charge a fee as provided in RCW 43.70.250 to recover the cost for the plan review. The practice arrangement plan shall delineate the manner and extent to which the physician assistant would practice and be supervised. Whenever an osteopathic physician assistant is practicing in a manner inconsistent with the approved practice arrangement plan, the board may take disciplinary action under chapter 18.130 RCW. [1993 c 28 § 3; 1991 c 3 § 152. Prior: 1986 c 259 § 96; 1985 c 7 § 57; 1975 1st ex.s. c 30 § 60; 1971 ex.s. c 30 § 10.]

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1971 ex.s. c 30: See note following RCW 18.71A.010.

18.57A.050 Osteopathic physician's liability, responsibility. No osteopathic physician who supervises a licensed osteopathic physician assistant in accordance with and within the terms of any permission granted by the board shall be considered as aiding and abetting an unlicensed person to practice osteopathic medicine within the meaning of RCW 18.57.001: PROVIDED, HOWEVER, That the supervising osteopathic physician and the osteopathic physician assistant shall retain professional and personal responsibility for any act which constitutes the practice of osteopathic medicine as defined in RCW 18.57.001 when performed by the physician assistant. [1993 c 28 § 4; 1986 c 259 § 97; 1971 ex.s. c 30 § 11.]

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1971 ex.s. c 30: See note following RCW 18.71A.010.

18.57A.060 Limitations on health care services. No health care services may be performed under this chapter in any of the following areas:

(1) The measurement of the powers or range of human vision, or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses or frames for the aid thereof.

(2) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training or orthoptics.

(3) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.

(4) Nothing in this section shall preclude the performance of routine visual screening.

(5) The practice of dentistry or dental hygiene as defined in chapter 18.32 and 18.29 RCW respectively. The exemptions set forth in RCW 18.32.030, paragraphs (1) and (8), shall not apply to a physician's assistant.

(6) The practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulations of the spine.

(7) The practice of *podiatry as defined in chapter 18.22 RCW. [1973 c 77 § 20; 1971 ex.s. c 30 § 12.]

*Reviser's note: The term "podiatry" was changed to "podiatric medicine and surgery" by 1990 c 147.

Severability—1971 ex.s. c 30: See note following RCW 18.71A.010.

18.57A.070 Acupuncture. (1) The performance of acupuncture for the purpose of demonstration, therapy, or the induction of analgesia by a person licensed under this chapter shall be within the scope of practice authorized: PROVIDED, HOWEVER, That a person licensed to perform acupuncture under this section shall only do so under the direct supervision of a licensed osteopathic physician.

(2) The board shall determine the qualifications of a person authorized to perform acupuncture under subsection (1) of this section. In establishing a procedure for certification of such practitioners the board shall consider a license or certificate which acknowledges that the person has the qualifications to practice acupuncture issued by the government of the Republic of China (Taiwan), the Peoples' Republic of China, British Crown Colony of Hong Kong, Korea, Great Britain, France, the Federated Republic of Germany (West Germany), Italy, Japan, or any other country or state which has generally equivalent standards of practices of acupuncture as determined by the board as evidence of such qualification.

(3) As used in this section "acupuncture" means the insertion of needles into the human body by piercing the skin of the body for the purpose of relieving pain, treating disease, or to produce analgesia, or as further defined by rules and regulations of the board. [1977 ex.s. c 233 § 1.]

Acupuncture: Chapter 18.06 RCW.

Chapter 18.59

OCCUPATIONAL THERAPY

Sections

18.59.005	Regulation of health care professions—Criteria.
18.59.010	Purpose.
18.59.020	Definitions.
18.59.031	License required.
18.59.040	Activities not regulated by chapter—Limited permits.
18.59.050	Licenses—Application—Requirements—Waiver.
18.59.060	Examinations.
18.59.070	Waiver of examination and licensing requirements—Applicants licensed in other states or territories.
18.59.080	License issuance—Posting required.
18.59.090	Renewal of licenses—Reinstatement of suspended or revoked licenses—Inactive status.
18.59.100	Duty to refer medical cases.
18.59.110	Applications—Licenses—Limited permits.
18.59.120	Board of occupational therapy practice established—Members—Terms—Meetings—Compensation.
18.59.130	Board—Powers and duties—Rules.
18.59.141	Application of uniform disciplinary act.
18.59.150	Board—Staff.
18.59.900	Short title.
18.59.905	Severability—1984 c 9.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

18.59.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.59.010 Purpose. In order to safeguard the public health, safety, and welfare; to protect the public from being misled by incompetent, unethical, and unauthorized persons; to assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and to assure the availability of occupational therapy services of high quality to persons in need of such services, it is the purpose of this chapter to provide for the regulation of persons offering occupational therapy services to the public. [1984 c 9 § 2.]

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

(1) "Board" means the board of occupational therapy practice.

(2) "Occupational therapy" is the scientifically based use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, or the aging process in order to maximize independence, prevent disability, and maintain health. The practice encompasses evaluation, treatment, and consultation. Specific occupational therapy services include but are not limited to: Using specifically designed activities and exercises to enhance neurodevelopmental, cognitive, perceptual motor, sensory integrative, and psychomotor functioning; administering and interpreting tests such as manual muscle and sensory integration; teaching daily living skills; developing prevocational skills and play and avocational capabilities; designing, fabricating, or applying selected orthotic and prosthetic devices or selected adaptive equipment; and adapting environments for the handicapped. These services are provided individually, in groups, or through social systems.

(3) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

(4) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under the supervision or with the regular consultation of an occupational therapist.

(5) "Occupational therapy aide" means a person who is trained to perform specific occupational therapy techniques under professional supervision as defined by the board but who does not perform activities that require advanced training in the sciences or practices involved in the profession of occupational therapy.

(6) "Person" means any individual, partnership, unincorporated organization, or corporate body, except that only an individual may be licensed under this chapter.

(7) "Department" means the department of health.

(8) "Secretary" means the secretary of health. [1991 c 3 § 153; 1984 c 9 § 3.]

18.59.031 License required. No person may practice or represent himself or herself as an occupational therapist without first having a valid license to do so. [1987 c 150 § 44.]

Severability—1987 c 150: See RCW 18.122.901.

18.59.040 Activities not regulated by chapter—Limited permits. This chapter shall not be construed as preventing or restricting the practice, services, or activities of:

(1) A person licensed in this state under any other law from engaging in the profession or occupation for which the person is licensed;

(2) A person employed as an occupational therapist or occupational therapy assistant by the government of the United States, if the person provides occupational therapy solely under the directions or control of the organization by which the person is employed;

(3) A person pursuing a course of study leading to a degree or certificate in occupational therapy in an accredited or approved educational program if the activities and services constitute a part of a supervised course of study, if the person is designated by a title which clearly indicated the person's status as a student or trainee;

(4) A person fulfilling the supervised fieldwork experience requirements of RCW 18.59.050, if the activities and services constitute a part of the experience necessary to meet the requirements of RCW 18.59.050;

(5) A person performing occupational therapy services in the state, if the services are performed for no more than ninety working days and if:

(a) The person is licensed under the laws of another state which has licensure requirements at least as stringent as the requirements of this chapter, as determined by the board; or

(b) The person has met commonly accepted standards for the practice of occupational therapy as specifically defined by the board;

(6) A person employed by or supervised by an occupational therapist as an occupational therapy aide;

(7) A person with a limited permit. A limited permit may be granted to persons who have completed the educa-

tion and experience requirements of this chapter, or education and experience requirements which the board deems equivalent to those specified as requirements for licensure. The limited permit allows the applicant to practice in association with an occupational therapist. The limited permit is valid until the results of the next examination have been made public. One extension of this permit may be granted if the applicant has failed the examination, but during this period the person shall be under the direct supervision of an occupational therapist;

(8) Any persons who teach daily living skills, develop prevocational skills, and play and avocational capabilities, or adapt equipment or environments for the handicapped, or who do specific activities to enhance cognitive, perceptual motor, sensory integrative and psychomotor skills, but who do not hold themselves out to the public by any title, initials, or description of services as being engaged in the practice of occupational therapy; or

(9) Any person who designs, fabricates, or applies orthotic or prosthetic devices which are prescribed by a health care professional authorized by the laws of the state of Washington to prescribe the device or to direct the design, fabrication or application of the device. [1985 c 296 § 1; 1984 c 9 § 5.]

18.59.050 Licenses—Application—Requirements—

Waiver. (1) An applicant applying for a license as an occupational therapist or as an occupational therapy assistant shall file a written application on forms provided by the department showing to the satisfaction of the board that the applicant meets the requirements specified in this subsection.

(a) The applicant shall be of good moral character.

(b) The applicant shall present evidence satisfactory to the board of having successfully completed the academic requirements of an educational program in occupational therapy recognized by the board, with concentration in biological or physical science, psychology, sociology, and with education in selected manual skills.

(i) For an occupational therapist, such a program shall be nationally accredited and approved by rules of the board.

(ii) For an occupational therapy assistant, such a program shall be nationally accredited and approved by rules of the board.

(c) The applicant shall submit to the board evidence of having successfully completed a period of supervised fieldwork experience at a recognized educational institution or a training program approved by the educational institution at which the applicant met the academic requirements.

(i) For an occupational therapist, a minimum of six months of supervised fieldwork experience is required.

(ii) For an occupational therapy assistant, a minimum of two months of supervised fieldwork experience is required.

(d) An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall pass an examination as provided in RCW 18.59.060.

(2) The board may waive the educational requirements specified under subsection (1)(b)(ii) of this section for an occupational therapy assistant who has met the experience and any other requirements established by the board. Upon successful completion of the examination required of the

occupational therapist, the individual shall be granted a license. [1984 c 9 § 6.]

18.59.060 Examinations. (1) A person applying for licensure shall demonstrate eligibility in accordance with RCW 18.59.050 and shall apply for examination upon a form and in such a manner as the department prescribes. The application shall be accompanied by the fee prescribed by RCW 18.59.110, which fee shall not be refunded. A person who fails an examination may apply for reexamination. The application shall be accompanied by the prescribed fee.

(2) An applicant for licensure under this chapter shall be given a written examination to test the applicant's knowledge of the basic and clinical sciences relating to occupational therapy and occupational therapy theory and practice, including the applicant's professional skills of occupational therapy techniques and methods, and such other subjects as the board deems useful to determine the applicant's fitness to practice. The board shall approve the examination and establish standards for acceptable performance.

(3) Applicants for licensure shall be examined at a time and place and under such supervision as the board may determine. The examination shall be given at least twice each year at such places as the board determines, and the board shall give reasonable public notice of the examinations in accordance with its rules at least sixty days prior to the administration of the examination.

(4) Applicants may obtain their examination scores and may review their papers in accordance with such rules as the board establishes. [1984 c 9 § 7.]

18.59.070 Waiver of examination and licensing requirements—Applicants licensed in other states or territories.

(1) The board shall waive the examination and grant a license to a person engaged in the profession of an occupational therapist or an occupational therapy assistant on June 7, 1984, if the board determines that the person meets commonly accepted standards for the profession, as established by rule of the board. The board may waive the examination, education, or experience requirements and grant a license to any person meeting the standards adopted by the board under this section after June 7, 1984, if the board considers the requirements for licensure in this chapter as having been met.

(2) The board may grant a license to any applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or a territory of the United States, which requires standards for licensure considered by the board to be equivalent to the requirements for licensure under this chapter.

(3) The board shall waive the education and experience requirements for licensure in RCW 18.59.050(1) (c) and (d) for applicants for licensure who present evidence to the board that they have been engaged in the practice of occupational therapy for the three years immediately prior to June 7, 1984. The proof of actual practice shall be presented to the board in such a manner as the board prescribes by rule. To obtain the waiver, an applicant shall file an application for examination no later than six months from June 7, 1984.

An applicant who has filed for examination under this subsection shall be excluded from the licensure requirement until the date the results of the examination are made public, and may conduct the appropriate activities under *RCW 18.59.030. [1984 c 9 § 8.]

*Reviser's note: RCW 18.59.030 was repealed by 1986 c 259 § 103.

18.59.080 License issuance—Posting required. The secretary shall issue a license to a person who meets the licensing requirements of this chapter upon payment of the prescribed license fee. The license shall be posted in a conspicuous location at the person's work site. [1991 c 3 § 154; 1984 c 9 § 9.]

18.59.090 Renewal of licenses—Reinstatement of suspended or revoked licenses—Inactive status. (1) Licenses under this chapter shall be renewed at the time and in the manner determined by the secretary and with the payment of a renewal fee. The board shall establish requirements for license renewal which provide evidence of continued competency. The secretary may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules which may include additional continuing education or examination requirements.

(2) A suspended license is subject to expiration and may be renewed as provided in this section, but the renewal does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other conduct or activity in violation of the order or judgment by which the license was suspended. If a license revoked on disciplinary grounds is reinstated, the licensee, as a condition of reinstatement, shall pay the renewal fee and any applicable late fee.

(3) Any occupational therapist or occupational therapy assistant licensed under this chapter not practicing occupational therapy or providing services may place his or her license in an inactive status. The secretary may prescribe requirements for maintaining an inactive status and converting from an inactive or active status. [1991 c 3 § 155; 1990 c 13 § 1; 1984 c 9 § 10.]

18.59.100 Duty to refer medical cases. An occupational therapist shall, after evaluating a patient and if the case is a medical one, refer the case to a physician for appropriate medical direction if such direction is lacking. Treatment by an occupational therapist of such a medical case may take place only upon the referral of a physician or *podiatrist licensed to practice medicine in this state. [1986 c 259 § 101; 1984 c 9 § 11.]

*Reviser's note: The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

Savings—1986 c 259 §§ 101, 103: "The repeal of RCW 18.59.030 and 18.59.200 and the amendment of RCW 18.59.100 by this act shall not be construed as affecting any rights and duties which matured, penalties which were incurred, and proceedings which were begun before June 11, 1986." [1986 c 259 § 104.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.59.110 Applications—Licenses—Limited permits. Administrative procedures, administrative requirements, and fees shall be established as provided in RCW 43.70.250 and

43.70.280 for applications, initial and renewal licenses, and limited permits. [1996 c 191 § 41; 1991 c 3 § 156; 1985 c 7 § 58; 1984 c 9 § 12.]

18.59.120 Board of occupational therapy practice established—Members—Terms—Meetings—Compensation. (1) There is established a board of occupational therapy practice. The board shall consist of five members appointed by the governor, who may consider the persons who are recommended for appointment by occupational therapy associations of the state. The members of the board shall be residents of the state. Four of the members shall have been engaged in rendering services to the public, teaching, or research in occupational therapy for at least five years immediately preceding their appointment. Three of these four board members shall be occupational therapists who shall at all times be holders of licenses for the practice of occupational therapy in the state, except for the initial members of the board, all of whom shall fulfill the requirements for licensure under this chapter. At least one member of the board shall be an occupational therapy assistant licensed to assist in the practice of occupational therapy, except for the initial member appointed to this position, who shall fulfill the requirements for licensure as an occupational therapy assistant under this chapter. The remaining member of the board shall be a member of the public with an interest in the rights of consumers of health services.

(2) The governor shall, within sixty days after June 7, 1984, appoint one member for a term of one year, two members for a term of two years, and two members for a term of three years. Appointments made thereafter shall be for three-year terms, but no person shall be appointed to serve more than two consecutive full terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the initial appointed members, who shall serve through the last calendar day of the year in which they are appointed before commencing the terms prescribed by this section. The governor shall make appointments for vacancies in unexpired terms within ninety days after the vacancies occur.

(3) The board shall meet during the first month of each calendar year to select a chairman and for other purposes. At least one additional meeting shall be held before the end of each calendar year. Further meetings may be convened at the call of the chairman or the written request of any two board members. A majority of members of the board constitutes a quorum for all purposes. All meetings of the board shall be open to the public, except that the board may hold closed sessions to prepare, approve, grade, or administer examinations or, upon request of an applicant who fails an examination, to prepare a response indicating the reasons for the applicant's failure.

(4) Members of the board shall receive compensation in the amount of fifty dollars for each day's attendance at proper meetings of the committee. [1984 c 9 § 13.]

18.59.130 Board—Powers and duties—Rules. (1) The board shall administer, coordinate, and enforce this chapter, evaluate qualifications under this chapter, and pro-

vide for supervision of examinations of applicants for licensure under this chapter.

(2) The board may adopt such rules as it deems necessary in the administration of this chapter. [1986 c 259 § 102; 1984 c 9 § 14.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.59.141 Application of uniform disciplinary act.

The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 43; 1986 c 259 § 100.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.59.150 Board—Staff. The secretary shall provide such administrative and investigative staff as are necessary for the board to carry out its duties under this chapter. [1991 c 3 § 157; 1984 c 9 § 15.]

18.59.900 Short title. This chapter shall be known and may be cited as the occupational therapy practice act. [1984 c 9 § 1.]

18.59.905 Severability—1984 c 9. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 9 § 21.]

Chapter 18.64 PHARMACISTS

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18.64.001 State board of pharmacy—Creation—Membership—Oath—Vacancies. There shall be a state board of pharmacy consisting of seven members, to be appointed by the governor by and with the advice and consent of the senate. Five of the members shall be designated as pharmacist members and two of the members shall be designated a public member.

Each pharmacist member shall be a citizen of the United States and a resident of this state, and at the time of his appointment shall have been a duly registered pharmacist under the laws of this state for a period of at least five consecutive years immediately preceding his appointment and shall at all times during his incumbency continue to be a duly licensed pharmacist: PROVIDED, That subject to the availability of qualified candidates the governor shall appoint pharmacist members representative of the areas of practice and geographically representative of the state of Washington.

The public member shall be a citizen of the United States and a resident of this state. The public member shall be appointed from the public at large, but shall not be affiliated with any aspect of pharmacy.

Members of the board shall hold office for a term of four years, and the terms shall be staggered so that the terms of office of not more than two members will expire simultaneously on the third Monday in January of each year.

No person who has been appointed to and served for two four year terms shall be eligible for appointment to the board.

Each member shall qualify by taking the usual oath of a state officer, which shall be filed with the secretary of state, and each member shall hold office for the term of his appointment and until his successor is appointed and qualified.

In case of the resignation or disqualification of a member, or a vacancy occurring from any cause, the governor shall appoint a successor for the unexpired term. [1984 c 153 § 1; 1981 c 338 § 17; 1973 1st ex.s. c 18 § 1; 1963 c 38 § 16; 1935 c 98 § 1; RRS § 10132. Formerly RCW 43.69.010.]

18.64.002 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.64.003 State board of pharmacy—Meetings—Chairperson—Compensation and travel expenses. Members of the board shall meet at such places and times as it shall determine and as often as necessary to discharge the duties imposed upon it. The board shall elect a chairperson and a vice chairperson from among its members. Each member shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 43; 1979 c 90 § 1; 1975-'76 2nd ex.s. c 34 § 40; 1963 c 38 § 17; 1935 c 98 § 2; RRS § 10132-1. Formerly RCW 43.69.020.]

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

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

18.64.005 State board of pharmacy—Powers and duties. The board shall:

(1) Regulate the practice of pharmacy and enforce all laws placed under its jurisdiction;

(2) Prepare or determine the nature of, and supervise the grading of, examinations for applicants for pharmacists' licenses;

(3) Establish the qualifications for licensure of pharmacists or pharmacy interns;

(4) Conduct hearings for the revocation or suspension of licenses, permits, registrations, certificates, or any other authority to practice granted by the board, which hearings may also be conducted by an administrative law judge appointed under chapter 34.12 RCW;

(5) Issue subpoenas and administer oaths in connection with any hearing, or disciplinary proceeding held under this chapter or any other chapter assigned to the board;

(6) Assist the regularly constituted enforcement agencies of this state in enforcing all laws pertaining to drugs, controlled substances, and the practice of pharmacy, or any other laws or rules under its jurisdiction;

(7) Promulgate rules for the dispensing, distribution, wholesaling, and manufacturing of drugs and devices and the practice of pharmacy for the protection and promotion of the public health, safety, and welfare. Violation of any such rules shall constitute grounds for refusal, suspension, or revocation of licenses or any other authority to practice issued by the board;

(8) Adopt rules establishing and governing continuing education requirements for pharmacists and other licensees applying for renewal of licenses under this chapter;

(9) Be immune, collectively and individually, from suit in any action, civil or criminal, based upon any disciplinary proceedings or other official acts performed as members of such board. Such immunity shall apply to employees of the department when acting in the course of disciplinary proceedings;

(10) Suggest strategies for preventing, reducing, and eliminating drug misuse, diversion, and abuse, including professional and public education, and treatment of persons misusing and abusing drugs;

(11) Conduct or encourage educational programs to be conducted to prevent the misuse, diversion, and abuse of drugs for health care practitioners and licensed or certified health care facilities;

(12) Monitor trends of drug misuse, diversion, and abuse and make periodic reports to disciplinary boards of licensed health care practitioners and education, treatment, and appropriate law enforcement agencies regarding these trends;

(13) Enter into written agreements with all other state and federal agencies with any responsibility for controlling drug misuse, diversion, or abuse and with health maintenance organizations, health care service contractors, and health care providers to assist and promote coordination of agencies responsible for ensuring compliance with controlled substances laws and to monitor observance of these laws and cooperation between these agencies. The department of social and health services, the department of labor and industries, and any other state agency including licensure disciplinary boards, shall refer all apparent instances of over-prescribing by practitioners and all apparent instances of legend drug overuse to the department. The department shall also encourage such referral by health maintenance organizations, health service contractors, and health care providers. [1990 c 83 § 1; 1989 1st ex.s. c 9 § 409; 1984 c 153 § 2; 1981 c 67 § 21; 1979 c 90 § 2; 1973 1st ex.s. c 18 § 2; 1963 c 38 § 18; 1935 c 98 § 3; RRS § 10132-2. Formerly RCW 43.69.030.]

Section captions not law—1990 c 83: "Section captions as used in this act do not constitute any part of the law." [1990 c 83 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

18.64.009 Department of health—Enforcement employees declared to be peace officers—Authority. Employees of the department, who are designated by the

board as enforcement officers, are declared to be peace officers and shall be vested with police powers to enforce chapters 18.64, 69.04, 69.36, 69.40, 69.41, and 69.50 RCW and all other laws enforced by the board. [1989 1st ex.s. c 9 § 411; 1985 c 7 § 59; 1979 c 90 § 4; 1969 ex.s. c 82 § 1.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64.011 Definitions. Unless the context clearly requires otherwise, definitions of terms shall be as indicated when used in this chapter.

(1) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(2) "Board" means the Washington state board of pharmacy.

(3) "Drugs" means:

(a) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection, but not including devices or their component parts or accessories.

(4) "Device" means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals, or (b) to affect the structure or any function of the body of man or other animals.

(5) "Nonlegend" or "nonprescription" drugs means any drugs which may be lawfully sold without a prescription.

(6) "Legend drugs" means any drugs which are required by any applicable federal or state law or regulation to be dispensed on prescription only or are restricted to use by practitioners only.

(7) "Controlled substance" means a drug or substance, or an immediate precursor of such drug or substance, so designated under or pursuant to the provisions of chapter 69.50 RCW.

(8) "Prescription" means an order for drugs or devices issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe drugs or devices in the course of his or her professional practice for a legitimate medical purpose.

(9) "Practitioner" means a physician, dentist, veterinarian, nurse, or other person duly authorized by law or rule in the state of Washington to prescribe drugs.

(10) "Pharmacist" means a person duly licensed by the Washington state board of pharmacy to engage in the practice of pharmacy.

(11) "Practice of pharmacy" includes the practice of and responsibility for: Interpreting prescription orders; the compounding, dispensing, labeling, administering, and distributing of drugs and devices; the monitoring of drug

therapy and use; the initiating or modifying of drug therapy in accordance with written guidelines or protocols previously established and approved for his or her practice by a practitioner authorized to prescribe drugs; the participating in drug utilization reviews and drug product selection; the proper and safe storing and distributing of drugs and devices and maintenance of proper records thereof; the providing of information on legend drugs which may include, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices.

(12) "Pharmacy" means every place properly licensed by the board of pharmacy where the practice of pharmacy is conducted.

(13) The words "drug" and "devices" shall not include surgical or dental instruments or laboratory materials, gas and oxygen, therapy equipment, X-ray apparatus or therapeutic equipment, their component parts or accessories, or equipment, instruments, apparatus, or contrivances used to render such articles effective in medical, surgical, or dental treatment, or for use or consumption in or for mechanical, industrial, manufacturing, or scientific applications or purposes, nor shall the word "drug" include any article or mixture covered by the Washington pesticide control act (chapter 15.58 RCW), as enacted or hereafter amended, nor medicated feed intended for and used exclusively as a feed for animals other than man.

(14) The word "poison" shall not include any article or mixture covered by the Washington pesticide control act (chapter 15.58 RCW), as enacted or hereafter amended.

(15) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a drug or device, whether or not there is an agency relationship.

(16) "Dispense" means the interpretation of a prescription or order for a drug, biological, or device and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(17) "Distribute" means the delivery of a drug or device other than by administering or dispensing.

(18) "Compounding" shall be the act of combining two or more ingredients in the preparation of a prescription.

(19) "Wholesaler" shall mean a corporation, individual, or other entity which buys drugs or devices for resale and distribution to corporations, individuals, or entities other than consumers.

(20) "Manufacture" means the production, preparation, propagation, compounding, or processing of a drug or other substance or device or the packaging or repackaging of such substance or device, or the labeling or relabeling of the commercial container of such substance or device, but does not include the activities of a practitioner who, as an incident to his or her administration or dispensing such substance or device in the course of his or her professional practice, prepares, compounds, packages, or labels such substance or device.

(21) "Manufacturer" shall mean a person, corporation, or other entity engaged in the manufacture of drugs or devices.

(22) "Labeling" shall mean the process of preparing and affixing a label to any drug or device container. The label

must include all information required by current federal and state law and pharmacy rules.

(23) "Administer" means the direct application of a drug or device, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject.

(24) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

(25) "Department" means the department of health.

(26) "Secretary" means the secretary of health or the secretary's designee.

(27) "Health care entity" means an organization that provides health care services in a setting that is not otherwise licensed by the state. Health care entity includes a free-standing outpatient surgery center, a free-standing cardiac care center, or a kidney dialysis center. It does not include an individual practitioner's office or a multipractitioner clinic. [1995 c 319 § 2; 1989 1st ex.s. c 9 § 412; 1984 c 153 § 3; 1982 c 182 § 29; 1979 c 90 § 5; 1963 c 38 § 1.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1982 c 182: See RCW 19.02.901.

18.64.020 Licensing required. It shall hereafter be unlawful for any person to practice pharmacy or to institute or operate any pharmacy unless such person shall be a licensed pharmacist or shall place in charge of said pharmacy a licensed pharmacist: PROVIDED, That persons licensed as manufacturers or as wholesalers, and their employees, acting within the scope of their licenses, shall be exempt from this section. [1979 c 90 § 6; 1899 c 121 § 1; RRS § 10126. Prior: 1891 c 113 § 1. Formerly RCW 18.67.010, part.]

18.64.040 Examination fee. Every applicant for license examination under this chapter shall pay the sum determined by the secretary under RCW 43.70.250 and 43.70.280 before the examination is attempted. [1996 c 191 § 42; 1989 1st ex.s. c 9 § 413; 1979 c 90 § 7; 1971 ex.s. c 201 § 1; 1963 c 38 § 2; 1949 c 153 § 1; 1935 c 98 § 4; 1909 c 213 § 5; 1899 c 121 § 10; Rem. Supp. 1949 § 10135.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1971 ex.s. c 201: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 201 § 9.]

18.64.043 Pharmacy license—Fee—Display—Declaration of ownership and location—Penalties. (1) The owner of each pharmacy shall pay an original license fee to be determined by the secretary, and annually thereafter, on or before a date to be determined by the secretary, a fee to be determined by the secretary, for which he or she shall receive a license of location, which shall entitle the owner to operate such pharmacy at the location specified, or such other temporary location as the secretary may approve,

for the period ending on a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280, and each such owner shall at the time of filing proof of payment of such fee as provided in RCW 18.64.045 as now or hereafter amended, file with the department on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of ownership of the pharmacy mentioned therein.

(2) It shall be the duty of the owner to immediately notify the department of any change of location or ownership and to keep the license of location or the renewal thereof properly exhibited in said pharmacy.

(3) Failure to comply with this section shall be deemed a misdemeanor, and each day that said failure continues shall be deemed a separate offense.

(4) In the event such license fee remains unpaid on the date due, no renewal or new license shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 43; 1991 c 229 § 3; 1989 1st ex.s. c 9 § 414; 1984 c 153 § 4; 1979 c 90 § 8; 1971 ex.s. c 201 § 2; 1963 c 38 § 3; 1949 c 153 § 4; 1935 c 98 § 8; 1909 c 213 § 12; Rem. Supp. 1949 § 10145. Formerly RCW 18.67.020.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1971 ex.s. c 201: See note following RCW 18.64.040.

18.64.044 Shopkeeper's registration—Penalty. (1) A shopkeeper registered as provided in this section may sell nonprescription drugs, if such drugs are sold in the original package of the manufacturer.

(2) Every shopkeeper not a licensed pharmacist, desiring to secure the benefits and privileges of this section, is hereby required to register as a shopkeeper through the master license system, and he or she shall pay the fee determined by the secretary for registration, and on a date to be determined by the secretary thereafter the fee determined by the secretary for renewal of the registration; and shall at all times keep said registration or the current renewal thereof conspicuously exposed in the shop to which it applies. In event such shopkeeper's registration is not renewed by the master license expiration date, no renewal or new registration shall be issued except upon payment of the registration renewal fee and the master license delinquency fee under chapter 19.02 RCW. This registration fee shall not authorize the sale of legend drugs or controlled substances.

(3) The registration fees determined by the secretary under subsection (2) of this section shall not exceed the cost of registering the shopkeeper.

(4) Any shopkeeper who shall vend or sell, or offer to sell to the public any such nonprescription drug or preparation without having registered to do so as provided in this section, shall be guilty of a misdemeanor and each sale or offer to sell shall constitute a separate offense. [1989 1st ex.s. c 9 § 401; 1989 c 352 § 1; 1984 c 153 § 5; 1982 c 182 § 30; 1979 c 90 § 17.]

Reviser's note: This section was amended by 1989 c 352 § 1 and by 1989 1st ex.s. c 9 § 401, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1982 c 182: See RCW 19.02.901.

Master license

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

system

existing licenses or permits registered under, when: RCW 19.02.810.

generally: RCW 18.64.011(24).

to include additional licenses: RCW 19.02.110.

18.64.045 Manufacturer's license—Fees—Display—Declaration of ownership and location—Penalties. The owner of each and every place of business which manufactures drugs shall pay a license fee to be determined by the secretary, and thereafter, on or before a date to be determined by the secretary, a fee to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280, for which the owner shall receive a license of location from the department, which shall entitle the owner to manufacture drugs at the location specified for the period ending on a date to be determined by the secretary, and each such owner shall at the time of payment of such fee file with the department, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein. It shall be the duty of the owner to notify immediately the department of any change of location or ownership and to keep the license of location or the renewal thereof properly exhibited in such place of business. Failure to conform with this section shall be deemed a misdemeanor, and each day that said failure continues shall be deemed a separate offense. In event such license fee remains unpaid on the date due, no renewal or new license shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 44; 1991 c 229 § 4; 1989 1st ex.s. c 9 § 416; 1984 c 153 § 6; 1979 c 90 § 9; 1971 ex.s. c 201 § 3; 1963 c 38 § 4; 1949 c 153 § 5; Rem. Supp. 1949 § 10154-4. Formerly RCW 18.67.140.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1971 ex.s. c 201: See note following RCW 18.64.040.

18.64.046 Wholesaler's license—Required—Authority of licensee—Penalty. The owner of each place of business which sells legend drugs and nonprescription drugs, or nonprescription drugs at wholesale shall pay a license fee to be determined by the secretary, and thereafter, on or before a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280, a like fee to be determined by the secretary, for which the owner shall receive a license of location from the department, which shall entitle such owner to either sell legend drugs and nonprescription drugs or nonprescription drugs at wholesale at the location specified for the period ending on a date to be determined by the secretary, and each such owner shall at the time of payment of such fee file with the department, on a blank therefor provided, a declaration of ownership and location, which declaration of ownership and location so filed as aforesaid shall be deemed presumptive evidence of the ownership of such place of business mentioned therein.

It shall be the duty of the owner to notify immediately the department of any change of location and ownership and to keep the license of location or the renewal thereof properly exhibited in such place of business. Failure to conform with this section shall be deemed a misdemeanor, and each day that said failure continues shall be deemed a separate offense. In event such license fee remains unpaid on the date due, no renewal or new license shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 45; 1991 c 229 § 5; 1989 1st ex.s. c 9 § 417; 1984 c 153 § 7; 1979 c 90 § 18.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64.047 Itinerant vendor's or peddler's registration—Fee—Penalties. Any itinerant vendor or any peddler of any nonprescription drug or preparation for the treatment of disease or injury, shall pay a registration fee determined by the secretary on a date to be determined by the secretary as provided in RCW 43.70.250 and 43.70.280. The department may issue a registration to such vendor on an approved application made to the department. Any itinerant vendor or peddler who shall vend or sell, or offer to sell to the public any such nonprescription drug or preparation without having registered to do so as provided in this section, shall be guilty of a misdemeanor and each sale or offer to sell shall constitute a separate offense. In event such registration fee remains unpaid on the date due, no renewal or new registration shall be issued except upon compliance with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. This registration shall not authorize the sale of legend drugs or controlled substances. [1996 c 191 § 46; 1991 c 229 § 6; 1989 1st ex.s. c 9 § 418; 1984 c 153 § 8; 1979 c 90 § 10; 1971 ex.s. c 201 § 4; 1963 c 38 § 5; 1949 c 153 § 3; 1935 c 98 § 7; 1899 c 121 § 16; Rem. Supp. 1949 § 10141. Formerly RCW 18.60.010 through 18.60.030.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1971 ex.s. c 201: See note following RCW 18.64.040.

18.64.050 Duplicate for lost or destroyed license or certificate—Certified documents—Fees. In the event that a license or certificate issued by the department is lost or destroyed, the person to whom it was issued may obtain a duplicate thereof upon furnishing proof of such fact satisfactory to the department and the payment of a fee determined by the secretary.

In the event any person desires any certified document to which he is entitled, he shall receive the same upon payment of a fee determined by the secretary. [1989 1st ex.s. c 9 § 419; 1984 c 153 § 9; 1963 c 38 § 6; 1935 c 98 § 9; RRS § 10145-1. FORMER PART OF SECTION: 1935 c 98 § 10; RRS § 10145-2, now codified as RCW 18.64.055.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64.080 Licensing of pharmacists—Registration of interns—Prerequisites—Examinations—Reciprocity—Fees—Renewal. (1) The department may license as a pharmacist any person who has filed an application therefor, subscribed by the person under oath or affirmation, containing such information as the board may by regulation require, and who—

(a) Is at least eighteen years of age;

(b) Has satisfied the board that he or she is of good moral and professional character, that he or she will carry out the duties and responsibilities required of a pharmacist, and that he or she is not unfit or unable to practice pharmacy by reason of the extent or manner of his or her proven use of alcoholic beverages, drugs, or controlled substances, or by reason of a proven physical or mental disability;

(c) Holds a baccalaureate degree in pharmacy or a doctor of pharmacy degree granted by a school or college of pharmacy which is accredited by the board of pharmacy;

(d) Has completed or has otherwise met the internship requirements as set forth in board rules;

(e) Has satisfactorily passed the necessary examinations approved by the board and administered by the department.

(2) The department shall, at least once in every calendar year, offer an examination to all applicants for a pharmacist license who have completed their educational and internship requirements pursuant to rules promulgated by the board. The examination shall be determined by the board. In case of failure at a first examination, the applicant shall have within three years the privilege of a second and third examination. In case of failure in a third examination, the applicant shall not be eligible for further examination until he or she has satisfactorily completed additional preparation as directed and approved by the board. The applicant must pay the examination fee determined by the secretary for each examination taken. Upon passing the required examinations and complying with all the rules and regulations of the board and the provisions of this chapter, the department shall grant the applicant a license as a pharmacist and issue to him or her a certificate qualifying him or her to enter into the practice of pharmacy.

(3) Any person enrolled as a student of pharmacy in an accredited college may file with the department an application for registration as a pharmacy intern in which application he or she shall be required to furnish such information as the board may, by regulation, prescribe and, simultaneously with the filing of said application, shall pay to the department a fee to be determined by the secretary. All certificates issued to pharmacy interns shall be valid for a period to be determined by the board, but in no instance shall the certificate be valid if the individual is no longer making timely progress toward graduation, provided however, the board may issue an intern certificate to a person to complete an internship to be eligible for initial licensure or for the reinstatement of a previously licensed pharmacist.

(4) To assure adequate practical instruction, pharmacy internship experience as required under this chapter shall be obtained after registration as a pharmacy intern by practice in any licensed pharmacy or other program meeting the requirements promulgated by regulation of the board, and shall include such instruction in the practice of pharmacy as the board by regulation shall prescribe.

(5) The department may, without examination other than one in the laws relating to the practice of pharmacy, license as a pharmacist any person who, at the time of filing application therefor, is currently licensed as a pharmacist in any other state, territory, or possession of the United States. The person shall produce evidence satisfactory to the department of having had the required secondary and professional education and training and who was licensed as a pharmacist by examination in another state prior to June 13, 1963, shall be required to satisfy only the requirements which existed in this state at the time he or she became licensed in such other state, and that the state in which the person is licensed shall under similar conditions grant reciprocal licenses as pharmacist without examination to pharmacists duly licensed by examination in this state. Every application under this subsection shall be accompanied by a fee determined by the department.

(6) The department shall provide for, regulate, and require all persons licensed as pharmacists to renew their license periodically, and shall prescribe the form of such license and information required to be submitted by all applicants. [1989 1st ex.s. c 9 §§ 403, 420; 1989 c 352 § 3; 1984 c 153 § 10; 1981 c 147 § 1; 1979 c 90 § 11; 1972 ex.s. c 9 § 1. Prior: 1971 ex.s. c 292 § 25; 1971 ex.s. c 201 § 5; 1963 c 38 § 7; 1931 c 56 § 1; 1927 c 253 § 1; 1923 c 180 § 3; RRS § 10126-3. Formerly RCW 18.64.010, part, 18.64.080 and 18.64.090, part.]

Reviser's note: This section was amended by 1989 c 352 § 3 and by 1989 1st ex.s. c 9 §§ 403, 420, all without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64.140 License—Fees—Display—Inactive license.

Every licensed pharmacist who desires to practice pharmacy shall secure from the department a license, the fee for which shall be determined by the secretary under RCW 43.70.250 and 43.70.280. The administrative procedures, administrative requirements, renewal fee, and late renewal fee shall also be determined under RCW 43.70.250 and 43.70.280. Payment of this fee shall entitle the licensee to a pharmacy law book, subsequent current mailings of all additions, changes, or deletions in the pharmacy practice act, chapter 18.64 RCW, and all additions, changes, or deletions of pharmacy board and department regulations. The current license shall be conspicuously displayed to the public in the pharmacy to which it applies. Any licensed pharmacist who desires to leave the active practice of pharmacy in this state may secure from the department an inactive license. The initial license and renewal fees shall be determined by the secretary under RCW 43.70.250 and 43.70.280. The holder of an inactive license may reactivate his or her license to practice pharmacy in accordance with rules adopted by the board. [1996 c 191 § 47; 1991 c 229 § 7; 1989 1st ex.s. c 9 § 421; 1984 c 153 § 11; 1979 c 90 § 12; 1971 ex.s. c 201 § 6; 1963 c 38 § 9; 1949 c 153 § 2; 1935 c 98 § 5; 1899 c 121 § 11; Rem. Supp. 1949 § 10136. Formerly RCW 18.64.140 and 18.64.150.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1971 ex.s. c 201: See note following RCW 18.64.040.

18.64.160 Disciplinary action against pharmacist's and intern's licenses—Grounds. In addition to the grounds under RCW 18.130.170 and 18.130.180, the board of pharmacy may take disciplinary action against the license of any pharmacist or intern upon proof that:

(1) His or her license was procured through fraud, misrepresentation, or deceit;

(2) In the event that a pharmacist is determined by a court of competent jurisdiction to be mentally incompetent, the pharmacist shall automatically have his or her license suspended by the board upon the entry of the judgment, regardless of the pendency of an appeal;

(3) He or she has knowingly violated or permitted the violation of any provision of any state or federal law, rule, or regulation governing the possession, use, distribution, or dispensing of drugs, including, but not limited to, the violation of any provision of this chapter, Title 69 RCW, or rule or regulation of the board;

(4) He or she has knowingly allowed any unlicensed person to take charge of a pharmacy or engage in the practice of pharmacy, except a pharmacy intern or pharmacy assistant acting as authorized in this chapter or chapter 18.64A RCW in the presence of and under the immediate supervision of a licensed pharmacist;

(5) He or she has compounded, dispensed, or caused the compounding or dispensing of any drug or device which contains more or less than the equivalent quantity of ingredient or ingredients specified by the person who prescribed such drug or device: PROVIDED, HOWEVER, That nothing herein shall be construed to prevent the pharmacist from exercising professional judgment in the preparation or providing of such drugs or devices. [1993 c 367 § 13; 1985 c 7 § 60; 1984 c 153 § 12; 1979 c 90 § 13; 1963 c 38 § 10; 1909 c 213 § 10; RRS § 10143. Formerly RCW 18.64.160 through 18.64.190.]

18.64.163 Uniform Disciplinary Act. The Uniform Disciplinary Act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses of pharmacists and pharmacy interns, and the discipline of licensed pharmacists and pharmacy interns under this chapter. [1993 c 367 § 14.]

18.64.165 Refusal, suspension, and revocation of other licenses. The board shall have the power to refuse, suspend, or revoke the license of any manufacturer, wholesaler, pharmacy, shopkeeper, itinerant vendor, peddler, poison distributor, health care entity, or precursor chemical distributor upon proof that:

(1) The license was procured through fraud, misrepresentation, or deceit;

(2) The licensee has violated or has permitted any employee to violate any of the laws of this state or the United States relating to drugs, controlled substances, cosmetics, or nonprescription drugs, or has violated any of the rules and regulations of the board of pharmacy or has been convicted of a felony. [1995 c 319 § 5. Prior: 1989 1st ex.s. c 9 § 404; 1989 c 352 § 4; 1979 c 90 § 14; 1963 c 38 § 15.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.64.200 Refusal, suspension, and revocation of other licenses—Appeal procedure. In any case of the refusal, suspension or revocation of a license by said board under the provisions of this chapter, appeal may be taken in accordance with the Administrative Procedure Act. [1963 c 38 § 11; 1909 c 213 § 11; RRS § 10144. Formerly RCW 18.64.200 through 18.64.240.]

Administrative Procedure Act: Title 34 RCW.

18.64.205 Retired active license status. The board may adopt rules pursuant to this section authorizing a retired active license status. An individual licensed pursuant to this chapter, who is practicing only in emergent or intermittent circumstances as defined by rule established by the board, may hold a retired active license at a reduced renewal fee established by the secretary under RCW 43.70.250 and 43.70.280. Such a license shall meet the continuing education requirements, if any, established by the board for renewals, and is subject to the provisions of the uniform disciplinary act, chapter 18.130 RCW. Individuals who have entered into retired status agreements with the disciplinary authority in any jurisdiction shall not qualify for a retired active license under this section. [1996 c 191 § 48; 1991 c 229 § 2.]

18.64.245 Prescription records. Every proprietor or manager of a pharmacy shall keep readily available a suitable record of prescriptions which shall preserve for a period of not less than two years the record of every prescription dispensed at such pharmacy which shall be numbered, dated, and filed, and shall produce the same in court or before any grand jury whenever lawfully required to do so. The record shall be maintained either separately from all other records of the pharmacy or in such form that the information required is readily retrievable from ordinary business records of the pharmacy. All record-keeping requirements for controlled substances must be complied with. Such record of prescriptions shall be for confidential use in the pharmacy, only. The record of prescriptions shall be open for inspection by the board of pharmacy or any officer of the law, who is authorized to enforce chapter 18.64, 69.41, or 69.50 RCW. [1989 1st ex.s. c 9 § 402; 1989 c 352 § 2; 1979 c 90 § 15; 1939 c 28 § 1; RRS § 6154-1. Formerly RCW 18.67.090.]

Reviser's note: This section was amended by 1989 c 352 § 2 and by 1989 1st ex.s. c 9 § 402, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64.246 Prescriptions—Labels—Cover or cap to meet safety standards. To every box, bottle, jar, tube or other container of a prescription which is dispensed there shall be fixed a label bearing the name and address of the pharmacy wherein the prescription is compounded, the corresponding serial number of the prescription, the name of the prescriber, his directions, the name of the medicine and the strength per unit dose, name of patient, date, the expira-

tion date, and initials of the licensed pharmacist who has compounded the prescription, and the security of the cover or cap on every bottle or jar shall meet safety standards promulgated by the state board of pharmacy: PROVIDED, That at the physician's request, the name and dosage of the drug need not be shown. If the prescription is for a combination drug product, the generic names of the drugs combined or the trade name used by the manufacturer or distributor for the product shall be noted on the label. This section shall not apply to the dispensing of medicines to inpatients in hospitals. [1984 c 153 § 13; 1971 ex.s. c 99 § 1; 1939 c 28 § 2; RRS § 6154-2. Formerly RCW 18.67.080.]

18.64.247 Penalty for violation of RCW 18.64.245, 18.64.246. Any person violating or failing to comply with the requirements of RCW 18.64.245 and 18.64.246 shall be guilty of a misdemeanor. [1939 c 28 § 3; RRS § 6154-3. Formerly RCW 18.67.091.]

18.64.250 Unlawful practices—Penalty for violations—Exceptions. (1) Any person not a licensed pharmacist and not having continuously and regularly in his employ a duly licensed pharmacist within the full meaning of this chapter, who shall practice pharmacy; or

(2) Any person who shall permit the compounding and dispensing of prescriptions, or vending of drugs, medicines, or poisons in his or her store or place of business, except under the supervision of a licensed pharmacist; or

(3) Any licensed pharmacist or shopkeeper licensed under this chapter, who while continuing in business, shall fail or neglect to procure his or her renewal of license; or

(4) Any person who shall wilfully make any false representations to procure a license for himself or herself or for any other person; or

(5) Any person who shall violate any of the provisions of this chapter wilfully and knowingly; or

(6) Any person who shall take or use or exhibit in or upon any place of business, or advertise in a newspaper, telephone directory, or other directory, or by electronic media, or in any other manner, the title of pharmacist, pharmacy intern, pharmacy assistant, druggist, pharmacy, drug store, medicine store, drug department, drugs, drug sundries, or any title or name of like description or import, or display or permit to be displayed upon said place of business the characteristic pharmacy symbols, bottles or globes, either colored or filled with colored liquids, without having continuously and regularly employed in his or her shop, store, or place of business, during business hours of the pharmacy, a pharmacist duly licensed under this chapter; shall be guilty of a misdemeanor, and each and every day that such prohibited practice continues shall be deemed a separate offense. [1979 c 90 § 16; 1963 c 38 § 12; 1935 c 98 § 6; 1909 c 213 § 7; 1899 c 121 § 13; RRS § 10138. Formerly RCW 18.64.250, 18.64.010, 18.64.030, 18.67.030, 18.67.040 and 18.67.130. FORMER PART OF SECTION: 1909 c 213 § 13; RRS § 10146, now codified as RCW 18.64.280.]

18.64.255 Authorized practices. Nothing in this chapter shall operate in any manner:

(1) To restrict the scope of authorized practice of any practitioner other than a pharmacist, duly licensed as such under the laws of this state. However, a health care entity shall comply with all state and federal laws and rules relating to the dispensing of drugs and the practice of pharmacy; or

(2) In the absence of the pharmacist from the hospital pharmacy, to prohibit a registered nurse designated by the hospital and the responsible pharmacist from obtaining from the hospital pharmacy such drugs as are needed in an emergency: PROVIDED, That proper record is kept of such emergency, including the date, time, name of prescriber, the name of the nurse obtaining the drugs, and a list of what drugs and quantities of same were obtained; or

(3) To prevent shopkeepers, itinerant vendors, peddlers, or salesmen from dealing in and selling nonprescription drugs, if such drugs are sold in the original packages of the manufacturer, or in packages put up by a licensed pharmacist in the manner provided by the state board of pharmacy, if such shopkeeper, itinerant vendor, salesman, or peddler shall have obtained a registration. [1995 c 319 § 7; 1984 c 153 § 14; 1981 c 147 § 3; 1979 c 90 § 19.]

18.64.257 Prescription of legend drugs by dialysis programs. This chapter shall not prevent a medicare-approved dialysis center or facility operating a medicare-approved home dialysis program from selling, delivering, possessing, or dispensing directly to its dialysis patients, in case or full shelf lots, if prescribed by a physician licensed under chapter 18.57 or 18.71 RCW, those legend drugs determined by the board pursuant to rule. [1987 c 41 § 1.]

Application of legend drug statutes to dialysis programs: RCW 69.41.032.

18.64.270 Responsibility for drug purity—Adulteration—Penalty. Every proprietor of a wholesale or retail drug store shall be held responsible for the quality of all drugs, chemicals or medicines sold or dispensed by him except those sold in original packages of the manufacturer and except those articles or preparations known as patent or proprietary medicines. Any person who shall knowingly, wilfully or fraudulently falsify or adulterate any drug or medicinal substance or preparation authorized or recognized by an official compendium or used or intended to be used in medical practice, or shall wilfully, knowingly or fraudulently offer for sale, sell or cause the same to be sold for medicinal purposes, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine in any sum not less than seventy-five nor more than one hundred and fifty dollars or by imprisonment in the county jail for a period of not less than one month nor more than three months, and any person convicted a third time for violation of any of the provisions of this section may suffer both fine and imprisonment. In any case he shall forfeit to the state of Washington all drugs or preparations so falsified or adulterated. [1963 c 38 § 13; 1899 c 121 § 14; RRS § 10139. Prior: 1891 c 153 § 15. Formerly RCW 18.67.100 and 18.67.120.]

18.64.275 Limitations on liability for dispensing of prescription. (1) A pharmacist who dispenses a prescription product in the form manufactured by a commercial manufac-

turer pursuant to a prescription issued by a licensed practitioner is not liable to a person who was injured through the use of the product, based on a claim of the following:

(a) Strict liability in tort; or

(b) Implied warranty provisions under the uniform commercial code Title 62 RCW.

(2) The limitation on pharmacist's liability as provided in subsection (1) of this section shall only apply if the pharmacist complies with recordkeeping requirements pursuant to chapters 18.64, 69.41, and 69.50 RCW, and related administrative rules.

(3) A pharmacist who dispenses a prescription product in the form manufactured by a commercial manufacturer issued by a licensed practitioner is liable to the claimant only if the claimant's harm was proximately caused by (a) the negligence of the pharmacist; (b) breach of an express warranty made by the pharmacist; or (c) the intentional misrepresentation of facts about the product by the pharmacist or the intentional concealment of information about the product by the pharmacist. A pharmacist shall not be liable for the product manufacturer's liability except as provided in RCW 7.72.040. [1991 c 189 § 1.]

18.64.280 General penalty. Any person who shall violate any of the provisions of chapter 18.64 RCW and for which a penalty is not provided shall be deemed guilty of a gross misdemeanor. [1963 c 38 § 14; 1909 c 213 § 13; RRS § 10146. Formerly RCW 18.64.250, part.]

18.64.300 Pharmacist members of committees to evaluate credentials and qualifications of pharmacists—Immunity from civil suit. See RCW 4.24.240.

18.64.301 Pharmacists filing charges or presenting evidence before pharmaceutical society—Immunity from civil suit. See RCW 4.24.250, 4.24.260.

18.64.302 Records of pharmaceutical society not subject to civil process. See RCW 4.24.250.

18.64.310 Department of health—Powers and duties. The department shall:

(1) Establish reasonable license and examination fees and fees for services to other agencies in accordance with RCW 43.70.250 and 43.70.280. In cases where there are unanticipated demands for services, the department may request payment for services directly from the agencies for whom the services are performed, to the extent that revenues or other funds are available. Drug-related investigations regarding licensed health care practitioners shall be funded by an appropriation to the department from the health professions account. The payment may be made on either an advance or a reimbursable basis as approved by the director of financial management;

(2) Employ, with confirmation by the board, an executive officer, who shall be exempt from the provisions of chapter 41.06 RCW and who shall be a pharmacist licensed in Washington, and employ inspectors, investigators, chemists, and other persons as necessary to assist it for any purpose which it may deem necessary;

(3) Investigate and prosecute, at the direction of the board, including use of subpoena powers, violations of law or regulations under its jurisdiction or the jurisdiction of the board of pharmacy;

(4) Make, at the direction of the board, inspections and investigations of pharmacies and other places, including dispensing machines, in which drugs or devices are stored, held, compounded, dispensed, sold, or administered to the ultimate consumer, to take and analyze any drugs or devices and to seize and condemn any drugs or devices which are adulterated, misbranded, stored, held, dispensed, distributed, administered, or compounded in violation of or contrary to law. The written operating agreement between the department and the board, as required by RCW 43.70.240 shall include provisions for the department to involve the board in carrying out its duties required by this section. [1996 c 191 § 49; 1989 1st ex.s. c 9 § 410.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64.350 Nonresident pharmacies—Findings. (1) The legislature finds and declares that the practice of pharmacy is a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and drug-related therapy.

(2) The legislature recognizes that with the proliferation of alternate methods of health delivery, there has arisen among third-party payors and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail-order pharmacies located outside the state of Washington.

(3) As a result, the legislature finds and declares that to continue to protect the Washington consumer-patient, all out-of-state pharmacies that provide services to Washington residents shall be licensed by the department of health, disclose specific information about their services, and provide pharmacy services at a high level of protection and competence. [1991 c 87 § 1.]

Effective date—1991 c 87: "This act shall take effect October 1, 1991." [1991 c 87 § 15.]

18.64.360 Nonresident pharmacies—Definition—Requirements—Exemption. (1) For the purposes of this chapter any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an individual, controlled substances, legend drugs, or devices into this state is a nonresident pharmacy, and shall be licensed by the department of health, and shall disclose to the department the following:

(a) The location, names, and titles of all owners including corporate officers and all pharmacists employed by the pharmacy who are dispensing controlled substances, legend drugs, or devices to residents of this state. A report containing this information shall be made on an annual basis and within ninety days after a change of location, corporate officer, or pharmacist;

(b) Proof of compliance with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the department of health

under this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to operate the pharmacy in compliance with the laws of the state in which it is located. As a prerequisite to be licensed by the department of health, the nonresident pharmacy shall submit a copy of the most recent inspection report issued by the regulatory licensing agency of the state in which it is located;

(c) Proof that it maintains its records of controlled substances, legend drugs, or devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs dispensed.

(2) Any pharmacy subject to this section shall, during its regular hours of operation, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on the label affixed to each container of drugs dispensed to patients in this state.

(3) A pharmacy subject to this section shall comply with board rules regarding the maintenance and use of patient medication record systems.

(4) A pharmacy subject to this section shall comply with board of pharmacy rules regarding the provision of drug information to the patient. Drug information may be contained in written form setting forth directions for use and any additional information necessary to assure the proper utilization of the medication prescribed. A label bearing the expiration date of the prescription must be affixed to each box, bottle, jar, tube, or other container of a prescription that is dispensed in this state by a pharmacy subject to this section.

(5) A pharmacy subject to this section shall not dispense medication in a quantity greater than authorized by the prescriber.

(6) The license fee specified by the secretary, in accordance with the provisions of RCW 43.70.250, shall not exceed the fee charged to a pharmacy located in this state.

(7) The license requirements of this section apply to nonresident pharmacies that ship, mail, or deliver controlled substances, legend drugs, and devices into this state only under a prescription. The board of pharmacy may grant an exemption from licensing under this section upon application by an out-of-state pharmacy that restricts its dispensing activity in Washington to isolated transactions.

(8) Each nonresident pharmacy that ships, mails, or delivers legend drugs or devices into this state shall designate a resident agent in Washington for service of process. The designation of such an agent does not indicate that the nonresident pharmacy is a resident of Washington for tax purposes. [1996 c 109 § 1; 1991 c 87 § 2.]

Effective date—1991 c 87: See note following RCW 18.64.350.

18.64.370 Nonresident pharmacies—License required—Application—Renewal. (1) A nonresident pharmacy that has not obtained a license from the department of health shall not conduct the business of selling or distributing drugs in this state.

(2) Applications for a nonresident pharmacy license under RCW 18.64.350 through 18.64.400 shall be made on a form furnished by the department. The department may

require such information as it deems is reasonably necessary to carry out the purpose of RCW 18.64.350 through 18.64.400.

(3) The nonresident pharmacy license shall be renewed annually on a date to be established by the department by rule. In the event the license fee remains unpaid, no renewal or new license shall be issued except upon payment of the license renewal fee and a penalty fee equal to the original license fee. [1991 c 87 § 3.]

Effective date—1991 c 87: See note following RCW 18.64.350.

18.64.380 Nonresident pharmacies—Information required—Inspection. A nonresident pharmacy shall:

(1) Submit to the department, upon request, information acceptable to the secretary concerning controlled substances shipped, mailed, or delivered to a Washington resident.

(2) Submit to on-site inspection by the department of the nonresident pharmacy's prescription records if the information in subsection (1) of this section is not provided to the department upon request. [1991 c 87 § 4.]

Effective date—1991 c 87: See note following RCW 18.64.350.

18.64.390 Nonresident pharmacies—Violations—Penalties. (1) The board may deny, revoke, or suspend a nonresident pharmacy license or impose a fine not to exceed one thousand dollars per violation for failure to comply with any requirement of RCW 18.64.350 through 18.64.400.

(2) The board may deny, revoke, or suspend a nonresident pharmacy license or impose a fine not to exceed one thousand dollars per violation for conduct that causes serious bodily or psychological injury to a resident of this state if the secretary has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and that regulatory or licensing agency fails to initiate an investigation within forty-five days of the referral under this subsection or fails to make a determination on the referral. [1991 c 87 § 5.]

Effective date—1991 c 87: See note following RCW 18.64.350.

18.64.400 Nonresident pharmacies—Definition—Advertising. For the purposes of this chapter, a nonresident pharmacy is defined as any pharmacy located outside this state that ships, mails, or delivers, in any manner, except when delivered in person to an individual, controlled substances, legend drugs, or devices into this state. It is unlawful for:

(1) Any nonresident pharmacy that is not licensed under RCW 18.64.350 through 18.64.400 to advertise its service in this state; or

(2) Any resident of this state to advertise the pharmaceutical services of a nonresident pharmacy with the knowledge that the nonresident pharmacy is not licensed by the department and that the advertisement will or is likely to induce persons within this state to use the nonresident pharmacy to fill prescriptions. [1991 c 87 § 6.]

Effective date—1991 c 87: See note following RCW 18.64.350.

18.64.410 Nonresident pharmacies—Rules. The board may adopt rules to implement the provisions of RCW 18.64.350 through 18.64.400 and 18.64.420. [1991 c 87 § 11.]

Effective date—1991 c 87: See note following RCW 18.64.350.

18.64.420 Nonresident pharmacies—Information confidential—Exceptions. All records, reports, and information obtained by the department from or on behalf of an entity licensed under chapter 48.20, 48.21, 48.44, or 48.46 RCW shall be confidential and exempt from inspection and copying under chapter 42.17 RCW. Nothing in this section restricts the investigation or the proceedings of the board or the department so long as the board and the department comply with the provisions of chapter 42.17 RCW. Nothing in this section or in chapter 42.17 RCW shall restrict the board or the department from complying with any mandatory reporting requirements that exist or may exist under federal law, nor shall the board or the department be restricted from providing to any person the name of any nonresident pharmacy that is or has been licensed or disciplined under RCW 18.64.350 through 18.64.400. [1991 c 87 § 12.]

Effective date—1991 c 87: See note following RCW 18.64.350.

18.64.430 Cost disclosure to health care providers. The registered or licensed pharmacist of [under] this chapter shall establish and maintain a procedure for disclosing to physicians and other health care providers with prescriptive authority information detailed by prescriber, of the cost and dispensation of all prescriptive medications prescribed by him or her for his or her patients on request. These charges should be made available on at least a quarterly basis for all requested patients and should include medication, dosage, number dispensed, and the cost of the prescription. Pharmacies may provide this information in a summary form for each prescribing physician for all patients rather than as individually itemized reports. All efforts should be made to utilize the existing computerized records and software to provide this information in the least costly format. [1993 c 492 § 267.]

Cost containment—1993 c 492: "The legislature finds that the spiraling costs of health care continue to surmount efforts to contain them, increasing at approximately twice the inflationary rate. One of the fastest growing segments of the health care expenditure involves prescription medications. By making physicians and other health care providers with prescriptive authority more aware of the cost consequences of health care treatments for consumers, these providers may be inclined to exercise more restraint in providing only the most relevant and cost-beneficial drug and medication treatments. The requirement of the pharmacy to inform physicians and other health care providers of the charges of prescription drugs and medications that they order may have a positive effect on containing health costs. Further, the option of the physician or other health care provider to inform the patient of these charges may strengthen the necessary dialogue in the provider-patient relationship that tends to be diminished by intervening third-party payers." [1993 c 492 § 266.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

18.64.450 Health care entity—License requirements for legend drugs and controlled substances—Exception. (1) In order for a health care entity to purchase, administer, dispense, and deliver legend drugs, the health care entity must be licensed by the department.

(2) In order for a health care entity to purchase, administer, dispense, and deliver controlled substances, the health

care entity must annually obtain a license from the department in accordance with the board's rules.

(3) The receipt, administration, dispensing, and delivery of legend drugs or controlled substances by a health care entity must be performed under the supervision or at the direction of a pharmacist.

(4) A health care entity may only administer, dispense, or deliver legend drugs and controlled substances to patients who receive care within the health care entity and in compliance with rules of the board. Nothing in this subsection shall prohibit a practitioner, in carrying out his or her licensed responsibilities within a health care entity, from dispensing or delivering to a patient of the health care entity drugs for that patient's personal use in an amount not to exceed seventy-two hours of usage. [1995 c 319 § 3.]

18.64.460 Health care entity—License fee—Requirements—Penalty. (1) The owner of a health care entity shall pay an original license fee to be determined by the secretary, and annually thereafter, on or before a date to be determined by the secretary, a fee to be determined by the secretary, for which he or she shall receive a license of location, which shall entitle the owner to purchase legend drugs or controlled substances at the location specified for the period ending on a date to be determined by the secretary. A declaration of ownership and location filed with the department under this section shall be deemed presumptive evidence of ownership of the health care entity.

(2) The owner shall immediately notify the department of any change of location or ownership in which case a new application and fee shall be submitted.

(3) It shall be the duty of the owner to keep the license of location or the renewal license properly exhibited in the health care entity.

(4) Failure to comply with this section is a misdemeanor and each day that the failure continues is a separate offense.

(5) In the event that a license fee remains unpaid after the date due, no renewal or new license may be issued except upon payment of the license renewal fee and a penalty fee equal to the original license fee. [1995 c 319 § 4.]

18.64.470 Health care entity—Records. Every proprietor or manager of a health care entity shall keep readily available a suitable record of drugs, which shall preserve for a period of not less than two years the record of every drug used at such health care entity. The record shall be maintained either separately from all other records of the health care entity or in such form that the information required is readily retrievable from ordinary business records of the health care entity. All recordkeeping requirements for controlled substances must be complied with. Such record of drugs shall be for confidential use in the health care entity, only. The record of drugs shall be open for inspection by the board of pharmacy, who is authorized to enforce chapter 18.64, 69.41, or 69.50 RCW. [1995 c 319 § 6.]

18.64.900 Severability—1923 c 180. Should any section or parts of sections of this act be declared unconstitutional it shall in no case affect the validity of other provisions of this act. [1923 c 180 § 12.]

18.64.910 Severability—1935 c 98. If any section, sentence, clause or part of this act shall be adjudged to be invalid, such adjudication shall not affect the remaining portions of the act. [1935 c 98 § 12.]

18.64.911 Severability—1963 c 38. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1963 c 38 § 24.]

18.64.920 Repealer—1935 c 98. All acts and parts of acts in conflict herewith are hereby repealed. [1935 c 98 § 11.]

Chapter 18.64A PHARMACY ASSISTANTS

Sections

- 18.64A.005 Regulation of health care professions—Criteria.
 - 18.64A.010 Definitions.
 - 18.64A.020 Rules—Qualifications and training programs.
 - 18.64A.030 Rules—Levels of service.
 - 18.64A.040 Limitations on practice.
 - 18.64A.050 Disciplinary action against certificate—Grounds.
 - 18.64A.055 Uniform Disciplinary Act.
 - 18.64A.060 Pharmacy's application for assistant—Fee—Approval or rejection by board—Hearing—Appeal.
 - 18.64A.070 Persons presently acting as assistants—Pharmacies presently employing those persons.
 - 18.64A.080 Pharmacy's or pharmacist's liability, responsibility.
 - 18.64A.900 Severability—1977 ex.s. c 101.
- Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.*

18.64A.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.64A.010 Definitions. Terms used in this chapter shall have the meaning set forth in this section unless the context clearly indicates otherwise:

- (1) "Board" means the state board of pharmacy;
- (2) "Department" means the department of health;
- (3) "Pharmacist" means a person duly licensed by the state board of pharmacy to engage in the practice of pharmacy;
- (4) "Pharmacy" means every place properly licensed by the board of pharmacy where the practice of pharmacy is conducted;
- (5) "Pharmacy assistant level A" means:
 - (a) A person who is enrolled in, or who has satisfactorily completed, a board approved training program designed to prepare persons to perform nondiscretionary functions associated with the practice of pharmacy; or
 - (b) A person who is a graduate with a degree in pharmacy or medicine of a foreign school, university, or college recognized by the board;
- (6) "Pharmacy assistant level B" means a person certified by the board to perform limited functions in the pharmacy;
- (7) "Practice of pharmacy" means the definition given in RCW 18.64.011, as now or hereafter amended;

(8) "Secretary" means the secretary of health or the secretary's designee. [1989 1st ex.s. c 9 § 422; 1977 ex.s. c 101 § 1.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64A.020 Rules—Qualifications and training programs. (1) The board shall adopt, in accordance with chapter 34.05 RCW, rules fixing the classification and qualifications and the educational and training requirements for persons who may be employed as pharmacy assistants or who may be enrolled in any pharmacy assistant training program. Such rules shall provide that:

(a) Licensed pharmacists shall supervise the training of pharmacy assistants; and

(b) Training programs shall assure the competence of pharmacy assistants to aid and assist pharmacy operations. Training programs shall consist of instruction and/or practical training.

Such rules may include successful completion of examinations for applicants for pharmacy assistant certificates. If such examination rules are adopted, the board shall prepare or determine the nature of, and supervise the grading of the examinations. The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities.

(2) The board may disapprove or revoke approval of any training program for failure to conform to board rules. In the case of the disapproval or revocation of approval of a training program by the board, a hearing shall be conducted in accordance with RCW 18.64.160, and appeal may be taken in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1995 c 198 § 8; 1977 ex.s. c 101 § 2.]

18.64A.030 Rules—Levels of service. The board shall adopt, in accordance with chapter 34.05 RCW, rules and regulations governing the extent to which pharmacy assistants may perform services associated with the practice of pharmacy during training and after successful completion of a training course. Such regulations shall provide for the certification of pharmacy assistants by the department at a fee determined by the secretary under RCW 43.70.250 and 43.70.280 according to the following levels of classification:

(1) "Level A pharmacy assistants" may assist in performing, under the immediate supervision and control of a licensed pharmacist, manipulative, nondiscretionary functions associated with the practice of pharmacy.

(2) "Level B pharmacy assistants" may perform, under the general supervision of a licensed pharmacist, duties including but not limited to, typing of prescription labels, filing, refiling, bookkeeping, pricing, stocking, delivery, nonprofessional phone inquiries, and documentation of third party reimbursements. [1996 c 191 § 50; 1989 1st ex.s. c 9 § 423; 1977 ex.s. c 101 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64A.040 Limitations on practice. (1) A pharmacy assistant shall practice pharmacy in this state only after

authorization by the board and only to the extent permitted by the board in accordance with this chapter.

(2) A pharmacist shall be assisted by a pharmacy assistant in the practice of pharmacy in this state only after authorization by the board and only to the extent permitted by the board in accordance with this chapter: PROVIDED, That no pharmacist may supervise more than one person performing level A pharmacy assistant duties and functions: PROVIDED FURTHER, That in pharmacies operating in connection with facilities licensed pursuant to chapter 70.41, 71.12, 71A.20, or 74.42 RCW, whether or not situated within the said facility which shall be physically separated from any area of a pharmacy where dispensing of prescriptions to the general public occurs, the ratio of pharmacists to persons performing level A pharmacy assistant duties and functions shall be as follows: In the preparation of medicine or other materials used by patients within the facility, one pharmacist supervising no more than three persons performing level A pharmacy assistant duties and functions; in the preparation of medicine or other materials dispensed to persons not patients within the facility, one pharmacist supervising not more than one person performing level A pharmacy assistant duties and functions. [1992 c 40 § 1; 1977 ex.s. c 101 § 4.]

18.64A.050 Disciplinary action against certificate—

Grounds. In addition to the grounds under RCW 18.130.170 and 18.130.180, the board of pharmacy may take disciplinary action against the certificate of any pharmacy assistant upon proof that:

(1) His or her certificate was procured through fraud, misrepresentation or deceit;

(2) He or she has been found guilty of any offense in violation of the laws of this state relating to drugs, poisons, cosmetics or drug sundries by any court of competent jurisdiction. Nothing herein shall be construed to affect or alter the provisions of RCW 9.96A.020;

(3) He or she has exhibited gross incompetency in the performance of his or her duties;

(4) He or she has willfully or repeatedly violated any of the rules and regulations of the board of pharmacy or of the department;

(5) He or she has willfully or repeatedly performed duties beyond the scope of his or her certificate in violation of the provisions of this chapter; or

(6) He or she has impersonated a licensed pharmacist. [1993 c 367 § 15; 1989 1st ex.s. c 9 § 424; 1977 ex.s. c 101 § 5.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.64A.055 Uniform Disciplinary Act. The Uniform Disciplinary Act, chapter 18.130 RCW, governs the issuance and denial of certificates and the discipline of certificants under this chapter. [1993 c 367 § 16.]

18.64A.060 Pharmacy's application for assistant—Fee—Approval or rejection by board—Hearing—Appeal.

No pharmacy licensed in this state shall utilize the services of pharmacy assistants without approval of the board.

Any pharmacy licensed in this state may apply to the board for permission to use the services of pharmacy assistants. The application shall be accompanied by a fee and shall comply with administrative procedures and administrative requirements set pursuant to RCW 43.70.250 and 43.70.280, shall detail the manner and extent to which the pharmacy assistants would be used and supervised, and shall provide other information in such form as the secretary may require.

The board may approve or reject such applications. In addition, the board may modify the proposed utilization of pharmacy assistants and approve the application as modified. Whenever it appears to the board that a pharmacy assistant is being utilized in a manner inconsistent with the approval granted, the board may withdraw such approval. In the event a hearing is requested upon the rejection of an application, or upon the withdrawal of approval, a hearing shall be conducted in accordance with chapter 18.64 RCW, as now or hereafter amended, and appeal may be taken in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1996 c 191 § 51; 1989 1st ex.s. c 9 § 425; 1977 ex.s. c 101 § 6.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.64A.070 Persons presently acting as assistants—Pharmacies presently employing those persons.

(1) Persons presently assisting a pharmacist by performing the functions of a pharmacy assistant may continue to do so under the supervision of a licensed pharmacist: PROVIDED, That within eighteen months after May 28, 1977, such persons shall be in compliance with the provisions of this chapter.

(2) Pharmacies presently employing persons to perform the functions of a pharmacy assistant may continue to do so while obtaining board approval for the use of certified pharmacy assistants: PROVIDED, That within eighteen months after May 28, 1977, such pharmacies shall be in compliance with the provisions of this chapter. [1977 ex.s. c 101 § 7.]

18.64A.080 Pharmacy's or pharmacist's liability, responsibility. No pharmacy or pharmacist which utilizes the services of a pharmacy assistant with approval by the board, shall be considered as aiding and abetting an unlicensed person to practice pharmacy within the meaning of chapter 18.64 RCW, as now or hereafter amended: PROVIDED, HOWEVER, That the pharmacy or pharmacist shall retain responsibility for any act performed by a pharmacy assistant in the course of his or her employment. [1977 ex.s. c 101 § 8.]

18.64A.900 Severability—1977 ex.s. c 101. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 101 § 10.]

Chapter 18.71 PHYSICIANS

Sections

- 18.71.002 Purpose.
- 18.71.003 Declaration of purpose.
- 18.71.005 Regulation of health care professions—Criteria.
- 18.71.010 Definitions.
- 18.71.011 Definition of practice of medicine—Engaging in practice of chiropractic prohibited, when.
- 18.71.015 Commission established—Membership—Qualifications—Duties and powers—Compensation—Order of removal—Vacancies.
- 18.71.017 Rules by commission—Successor to other boards.
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- 18.71.210 Emergency medical service personnel—Liability (*as amended by 1995 c 103*).
- 18.71.212 Medical program directors—Certification.
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- 18.71.350 Report of malpractice payments by insurers.
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- 18.71.400 Medical disciplinary assessment fee.
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- 18.71.420 Allocation of all appropriated funds.
- 18.71.910 Repeal—1909 c 192.
- 18.71.920 Repeal—1957 c 60.
- 18.71.930 Severability—1957 c 60.
- 18.71.940 Severability—1961 c 284.
- 18.71.941 Severability—1975 1st ex.s. c 171.

Reviser's note: Certain powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Abortion: Chapter 9.02 RCW.

Accepted medical procedures not to include adjustment by hand of any articulation of the spine: RCW 18.25.005.

Actions against, limitation of: RCW 4.16.350.

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

Audits and investigations: RCW 74.09.290.

Crimes relating to pregnancy and childbirth: RCW 9A.32.060.

Health care assistants: Chapter 18.135 RCW.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Homeless person vision services: RCW 43.20A.800 through 43.20A.850.

License of doctors as examining physician for contestants in boxing or sparring matches: RCW 67.08.090.

Lien of doctors: Chapter 60.44 RCW.

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

Regulation of practice of medicine and surgery, sale of drugs and medicines: State Constitution Art. 20 § 2.

18.71.002 Purpose. It is the purpose of the medical quality assurance commission to regulate the competency and quality of professional health care providers under its jurisdiction by establishing, monitoring, and enforcing qualifications for licensing, consistent standards of practice, continuing competency mechanisms, and discipline. Rules, policies, and procedures developed by the commission must promote the delivery of quality health care to the residents of the state of Washington. [1994 sp.s. c 9 § 301.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.71.003 Declaration of purpose. This chapter is passed:

(1) In the exercise of the police power of the state to protect public health, to promote the welfare of the state, and to provide an adequate public agency to act as a disciplinary body for the members of the medical profession licensed to practice medicine and surgery in this state;

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

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

(4) Because the agency which now exists to handle disciplinary proceedings for members of the medical profession licensed to practice medicine and surgery in this state is ineffective and very infrequently employed, and consequently there is no effective means of handling such disciplinary proceedings when they are necessary for the protection of the public health. [1955 c 202 § 1. Formerly RCW 18.72.010.]

18.71.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.71.010 Definitions. The following terms used in this chapter shall have the meanings set forth in this section unless the context clearly indicates otherwise:

(1) "Commission" means the Washington state medical quality assurance commission.

(2) "Secretary" means the secretary of health.

(3) "Resident physician" means an individual who has graduated from a school of medicine which meets the requirements set forth in RCW 18.71.055 and is serving a period of postgraduate clinical medical training sponsored by a college or university in this state or by a hospital accredited by this state. For purposes of this chapter, the term shall include individuals designated as intern or medical fellow.

(4) "Emergency medical care" or "emergency medical service" has the same meaning as in chapter 18.73 RCW. [1994 sp.s. c 9 § 302; 1991 c 3 § 158; 1988 c 104 § 1; 1979 c 158 § 51; 1975 1st ex.s. c 171 § 1; 1961 c 284 § 1; 1957 c 60 § 2. Prior: 1947 c 168 § 1, part; 1919 c 134 § 3, part; 1909 c 192 § 6, part; Rem. Supp. 1947 § 10008, part; prior: 1905 c 41 § 1, part; 1901 c 42 § 1, part; 1890 p 115 § 3, part; Code 1881 § 2285, part.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Uniform Anatomical Gift Act: Chapter 68.50 RCW.

18.71.011 Definition of practice of medicine—Engaging in practice of chiropractic prohibited, when. A person is practicing medicine if he does one or more of the following:

(1) Offers or undertakes to diagnose, cure, advise or prescribe for any human disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary, by any means or instrumentality;

(2) Administers or prescribes drugs or medicinal preparations to be used by any other person;

(3) Severs or penetrates the tissues of human beings;

(4) Uses on cards, books, papers, signs or other written or printed means of giving information to the public, in the conduct of any occupation or profession pertaining to the diagnosis or treatment of human disease or conditions the designation "doctor of medicine", "physician", "surgeon", "m.d." or any combination thereof unless such designation additionally contains the description of another branch of the healing arts for which a person has a license: PROVIDED HOWEVER, That a person licensed under this chapter shall not engage in the practice of chiropractic as defined in RCW 18.25.005. [1975 1st ex.s. c 171 § 15.]

18.71.015 Commission established—Membership—Qualifications—Duties and powers—Compensation—Order of removal—Vacancies. The Washington state medical quality assurance commission is established, consisting of thirteen individuals licensed to practice medicine in the state of Washington under this chapter, two individuals who are licensed as physician assistants under chapter 18.71A RCW, and four individuals who are members of the public. Each congressional district now existing or hereafter created in the state must be represented by at least one physician member of the commission. The terms of office of members of the commission are not affected by changes in congressional district boundaries. Public mem-

bers of the commission may not be a member of any other health care licensing board or commission, or have a fiduciary obligation to a facility rendering health services regulated by the commission, or have a material or financial interest in the rendering of health services regulated by the commission.

The members of the commission shall be appointed by the governor. Members of the initial commission may be appointed to staggered terms of one to four years, and thereafter all terms of appointment shall be for four years. The governor shall consider such physician and physician assistant members who are recommended for appointment by the appropriate professional associations in the state. In appointing the initial members of the commission, it is the intent of the legislature that, to the extent possible, the existing members of the board of medical examiners and medical disciplinary board repealed under section 336, chapter 9, Laws of 1994 sp. sess. be appointed to the commission. No member may serve more than two consecutive full terms. Each member shall hold office until a successor is appointed.

Each member of the commission must be a citizen of the United States, must be an actual resident of this state, and, if a physician, must have been licensed to practice medicine in this state for at least five years.

The commission shall meet as soon as practicable after appointment and elect officers each year. Meetings shall be held at least four times a year and at such place as the commission determines and at such other times and places as the commission deems necessary. A majority of the commission members appointed and serving constitutes a quorum for the transaction of commission business.

The affirmative vote of a majority of a quorum of the commission is required to carry any motion or resolution, to adopt any rule, or to pass any measure. The commission may appoint panels consisting of at least three members. A quorum for the transaction of any business by a panel is a minimum of three members. A majority vote of a quorum of the panel is required to transact business delegated to it by the commission.

Each member of the commission shall be compensated in accordance with RCW 43.03.240 and in addition thereto shall be reimbursed for travel expenses incurred in carrying out the duties of the commission in accordance with RCW 43.03.050 and 43.03.060. Any such expenses shall be paid from funds appropriated to the department of health.

Whenever the governor is satisfied that a member of a commission has been guilty of neglect of duty, misconduct, or malfeasance or misfeasance in office, the governor shall file with the secretary of state a statement of the causes for and the order of removal from office, and the secretary shall forthwith send a certified copy of the statement of causes and order of removal to the last known post office address of the member.

Vacancies in the membership of the commission shall be filled for the unexpired term by appointment by the governor.

The members of the commission are immune from suit in an action, civil or criminal, based on its disciplinary proceedings or other official acts performed in good faith as members of the commission.

Whenever the workload of the commission requires, the commission may request that the secretary appoint pro tempore members of the commission. When serving, pro tempore members of the commission have all of the powers, duties, and immunities, and are entitled to all of the emoluments, including travel expenses, of regularly appointed members of the commission. [1994 sp.s. c 9 § 303. Prior: 1991 c 44 § 1; 1991 c 3 § 159; 1990 c 196 § 11; 1987 c 116 § 1; 1984 c 287 § 44; 1979 c 158 § 52; 1975-'76 2nd ex.s. c 34 § 41; 1975 1st ex.s. c 171 § 2; 1961 c 284 § 2.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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

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

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.71.017 Rules by commission—Successor to other boards. The board [commission] may adopt such rules as are not inconsistent with the laws of this state as may be determined necessary or proper to carry out the purposes of this chapter. The commission is the successor in interest of the board of medical examiners and the medical disciplinary board. All contracts, undertakings, agreements, rules, regulations, and policies continue in full force and effect on July 1, 1994, unless otherwise repealed or rejected by this chapter or by the commission. [1994 sp.s. c 9 § 304; 1961 c 284 § 11.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.71.019 Application of Uniform Disciplinary Act—Request for review of revocation order. The Uniform Disciplinary Act, chapter 18.130 RCW, governs unlicensed practice and the issuance and denial of licenses and discipline of licensees under this chapter. When a panel of the commission revokes a license, the respondent may request review of the revocation order of the panel by the remaining members of the commission not involved in the initial investigation. The respondent's request for review must be filed within twenty days of the effective date of the order revoking the respondent's license. The review shall be scheduled for hearing by the remaining members of the commission not involved in the initial investigation within sixty days. The commission shall adopt rules establishing review procedures. [1996 c 195 § 1; 1994 sp.s. c 9 § 305; 1987 c 150 § 45; 1986 c 259 § 105.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.71.0191 Executive director—Staff. The secretary of the department of health shall appoint, from a list of three names supplied by the commission, an executive director who shall act to carry out the provisions of this chapter. The secretary shall also employ such additional staff including administrative assistants, investigators, and clerical staff as are required to enable the commission to accomplish its duties and responsibilities. The executive director is exempt

from the provisions of the civil service law, chapter 41.06 RCW, as now or hereafter amended. [1994 sp.s. c 9 § 326; 1991 c 3 § 168; 1979 ex.s. c 111 § 6. Formerly RCW 18.72.155.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1979 ex.s. c 111: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 111 § 21.]

18.71.0193 Duty to report unprofessional conduct—Exceptions. (1) A licensed health care professional licensed under this chapter shall report to the commission when he or she has personal knowledge that a practicing physician has either committed an act or acts which may constitute

statutorily defined unprofessional conduct or that a practicing physician may be unable to practice medicine with reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical conditions.

(2) Reporting under this section is not required by:

(a) An appropriately appointed peer review committee member of a licensed hospital or by an appropriately designated professional review committee member of a county or state medical society during the investigative phase of their respective operations if these investigations are completed in a timely manner; or

(b) A treating licensed health care professional of a physician currently involved in a treatment program as long as the physician patient actively participates in the treatment program and the physician patient's impairment does not constitute a clear and present danger to the public health, safety, or welfare.

(3) The commission may impose disciplinary sanctions, including license suspension or revocation, on any health care professional subject to the jurisdiction of the commission who has failed to comply with this section. [1994 sp.s. c 9 § 327; 1986 c 300 § 5. Formerly RCW 18.72.165.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.174.

18.71.0195 Disciplinary reports—Confidentiality—Immunity. (1) The contents of any report file under RCW

18.130.070 shall be confidential and exempt from public disclosure pursuant to chapter 42.17 RCW, except that it may be reviewed (a) by the licensee involved or his or her counsel or authorized representative who may submit any additional exculpatory or explanatory statements or other information, which statements or other information shall be included in the file, or (b) by a representative of the commission, or investigator thereof, who has been assigned to review the activities of a licensed physician.

Upon a determination that a report is without merit, the commission's records may be purged of information relating to the report.

(2) Every individual, medical association, medical society, hospital, medical service bureau, health insurance carrier or agent, professional liability insurance carrier,

professional standards review organization, and agency of the federal, state, or local government shall be immune from civil liability, whether direct or derivative, for providing information to the commission under RCW 18.130.070, or for which an individual health care provider has immunity under the provisions of RCW 4.24.240, 4.24.250, or 4.24.260. [1994 sp.s. c 9 § 328; 1986 c 259 § 117; 1979 ex.s. c 111 § 15. Formerly RCW 18.72.265.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1979 ex.s. c 111: See note following RCW 18.71.0191.

18.71.021 License required. No person may practice or represent himself or herself as practicing medicine without first having a valid license to do so. [1987 c 150 § 46.]

Severability—1987 c 150: See RCW 18.122.901.

18.71.030 Exemptions. Nothing in this chapter shall be construed to apply to or interfere in any way with the practice of religion or any kind of treatment by prayer; nor shall anything in this chapter be construed to prohibit:

(1) The furnishing of medical assistance in cases of emergency requiring immediate attention;

(2) The domestic administration of family remedies;

(3) The administration of oral medication of any nature to students by public school district employees or private elementary or secondary school employees as provided for in chapter 28A.210 RCW;

(4) The practice of dentistry, osteopathic medicine and surgery, nursing, chiropractic, podiatric medicine and surgery, optometry, naturopathy, or any other healing art licensed under the methods or means permitted by such license;

(5) The practice of medicine in this state by any commissioned medical officer serving in the armed forces of the United States or public health service or any medical officer on duty with the United States veterans administration while such medical officer is engaged in the performance of the duties prescribed for him or her by the laws and regulations of the United States;

(6) The practice of medicine by any practitioner licensed by another state or territory in which he or she resides, provided that such practitioner shall not open an office or appoint a place of meeting patients or receiving calls within this state;

(7) The practice of medicine by a person who is a regular student in a school of medicine approved and accredited by the commission, however, the performance of such services be only pursuant to a regular course of instruction or assignments from his or her instructor, or that such services are performed only under the supervision and control of a person licensed pursuant to this chapter;

(8) The practice of medicine by a person serving a period of postgraduate medical training in a program of clinical medical training sponsored by a college or university in this state or by a hospital accredited in this state, however, the performance of such services shall be only pursuant to his or her duties as a trainee;

(9) The practice of medicine by a person who is regularly enrolled in a physician assistant program approved by the commission, however, the performance of such services shall be only pursuant to a regular course of instruction in said program and such services are performed only under the supervision and control of a person licensed pursuant to this chapter;

(10) The practice of medicine by a licensed physician assistant which practice is performed under the supervision and control of a physician licensed pursuant to this chapter;

(11) The practice of medicine, in any part of this state which shares a common border with Canada and which is surrounded on three sides by water, by a physician licensed to practice medicine and surgery in Canada or any province or territory thereof;

(12) The administration of nondental anesthesia by a dentist who has completed a residency in anesthesiology at a school of medicine approved by the commission, however, a dentist allowed to administer nondental anesthesia shall do so only under authorization of the patient's attending surgeon, obstetrician, or psychiatrist, and the commission has jurisdiction to discipline a dentist practicing under this exemption and enjoin or suspend such dentist from the practice of nondental anesthesia according to this chapter and chapter 18.130 RCW;

(13) Emergency lifesaving service rendered by a physician's trained emergency medical service intermediate life support technician and paramedic, as defined in RCW 18.71.200, if the emergency lifesaving service is rendered under the responsible supervision and control of a licensed physician;

(14) The provision of clean, intermittent bladder catheterization for students by public school district employees or private school employees as provided for in RCW 18.79.290 and 28A.210.280. [1996 c 178 § 4; 1995 c 65 § 1; 1994 sp.s. c 9 § 306. Prior: 1990 c 196 § 12; 1990 c 33 § 552; 1988 c 48 § 4; 1986 c 259 § 108; 1983 c 2 § 1; prior: 1982 c 195 § 3; 1982 c 51 § 1; 1975 1st ex.s. c 171 § 5; 1973 1st ex.s. c 110 § 1; 1961 c 284 § 4; 1919 c 134 § 12; 1909 c 192 § 19; RRS § 10024.]

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

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

Severability—1986 c 259: See note following RCW 18.130.010.

Severability—1983 c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 2 § 21.]

Severability—1982 c 195: See note following RCW 28A.210.260.

18.71.040 Application—Fee. Every applicant for a certificate to practice medicine and surgery shall pay a fee determined by the secretary as provided in RCW 43.70.250. [1991 c 3 § 160; 1985 c 322 § 1. Prior: 1975 1st ex.s. c 171 § 6; 1975 1st ex.s. c 30 § 61; 1955 c 202 § 35; prior: 1941 c 166 § 1, part; 1913 c 82 § 1, part; 1909 c 192 § 7, part; Rem. Supp. 1941 § 10010-1, part.]

18.71.050 Application—Eligibility requirements—United States and Canadian graduates. (1) Each applicant

who has graduated from a school of medicine located in any state, territory, or possession of the United States, the District of Columbia, or the Dominion of Canada, shall file an application for licensure with the commission on a form prepared by the secretary with the approval of the commission. Each applicant shall furnish proof satisfactory to the commission of the following:

(a) That the applicant has attended and graduated from a school of medicine approved by the commission;

(b) That the applicant has completed two years of postgraduate medical training in a program acceptable to the commission, provided that applicants graduating before July 28, 1985, may complete only one year of postgraduate medical training;

(c) That the applicant is of good moral character; and

(d) That the applicant is physically and mentally capable of safely carrying on the practice of medicine. The commission may require any applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical and/or mental capability to safely practice medicine.

(2) Nothing in this section shall be construed as prohibiting the commission from requiring such additional information from applicants as it deems necessary. The issuance and denial of licenses are subject to chapter 18.130 RCW, the Uniform Disciplinary Act. [1994 sp.s. c 9 § 307; 1991 c 3 § 161. Prior: 1986 c 259 § 109; 1985 c 322 § 2; 1975 1st ex.s. c 171 § 7; 1961 c 284 § 5; 1957 c 60 § 3; prior: 1947 c 168 § 1, part; 1919 c 134 § 3, part; 1909 c 192 § 6, part; Rem. Supp. 1947 § 10008, part; prior: 1905 c 41 § 1, part; 1901 c 42 § 1, part; 1890 p 115 § 3, part; Code 1881 § 2285, part.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1986 c 259: See note following RCW 18.130.010.

18.71.051 Application—Eligibility requirements—Foreign graduates. Applicants for licensure to practice medicine who have graduated from a school of medicine located outside of the states, territories, and possessions of the United States, the District of Columbia, or the Dominion of Canada, shall file an application for licensure with the commission on a form prepared by the secretary with the approval of the commission. Each applicant shall furnish proof satisfactory to the commission of the following:

(1) That he or she has completed in a school of medicine a resident course of professional instruction equivalent to that required in this chapter for applicants generally;

(2) That he or she meets all the requirements which must be met by graduates of the United States and Canadian school of medicine except that he or she need not have graduated from a school of medicine approved by the commission;

(3) That he or she has satisfactorily passed the examination given by the educational council for foreign medical graduates or has met the requirements in lieu thereof as set forth in rules adopted by the commission;

(4) That he or she has the ability to read, write, speak, understand, and be understood in the English language. [1994 sp.s. c 9 § 308; 1991 c 3 § 162; 1975 1st ex.s. c 171 § 16.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.71.055 Schools of medicine—Requirements for approval. The commission may approve any school of medicine which is located in any state, territory, or possession of the United States, the District of Columbia, or in the Dominion of Canada, provided that it:

(1) Requires collegiate instruction which includes courses deemed by the commission to be prerequisites to medical education;

(2) Provides adequate instruction in the following subjects: Anatomy, biochemistry, microbiology and immunology, pathology, pharmacology, physiology, anaesthesiology, dermatology, gynecology, internal medicine, neurology, obstetrics, ophthalmology, orthopedic surgery, otolaryngology, pediatrics, physical medicine and rehabilitation, preventive medicine and public health, psychiatry, radiology, surgery, and urology, and such other subjects determined by the commission;

(3) Provides clinical instruction in hospital wards and out-patient clinics under guidance.

Approval may be withdrawn by the commission at any time a medical school ceases to comply with one or more of the requirements of this section.

(4) Nothing in this section shall be construed to authorize the commission to approve a school of osteopathic medicine and surgery, or osteopathic medicine, for purposes of qualifying an applicant to be licensed under this chapter by direct licensure, reciprocity, or otherwise. [1996 c 178 § 5; 1994 sp.s. c 9 § 309; 1975 1st ex.s. c 171 § 8; 1961 c 284 § 6; 1957 c 60 § 4.]

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.71.060 Record of proceedings of commission and of applications. The commission shall keep an official record of all its proceedings, a part of which record shall consist of a register of all applicants for licensure under this chapter, with the result of each application. The record shall be evidence of all the proceedings of the commission that are set forth in it. [1994 sp.s. c 9 § 310; 1975 1st ex.s. c 171 § 9; 1961 c 284 § 7; 1909 c 192 § 8; RRS § 10011.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.71.070 Examination—Record. With the exception of those applicants granted licensure through the provisions of RCW 18.71.090 or 18.71.095, applicants for licensure must successfully complete an examination administered by the commission to determine their professional qualifications. The commission shall prepare and give, or approve the preparation and giving of, an examination which shall cover those general subjects and topics, a knowledge of which is commonly and generally required of candidates for the degree of doctor of medicine conferred by approved colleges or schools of medicine in the United States. Notwithstanding any other provision of law, the commission has the sole responsibility for determining the proficiency of applicants under this chapter, and, in so doing, may waive any prerequisite to licensure not set forth in this chapter.

The commission may by rule establish the passing grade for the examination.

Examination results shall be part of the records of the commission and shall be permanently kept with the applicant's file. [1994 sp.s. c 9 § 311; 1985 c 322 § 3; 1975 1st ex.s. c 171 § 10; 1961 c 284 § 8; 1919 c 134 § 4; 1909 c 192 § 6; RRS § 10009.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.71.080 License renewal—Continuing education requirement—Failure to renew, procedure. Every person licensed to practice medicine in this state shall pay licensing fees and renew his or her license in accordance with administrative procedures and administrative requirements adopted as provided in RCW 43.70.250 and 43.70.280. The commission may establish rules governing mandatory continuing education requirements which shall be met by physicians applying for renewal of licenses. The rules shall provide that mandatory continuing education requirements may be met in part by physicians showing evidence of the completion of approved activities relating to professional liability risk management. The commission, in its sole discretion, may permit an applicant who has not renewed his or her license to be licensed without examination if it is satisfied that such applicant meets all the requirements for licensure in this state, and is competent to engage in the practice of medicine. [1996 c 191 § 52; 1994 sp.s. c 9 § 312. Prior: 1991 c 195 § 1; 1991 c 3 § 163; 1985 c 322 § 4; prior: 1979 c 158 §§ 53, 54, 55; 1975 1st ex.s. c 171 § 11; 1971 ex.s. c 266 § 12; 1955 c 202 § 36; prior: 1941 c 166 § 1, part; 1913 c 82 § 1, part; 1909 c 192 § 7, part; Rem. Supp. 1941 § 10010-1, part.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Medical disciplinary assessment fee, payment annually: RCW 18.71.400.

18.71.085 Inactive licenses—Renewal—Application of disciplinary provisions. The commission may adopt rules pursuant to this section authorizing an inactive license status.

(1) An individual licensed pursuant to chapter 18.71 RCW may place his or her license on inactive status. The holder of an inactive license shall not practice medicine and surgery in this state without first activating the license.

(2) The administrative procedures, administrative requirements, and fee for inactive renewal shall be established pursuant to RCW 43.70.250 and 43.70.280.

(3) An inactive license may be placed in an active status upon compliance with rules established by the commission.

(4) Provisions relating to disciplinary action against a person with a license shall be applicable to a person with an inactive license, except that when disciplinary proceedings against a person with an inactive license have been initiated, the license shall remain inactive until the proceedings have been completed. [1996 c 191 § 53; 1994 sp.s. c 9 § 313; 1991 c 44 § 2.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.71.090 License without examination—Reciprocity—National board examinees—Fee. Any applicant who meets the requirements of RCW 18.71.050 and has been licensed under the laws of another state, territory, or possession of the United States, or of any province of Canada, or an applicant who has satisfactorily passed examinations given by the national board of medical examiners may, in the discretion of the commission, be granted a license without examination on the payment of the fees required by this chapter: PROVIDED, That the applicant must file with the commission a copy of the license certified by the proper authorities of the issuing state to be a full, true copy thereof, and must show that the standards, eligibility requirements, and examinations of that state are at least equal in all respects to those of this state. [1994 sp.s. c 9 § 314; 1985 c 322 § 5. Prior: 1975 1st ex.s. c 171 § 12; 1975 1st ex.s. c 30 § 63; 1961 c 284 § 9; 1957 c 60 § 5; 1919 c 134 § 11; RRS § 10023.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.71.095 Limited licenses. The commission may, without examination, issue a limited license to persons who possess the qualifications set forth herein:

(1) The commission may, upon the written request of the secretary of the department of social and health services or the secretary of corrections, issue a limited license to practice medicine in this state to persons who have been accepted for employment by the department of social and health services or the department of corrections as physicians; who are licensed to practice medicine in another state of the United States or in the country of Canada or any province or territory thereof; and who meet all of the qualifications for licensure set forth in RCW 18.71.050.

Such license shall permit the holder thereof to practice medicine only in connection with patients, residents, or inmates of the state institutions under the control and supervision of the secretary of the department of social and health services or the department of corrections.

(2) The commission may issue a limited license to practice medicine in this state to persons who have been accepted for employment by a county or city health department as physicians; who are licensed to practice medicine in another state of the United States or in the country of Canada or any province or territory thereof; and who meet all of the qualifications for licensure set forth in RCW 18.71.050.

Such license shall permit the holder thereof to practice medicine only in connection with his or her duties in employment with the city or county health department.

(3) Upon receipt of a completed application showing that the applicant meets all of the requirements for licensure set forth in RCW 18.71.050 except for completion of two years of postgraduate medical training, and that the applicant has been appointed as a resident physician in a program of postgraduate clinical training in this state approved by the commission, the commission may issue a limited license to a resident physician. Such license shall permit the resident physician to practice medicine only in connection with his or her duties as a resident physician and shall not authorize the physician to engage in any other form of practice. Each resident physician shall practice medicine only under the

supervision and control of a physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician at the place where services are rendered.

(4)(a) Upon nomination by the dean of the school of medicine at the University of Washington or the chief executive officer of a hospital or other appropriate health care facility licensed in the state of Washington, the commission may issue a limited license to a physician applicant invited to serve as a teaching-research member of the institution's instructional staff if the sponsoring institution and the applicant give evidence that he or she has graduated from a recognized medical school and has been licensed or otherwise privileged to practice medicine at his or her location of origin. Such license shall permit the recipient to practice medicine only within the confines of the instructional program specified in the application and shall terminate whenever the holder ceases to be involved in that program, or at the end of one year, whichever is earlier. Upon request of the applicant and the institutional authority, the license may be renewed for no more than a total of two years.

(b) Upon nomination by the dean of the school of medicine of the University of Washington or the chief executive officer of any hospital or appropriate health care facility licensed in the state of Washington, the commission may issue a limited license to an applicant selected by the sponsoring institution to be enrolled in one of its designated departmental or divisional fellowship programs provided that the applicant shall have graduated from a recognized medical school and has been granted a license or other appropriate certificate to practice medicine in the location of the applicant's origin. Such license shall permit the holder only to practice medicine within the confines of the fellowship program to which he or she has been appointed and, upon the request of the applicant and the sponsoring institution, the license may be renewed by the commission for no more than a total of two years.

All persons licensed under this section shall be subject to the jurisdiction of the commission to the same extent as other members of the medical profession, in accordance with this chapter and chapter 18.130 RCW.

Persons applying for licensure and renewing licenses pursuant to this section shall comply with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. Any person who obtains a limited license pursuant to this section may apply for licensure under this chapter, but shall submit a new application form and comply with all other licensing requirements of this chapter. [1996 c 191 § 54; 1994 sp.s. c 9 § 315; 1991 c 3 § 164; 1990 c 160 § 1; 1987 c 129 § 1. Prior: 1986 c 259 § 110; 1985 c 322 § 6; 1975 1st ex.s. c 171 § 13; 1973 1st ex.s. c 4 § 1; 1967 c 138 § 1; 1965 c 29 § 1; 1959 c 189 § 1.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1986 c 259: See note following RCW 18.130.010.

18.71.100 Applicability of health regulations. All persons granted licenses or certificates under this chapter, shall be subject to the state and municipal regulations relating to the control of contagious diseases, the reporting

and certifying to births and deaths, and all matters pertaining to public health; and all such reports shall be accepted as legal. [1909 c 192 § 18; RRS § 10022.]

Public health and safety: Title 70 RCW.

Vital statistics: Chapter 70.58 RCW.

18.71.151 Physician members of committees to evaluate credentials and qualifications of physicians—Immunity from civil suit. See RCW 4.24.240.

18.71.161 Physicians filing charges or presenting evidence before committees, boards, or hospitals—Immunity from civil suit. See RCW 4.24.250, 4.24.260.

18.71.171 Records of medical society or hospital committee or board not subject to civil process. See RCW 4.24.250.

18.71.190 False personation—Penalty. Every person filing for record, or attempting to file for record, the certificate issued to another, falsely claiming himself to be the person named in such certificate, or falsely claiming himself to be the person entitled to the same, shall be guilty of a felony, and, upon conviction thereof, shall be subject to such penalties as are provided by the laws of this state for the crime of forgery. [1909 c 192 § 16; RRS § 10019.]

False personation: RCW 9A.60.040.

18.71.200 Emergency medical service personnel—Definitions. As used in this chapter, a "physician's trained emergency medical service intermediate life support technician and paramedic" means a person who:

(1) Has successfully completed an emergency medical technician course as described in chapter 18.73 RCW;

(2) Is trained under the supervision of an approved medical program director according to training standards prescribed in rule to perform specific phases of advanced cardiac and trauma life support under written or oral authorization of an approved licensed physician; and

(3) Has been examined and certified as a physician's trained emergency medical service intermediate life support technician and paramedic, by level, by the University of Washington's school of medicine or the department of health. [1995 c 65 § 2; 1991 c 3 § 165; 1986 c 259 § 111; 1983 c 112 § 1; 1977 c 55 § 2; 1973 1st ex.s. c 52 § 1; 1971 ex.s. c 305 § 2.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

18.71.205 Emergency medical service personnel—Certification. (1) The secretary of the department of health, in conjunction with the advice and assistance of the emergency medical services licensing and certification advisory committee as prescribed in RCW 18.73.050, and the commission, shall prescribe:

(a) Practice parameters, training standards for, and levels of, physician trained emergency medical service intermediate life support technicians and paramedics;

(b) Minimum standards and performance requirements for the certification and recertification of physician's trained emergency medical service intermediate life support technicians and paramedics; and

(c) Procedures for certification, recertification, and decertification of physician's trained emergency medical service intermediate life support technicians and paramedics.

(2) Initial certification shall be for a period established by the secretary pursuant to RCW 43.70.250 and 43.70.280.

(3) Recertification shall be granted upon proof of continuing satisfactory performance and education, and shall be for a period established by the secretary pursuant to RCW 43.70.250 and 43.70.280.

(4) As used in chapters 18.71 and 18.73 RCW, "approved medical program director" means a person who:

(a) Is licensed to practice medicine and surgery pursuant to chapter 18.71 RCW or osteopathic medicine and surgery pursuant to chapter 18.57 RCW; and

(b) Is qualified and knowledgeable in the administration and management of emergency care and services; and

(c) Is so certified by the department of health for a county, group of counties, or cities with populations over four hundred thousand in coordination with the recommendations of the local medical community and local emergency medical services and trauma care council.

(5) The Uniform Disciplinary Act, chapter 18.130 RCW, governs uncertified practice, the issuance and denial of certificates, and the disciplining of certificate holders under this section. The secretary shall be the disciplining authority under this section. Disciplinary action shall be initiated against a person credentialed under this chapter in a manner consistent with the responsibilities and duties of the medical program director under whom such person is responsible.

(6) Such activities of physician's trained emergency medical service intermediate life support technicians and paramedics shall be limited to actions taken under the express written or oral order of medical program directors and shall not be construed at any time to include free standing or nondirected actions, for actions not presenting an emergency or life-threatening condition. [1996 c 191 § 55; 1996 c 178 § 6; 1995 c 65 § 3; 1994 sp.s. c 9 § 316; 1992 c 128 § 1; 1990 c 269 § 18; 1986 c 68 § 1; 1983 c 112 § 2; 1977 c 55 § 3.]

Reviser's note: This section was amended by 1996 c 178 § 6 and by 1996 c 191 § 55, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1990 c 269: See RCW 70.168.901.

18.71.210 Emergency medical service personnel—Liability (as amended by 1995 c 65). No act or omission of any physician's trained (~~mobile intensive care paramedic, intravenous therapy technician, airway management technician,~~) emergency medical service intermediate life support technician and paramedic, (or airway management technician,) as defined in RCW 18.71.200 (~~as now or hereafter amended~~), any emergency medical technician or first responder as defined in RCW 18.73.030, done or omitted in good faith while rendering emergency medical service under the responsible supervision and control of a licensed physician or an approved medical program director or delegate(s) to a person who has suffered illness or bodily injury shall impose any liability upon:

(1) The physician's trained ((mobile intensive care paramedic, intravenous therapy technician, airway management technician,)) emergency medical service intermediate life support technician and paramedic, emergency medical technician, or first responder,

(2) The medical program director;

(3) The supervising physician(s);

(4) Any hospital, the officers, members of the staff, nurses, or other employees of a hospital;

(5) Any training agency or training physician(s);

(6) Any licensed ambulance service; or

(7) Any federal, state, county, city or other local governmental unit or employees of such a governmental unit.

This section shall apply to an act or omission committed or omitted in the performance of the actual emergency medical procedures and not in the commission or omission of an act which is not within the field of medical expertise of the physician's trained (~~mobile intensive care paramedic, intravenous therapy technician, airway management technician,)~~ emergency medical service intermediate life support technician and paramedic, emergency medical technician, or first responder, as the case may be.

This section shall not relieve a physician or a hospital of any duty otherwise imposed by law upon such physician or hospital for the designation or training of a physician's trained (~~mobile intensive care paramedic, intravenous therapy technician, airway management technician,)~~ emergency medical service intermediate life support technician and paramedic, emergency medical technician, or first responder, nor shall this section relieve any individual or other entity listed in this section of any duty otherwise imposed by law for the provision or maintenance of equipment to be used by the physician's trained (~~mobile intensive care paramedics, intravenous therapy technicians, airway management technicians,)~~ emergency medical service intermediate life support technicians and paramedics, emergency medical technicians, or first responders.

This section shall not apply to any act or omission which constitutes either gross negligence or willful or wanton misconduct. [1995 c 65 § 4; 1989 c 260 § 4; 1987 c 212 § 502; 1986 c 68 § 4; 1983 c 112 § 3; 1977 c 55 § 4; 1971 ex.s. c 305 § 3.]

18.71.210 Emergency medical service personnel—Liability (as amended by 1995 c 103). No act or omission of any physician's trained mobile intensive care paramedic, intravenous therapy technician, or airway management technician, as defined in RCW 18.71.200 as now or hereafter amended, any emergency medical technician or first responder as defined in RCW 18.73.030, done or omitted in good faith while rendering emergency medical service under the responsible supervision and control of a licensed physician or an approved medical program director or delegate(s) to a person who has suffered illness or bodily injury shall impose any liability upon:

(1) The trained mobile intensive care paramedic, intravenous therapy technician, airway management technician, emergency medical technician, or first responder;

(2) The medical program director;

(3) The supervising physician(s);

(4) Any hospital, the officers, members of the staff, nurses, or other employees of a hospital;

(5) Any training agency or training physician(s);

(6) Any licensed ambulance service; or

(7) Any federal, state, county, city or other local governmental unit or employees of such a governmental unit.

This section shall apply to an act or omission committed or omitted in the performance of the actual emergency medical procedures and not in the commission or omission of an act which is not within the field of medical expertise of the physician's trained mobile intensive care paramedic, intravenous therapy technician, airway management technician, emergency medical technician, or first responder, as the case may be.

This section shall (~~not relieve a physician or a hospital of any duty otherwise imposed by law upon such physician or hospital for the designation or training of a physician's trained mobile intensive care paramedic, intravenous therapy technician, airway management technician, emergency medical technician, or first responder, nor shall this section relieve any individual or other entity listed in this section of any duty otherwise imposed by law for the provision or maintenance of equipment to be used by the physician's trained mobile intensive care paramedics, intravenous therapy technicians, airway management technicians, emergency medical technicians, or first responders~~) apply also, as to the entities and personnel described in subsections (1) through (7) of this section, to any act or omission committed or omitted in good faith by such entities or personnel

in rendering services at the request of an approved medical program director in the training of emergency service medical personnel for certification or recertification pursuant to this chapter.

This section shall not apply to any act or omission which constitutes either gross negligence or willful or wanton misconduct. [1995 c 103 § 1; 1989 c 260 § 4; 1987 c 212 § 502; 1986 c 68 § 4; 1983 c 112 § 3; 1977 c 55 § 4; 1971 ex.s. c 305 § 3.]

Reviser's note: RCW 18.71.210 was amended twice during the 1995 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—1995 c 103: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 19, 1995]." [1995 c 103 § 3.]

18.71.212 Medical program directors—Certification. The secretary of the department of health, in conjunction with the state emergency medical services and trauma care committee, shall evaluate, certify and terminate certification of medical program directors, and prescribe minimum standards defining duties and responsibilities and performance of duties and responsibilities. [1990 c 269 § 19; 1986 c 68 § 2.]

Severability—1990 c 269: See RCW 70.168.901.

18.71.213 Medical program directors—Termination—Temporary delegation of authority. If a medical program director terminates certification, that medical program director's authority may be delegated by the department to any other licensed physician for a period of thirty days, or until a new medical program director is certified, whichever comes first. [1986 c 68 § 3.]

18.71.215 Medical program directors—Liability for acts or omissions of others. The department of health shall defend and hold harmless approved medical program directors, delegates, or agents, including but not limited to hospitals and hospital personnel in their capacity of training emergency service medical personnel for certification or recertification pursuant to this chapter at the request of such directors, for any act or omission committed or omitted in good faith in the performance of their duties. [1995 c 103 § 2; 1990 c 269 § 20; 1986 c 68 § 5; 1983 c 112 § 4.]

Effective date—1995 c 103: See note following RCW 18.71.210.

Severability—1990 c 269: See RCW 70.168.901.

18.71.220 Rendering emergency care—Immunity of physician or hospital from civil liability. No physician or hospital licensed in this state shall be subject to civil liability, based solely upon failure to obtain consent in rendering emergency medical, surgical, hospital, or health services to any individual regardless of age where its patient is unable to give his consent for any reason and there is no other person reasonably available who is legally authorized to consent to the providing of such care: PROVIDED, That such physician or hospital has acted in good faith and without knowledge of facts negating consent. [1971 ex.s. c 305 § 4.]

Persons rendering emergency care, immunity from liability—Exclusion: RCW 4.24.300.

18.71.230 Disciplinary action against persons exempt from licensure. A right to practice medicine and surgery by an individual in this state pursuant to RCW 18.71.030 (5) through (12) shall be subject to discipline by order of the commission upon a finding by the commission of an act of unprofessional conduct as defined in RCW 18.130.180 or that the individual is unable to practice with reasonable skill or safety due to a mental or physical condition as described in RCW 18.130.170. Such physician shall have the same rights of notice, hearing, and judicial review as provided licensed physicians generally under this chapter and chapter 18.130 RCW. [1994 sp.s. c 9 § 317; 1986 c 259 § 112; 1979 c 158 § 57; 1973 1st ex.s. c 110 § 2.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1986 c 259: See note following RCW 18.130.010.

18.71.240 Abortion—Right to medical treatment of infant born alive. The right of medical treatment of an infant born alive in the course of an abortion procedure shall be the same as the right of an infant born prematurely of equal gestational age. [1981 c 328 § 1.]

18.71.300 Impaired physician program—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 18.71.310 through 18.71.340.

(1) "Committee" means a nonprofit corporation formed by physicians who have expertise in the areas of alcoholism, drug abuse, or mental illness and who broadly represent the physicians of the state and that has been designated to perform any or all of the activities set forth in RCW 18.71.310(1) pursuant to rules adopted by the commission under chapter 34.05 RCW.

(2) "Impaired" or "impairment" means the presence of the diseases of alcoholism, drug abuse, mental illness, or other debilitating conditions.

(3) "Impaired physician program" means the program for the prevention, detection, intervention, and monitoring of impaired physicians established by the commission pursuant to RCW 18.71.310(1).

(4) "Physician" means a person licensed under this chapter.

(5) "Treatment program" means a plan of care and rehabilitation services provided by those organizations or persons authorized to provide such services to be approved by the commission for impaired physicians taking part in the impaired physician program created by RCW 18.71.310. [1994 sp.s. c 9 § 329; 1989 c 119 § 1; 1987 c 416 § 1. Formerly RCW 18.72.301.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—1987 c 416: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 416 § 10.]

18.71.310 Impaired physician program—License surcharge. (1) The commission shall enter into a contract with the committee to implement an impaired physician

program. The impaired physician program may include any or all of the following:

- (a) Contracting with providers of treatment programs;
- (b) Receiving and evaluating reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment;
- (d) Referring impaired physicians to treatment programs;
- (e) Monitoring the treatment and rehabilitation of impaired physicians including those ordered by the commission;
- (f) Providing post-treatment monitoring and support of rehabilitative impaired physicians;
- (g) Performing such other activities as agreed upon by the commission and the committee; and
- (h) Providing prevention and education services.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of up to twenty-five dollars on each license renewal or issuance of a new license to be collected by the department of health from every physician and surgeon licensed under this chapter in addition to other license fees and the medical discipline assessment fee established under *RCW 18.72.380. These moneys shall be placed in the health professions account to be used solely for the implementation of the impaired physician program. [1994 sp.s. c 9 § 330; 1991 c 3 § 169; 1989 c 119 § 2; 1987 c 416 § 2. Formerly RCW 18.72.306.]

*Reviser's note: RCW 18.72.380 was recodified as RCW 18.71.400 pursuant to 1994 sp.s. c 9 § 335, effective July 1, 1994.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—1987 c 416: See note following RCW 18.72.301.

18.71.320 Impaired physician program—Procedures. The committee shall develop procedures in consultation with the commission for:

- (1) Periodic reporting of statistical information regarding impaired physician activity;
- (2) Periodic disclosure and joint review of such information as the commission may deem appropriate regarding reports received, contacts or investigations made, and the disposition of each report: PROVIDED, That the committee shall not disclose any personally identifiable information except as provided in subsections (3) and (4) of this section;
- (3) Immediate reporting to the commission of the name and results of any contact or investigation regarding any impaired physician who is believed to constitute an imminent danger to the public;
- (4) Reporting to the commission, in a timely fashion, any impaired physician who refuses to cooperate with the committee, refuses to submit to treatment, or whose impairment is not substantially alleviated through treatment, and who, in the opinion of the committee, is unable to practice medicine with reasonable skill and safety. However, impairment, in and of itself, shall not give rise to a presumption of the inability to practice medicine with reasonable skill and safety;
- (5) Informing each participant of the impaired physician program of the program procedures, the responsibilities of program participants, and the possible consequences of noncompliance with the program. [1994 sp.s. c 9 § 331; 1987 c 416 § 3. Formerly RCW 18.72.311.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—1987 c 416: See note following RCW 18.71.300.

18.71.330 Impaired physician program—Evaluation of physician. If the commission has reasonable cause to believe that a physician is impaired, the commission shall cause an evaluation of such physician to be conducted by the committee or the committee's designee or the commission's designee for the purpose of determining if there is an impairment. The committee or appropriate designee shall report the findings of its evaluation to the commission. [1994 sp.s. c 9 § 332; 1987 c 416 § 4. Formerly RCW 18.72.316.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—1987 c 416: See note following RCW 18.71.300.

18.71.340 Impaired physician program—Committee records protected. All committee records are not subject to disclosure pursuant to chapter 42.17 RCW. [1987 c 416 § 6. Formerly RCW 18.72.321.]

Effective date—1987 c 416: See note following RCW 18.71.300.

18.71.350 Report of malpractice payments by insurers. (1) Every institution or organization providing professional liability insurance to physicians shall send a complete report to the commission of all malpractice settlements, awards, or payments in excess of twenty thousand dollars as a result of a claim or action for damages alleged to have been caused by an insured physician's incompetency or negligence in the practice of medicine. Such institution or organization shall also report the award, settlement, or payment of three or more claims during a five-year time period as the result of the alleged physician's incompetence or negligence in the practice of medicine regardless of the dollar amount of the award or payment.

(2) Reports required by this section shall be made within sixty days of the date of the settlement or verdict. Failure to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars. [1994 sp.s. c 9 § 333; 1993 c 367 § 17; 1986 c 300 § 6. Formerly RCW 18.72.340.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.174.

18.71.360 Driving records. To assist in identifying impairment related to alcohol abuse, the commission may obtain a copy of the driving record of a physician or a physician assistant maintained by the department of licensing. [1994 sp.s. c 9 § 334; 1991 c 215 § 2. Formerly RCW 18.72.345.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.71.400 Medical disciplinary assessment fee. There is hereby levied to be collected by the department of health from every physician and surgeon licensed pursuant to chapter 18.71 RCW and every physician assistant licensed

pursuant to chapter 18.71A RCW a medical disciplinary assessment equal to the license renewal fee established by the secretary under RCW 43.70.250 and 43.70.280. The assessment levied pursuant to this section is in addition to any license renewal fee. [1996 c 191 § 56; 1993 c 367 § 18; 1991 c 3 § 170; 1985 c 7 § 62; 1983 c 71 § 1. Formerly RCW 18.72.380.]

18.71.410 Medical disciplinary account—Purpose. Because it is the express purpose of this chapter to protect the public health and to provide for a public agency to act as a disciplinary body for members of the medical profession licensed to practice medicine and surgery in this state, and because the health and well-being of the people of this state are of paramount importance, there is hereby created an account in the state treasury to be known as the medical disciplinary account. All assessments, fines, and other funds collected or received pursuant to this chapter shall be deposited in the medical disciplinary account and used to administer and implement this chapter. [1991 sp.s. c 13 § 17; 1985 c 57 § 6; 1983 c 71 § 2. Formerly RCW 18.72.390.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: See note following RCW 18.04.105.

18.71.420 Allocation of all appropriated funds. The secretary of health shall allocate all appropriated funds to accomplish the purposes of this chapter. [1991 c 3 § 171; 1983 c 71 § 3. Formerly RCW 18.72.400.]

18.71.910 Repeal—1909 c 192. All acts, or parts of acts, in any wise conflicting with the provisions of this act, are hereby repealed. [1909 c 192 § 22.]

18.71.920 Repeal—1957 c 60. All acts and parts of acts to the extent that the same are in conflict herewith are hereby repealed. [1957 c 60 § 6.]

18.71.930 Severability—1957 c 60. If any section, sentence, clause, or phrase of this act should be held to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this act. [1957 c 60 § 7.]

18.71.940 Severability—1961 c 284. If any section, sentence, clause, or phrase of this act should be held to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this act. [1961 c 284 § 13.]

18.71.941 Severability—1975 1st ex.s. c 171. If any section, sentence, clause, or phrase of this 1975 amendatory act should be held to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this 1975 amendatory act. [1975 1st ex.s. c 171 § 19.]

Chapter 18.71A PHYSICIAN ASSISTANTS

Sections

- 18.71A.005 Regulation of health care professions—Criteria.
- 18.71A.010 Definitions.
- 18.71A.020 Rules fixing qualifications and restricting practice—Applications—Discipline.
- 18.71A.025 Application of uniform disciplinary act.
- 18.71A.030 Limitations on practice.
- 18.71A.040 Commission approval required—Application—Fee—Discipline.
- 18.71A.045 Eligibility of foreign medical school graduates.
- 18.71A.050 Physician's liability, responsibility.
- 18.71A.060 Limitations on health care services.
- 18.71A.085 Acupuncture.

Reviser's note: Certain powers and duties of the department of licensing and the director of licensing transferred to the department of health and the secretary of health. See RCW 43.70.220.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

18.71A.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.71A.010 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Physician assistant" means a person who is licensed by the commission to practice medicine to a limited extent only under the supervision of a physician as defined in chapter 18.71 RCW and who is academically and clinically prepared to provide health care services and perform diagnostic, therapeutic, preventative, and health maintenance services.

(2) "Commission" means the medical quality assurance commission.

(3) "Practice medicine" has the meaning defined in RCW 18.71.011.

(4) "Secretary" means the secretary of health or the secretary's designee.

(5) "Department" means the department of health. [1994 sp.s. c 9 § 318; 1990 c 196 § 1; 1988 c 113 § 1; 1975 1st ex.s. c 190 § 1; 1971 ex.s. c 30 § 1.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1971 ex.s. c 30: "If any provision of this 1971 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 30 § 13.]

Medical quality assurance commission: Chapter 18.71 RCW.

18.71A.020 Rules fixing qualifications and restricting practice—Applications—Discipline. (1) The commission shall adopt rules fixing the qualifications and the educational and training requirements for licensure as a physician assistant or for those enrolled in any physician assistant training program. The requirements shall include completion of an accredited physician assistant training program approved by the commission and eligibility to take an examination approved by the commission, if the examination tests subjects substantially equivalent to the curriculum of an accredited physician assistant training program. Physician assistants licensed by the board of medical examiners as of June 7, 1990, shall continue to be licensed.

(2)(a) The commission shall adopt rules governing the extent to which:

(i) Physician assistant students may practice medicine during training; and

(ii) Physician assistants may practice after successful completion of a physician assistant training course.

(b) Such rules shall provide:

(i) That the practice of a physician assistant shall be limited to the performance of those services for which he or she is trained; and

(ii) That each physician assistant shall practice medicine only under the supervision and control of a physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician or physicians at the place where services are rendered.

(3) Applicants for licensure shall file an application with the commission on a form prepared by the secretary with the approval of the commission, detailing the education, training, and experience of the physician assistant and such other information as the commission may require. The application shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. Each applicant shall furnish proof satisfactory to the commission of the following:

(a) That the applicant has completed an accredited physician assistant program approved by the commission and is eligible to take the examination approved by the commission;

(b) That the applicant is of good moral character; and

(c) That the applicant is physically and mentally capable of practicing medicine as a physician assistant with reasonable skill and safety. The commission may require an applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical or mental capability, or both, to safely practice as a physician assistant.

(4) The commission may approve, deny, or take other disciplinary action upon the application for license as provided in the Uniform Disciplinary Act, chapter 18.130 RCW. The license shall be renewed as determined under RCW 43.70.250 and 43.70.280. The commission may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW. [1996 c 191 § 57; 1994 sp.s. c 9 § 319; 1993 c 28 § 5; 1992 c 28 § 2; 1990 c 196 § 2; 1971 ex.s. c 30 § 2.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.71A.025 Application of uniform disciplinary act.

The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of licenses and the discipline of licensees under this chapter. [1986 c 259 § 106.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.71A.030 Limitations on practice. A physician assistant may practice medicine in this state only with the approval of the practice arrangement plan by the commission and only to the extent permitted by the commission. A physician assistant who has received a license but who has not received commission approval of the practice arrange-

ment plan under RCW 18.71A.040 may not practice. A physician assistant shall be subject to discipline under chapter 18.130 RCW. [1994 sp.s. c 9 § 320; 1993 c 28 § 6; 1990 c 196 § 3; 1971 ex.s. c 30 § 3.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.71A.040 Commission approval required—Application—Fee—Discipline. (1) No physician assistant practicing in this state shall be employed or supervised by a physician or physician group without the approval of the commission.

(2) Prior to commencing practice, a physician assistant licensed in this state shall apply to the commission for permission to be employed or supervised by a physician or physician group. The practice arrangement plan shall be jointly submitted by the physician or physician group and physician assistant. Administrative procedures, administrative requirements, and fees shall be established as provided in RCW 43.70.250 and 43.70.280. The practice arrangement plan shall delineate the manner and extent to which the physician assistant would practice and be supervised. Whenever a physician assistant is practicing in a manner inconsistent with the approved practice arrangement plan, the commission may take disciplinary action under chapter 18.130 RCW. [1996 c 191 § 58; 1996 c 191 § 40; 1994 sp.s. c 9 § 321; 1993 c 28 § 7; 1990 c 196 § 4. Prior: 1986 c 259 § 113; 1985 c 7 § 61; 1975 1st ex.s. c 30 § 64; 1975 1st ex.s. c 190 § 2; 1971 ex.s. c 30 § 4.]

Reviser's note: This section was amended by 1996 c 191 § 40 and by 1996 c 191 § 58, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1986 c 259: See note following RCW 18.130.010.

18.71A.045 Eligibility of foreign medical school graduates. Foreign medical school graduates shall not be eligible for licensing as physician assistants after July 1, 1989. [1994 sp.s. c 9 § 322; 1988 c 113 § 2.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.71A.050 Physician's liability, responsibility. No physician who supervises a licensed physician assistant in accordance with and within the terms of any permission granted by the commission is considered as aiding and abetting an unlicensed person to practice medicine. The supervising physician and physician assistant shall retain professional and personal responsibility for any act which constitutes the practice of medicine as defined in RCW 18.71.011 when performed by the physician assistant. [1994 sp.s. c 9 § 323; 1993 c 28 § 8; 1990 c 196 § 5; 1986 c 259 § 114; 1971 ex.s. c 30 § 5.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1986 c 259: See note following RCW 18.130.010.

18.71A.060 Limitations on health care services. No health care services may be performed under this chapter in any of the following areas:

(1) The measurement of the powers or range of human vision, or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses or frames for the aid thereof.

(2) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training, or orthoptics.

(3) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye.

(4) Nothing in this section shall preclude the performance of routine visual screening.

(5) The practice of dentistry or dental hygiene as defined in chapters 18.32 and 18.29 RCW respectively. The exemptions set forth in RCW 18.32.030 (1) and (8), shall not apply to a physician assistant.

(6) The practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulations of the spine.

(7) The practice of podiatric medicine and surgery as defined in chapter 18.22 RCW. [1994 sp.s. c 9 § 324; 1990 c 196 § 6; 1973 c 77 § 21; 1971 ex.s. c 30 § 6.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.71A.085 Acupuncture. Any physician assistant acupuncturist currently licensed by the commission may continue to perform acupuncture under the physician assistant license as long as he or she maintains licensure as a physician assistant. [1994 sp.s. c 9 § 325; 1990 c 196 § 10.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Chapter 18.73

EMERGENCY MEDICAL CARE AND TRANSPORTATION SERVICES

Sections

- 18.73.005 Regulation of health care professions—Criteria.
- 18.73.010 Legislative finding.
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- 18.73.900 Severability—1973 1st ex.s. c 208.
- 18.73.901 Severability—1987 c 214.
- 18.73.910 Effective dates—1973 1st ex.s. c 208.

AIDS education and training: Chapter 70.24 RCW.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Natural death act and futile treatment: RCW 43.70.480.

Poison information centers: Chapter 18.76 RCW.

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

Violation of chapter 69.50 RCW, the Uniform Controlled Substances Act—Suspension of license: RCW 69.50.413.

18.73.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.73.010 Legislative finding. The legislature finds that a state-wide program of emergency medical care is necessary to promote the health, safety, and welfare of the citizens of this state. The intent of the legislature is to assure minimum standards and training for first responders and emergency medical technicians, and minimum standards for ambulance services, ambulances, aid vehicles, aid services, and emergency medical equipment. [1990 c 269 § 22; 1988 c 104 § 2; 1987 c 214 § 1; 1973 1st ex.s. c 208 § 1.]

Severability—1990 c 269: See RCW 70.168.901.

18.73.020 Supersession of local regulation. The legislature further declares its intention to supersede all ordinances, regulations, and requirements promulgated by counties, cities and other political subdivisions of the state of Washington, insofar as they may provide for the regulation of emergency medical care, first aid, and ambulance services which do not exceed the provisions of this chapter; except that (1) license fees established in this chapter shall supersede all license fees of counties, cities and other political subdivisions of this state; and, (2) nothing in this chapter shall alter the provisions of RCW 18.71.200, 18.71.210, and 18.71.220. [1986 c 259 § 118; 1973 1st ex.s. c 208 § 2.]

Severability—1986 c 259: See note following RCW 18.130.010.

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

(1) "Secretary" means the secretary of the department of health.

(2) "Department" means the department of health.

(3) "Committee" means the emergency medical services licensing and certification advisory committee.

(4) "Ambulance" means a ground or air vehicle designed and used to transport the ill and injured and to provide personnel, facilities, and equipment to treat patients before and during transportation.

(5) "Aid vehicle" means a vehicle used to carry aid equipment and individuals trained in first aid or emergency medical procedure.

(6) "Emergency medical technician" means a person who is authorized by the secretary to render emergency medical care pursuant to RCW 18.73.081.

(7) "Ambulance operator" means a person who owns one or more ambulances and operates them as a private business.

(8) "Ambulance director" means a person who is a director of a service which operates one or more ambulances

provided by a volunteer organization or governmental agency.

(9) "Aid vehicle operator" means a person who owns one or more aid vehicles and operates them as a private business.

(10) "Aid director" means a person who is a director of a service which operates one or more aid vehicles provided by a volunteer organization or governmental agency.

(11) "Emergency medical service" means medical treatment and care which may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.

(12) "Communications system" means a radio and landline network which provides rapid public access, coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in an emergency medical services and trauma care system.

(13) "Prehospital patient care protocols" means the written procedure adopted by the emergency medical services medical program director which direct the out-of-hospital emergency care of the emergency patient which includes the trauma care patient. These procedures shall be based upon the assessment of the patient's medical needs and what treatment will be provided for emergency conditions. The protocols shall meet or exceed state-wide minimum standards developed by the department in rule as authorized in chapter 70.168 RCW.

(14) "Patient care procedures" means written operating guidelines adopted by the regional emergency medical services and trauma care council, in consultation with the local emergency medical services and trauma care councils, emergency communication centers, and the emergency medical services medical program director, in accordance with state-wide minimum standards. The patient care procedures shall identify the level of medical care personnel to be dispatched to an emergency scene, procedures for triage of patients, the level of trauma care facility to first receive the patient, and the name and location of other trauma care facilities to receive the patient should an interfacility transfer be necessary. Procedures on interfacility transfer of patients shall be consistent with the transfer procedures in chapter 70.170 RCW.

(15) "Emergency medical services medical program director" means a person who is an approved medical program director as defined by RCW 18.71.205(4).

(16) "Council" means the local or regional emergency medical services and trauma care council as authorized under chapter 70.168 RCW.

(17) "Basic life support" means noninvasive emergency medical services requiring basic medical treatment skills as defined in chapter 18.73 RCW.

(18) "Advanced life support" means invasive emergency medical services requiring advanced medical treatment skills as defined by chapter 18.71 RCW.

(19) "First responder" means a person who is authorized by the secretary to render emergency medical care as defined by RCW 18.73.081. [1990 c 269 § 23; 1988 c 104 § 3; 1987 c 214 § 2; 1983 c 112 § 5; 1979 ex.s. c 261 § 1; 1973 1st ex.s. c 208 § 3.]

Severability—1990 c 269: See RCW 70.168.901.

18.73.040 Emergency medical services licensing and certification advisory committee. There is created an emergency medical services licensing and certification advisory committee of eleven members to be appointed by the department. Members of the committee shall be composed of a balance of physicians, one of whom is an emergency medical services medical program director, and individuals regulated under RCW 18.71.205 and 18.73.081, an administrator from a city or county emergency medical services system, a member of the emergency medical services and trauma care steering committee, and one consumer. All members except the consumer shall be knowledgeable in specific and general aspects of emergency medical services. Members shall be appointed for a period of three years. The terms of those members representing the same field shall not expire at the same time.

The committee shall elect a chairman and a vice chairman whose terms of office shall be for one year each. The chairman shall be ineligible for reelection after serving four consecutive terms.

The committee shall meet on call by the secretary or the chairman.

All appointive members of the committee, in the performance of their duties, may be entitled to receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1990 c 269 § 6; 1984 c 279 § 55; 1981 c 338 § 13; 1979 ex.s. c 261 § 2; 1975-'76 2nd ex.s. c 34 § 43; 1973 1st ex.s. c 208 § 4.]

Severability—1990 c 269: See RCW 70.168.901.

Severability—1984 c 279: See RCW 18.130.901.

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

18.73.050 Committee—Duties—Review of rules. The emergency medical services licensing and certification advisory committee shall:

(1) Review all administrative rules pertaining to licensing and certification of emergency medical services proposed for adoption by the department under this chapter or under RCW 18.71.205 and advise the department of its recommendations.

(2) Assist the department, at the department's request, to fulfill any duty or exercise any power under this chapter pertaining to emergency medical services licensing and certification. [1990 c 269 § 7; 1987 c 214 § 3; 1979 ex.s. c 261 § 3; 1973 1st ex.s. c 208 § 5.]

Severability—1990 c 269: See RCW 70.168.901.

18.73.081 Duties of secretary—Minimum requirements to be prescribed. In addition to other duties prescribed by law, the secretary shall:

(1) Prescribe minimum requirements for:

(a) Ambulance, air ambulance, and aid vehicles and equipment;

(b) Ambulance and aid services; and

(c) Minimum emergency communication equipment;

(2) Adopt procedures for services that fail to perform in accordance with minimum requirements;

(3) Prescribe minimum standards for first responder and emergency medical technician training including:

(a) Adoption of curriculum and period of certification;

(b) Procedures for certification, recertification, decertification, or modification of certificates;

(c) Adoption of requirements for ongoing training and evaluation, as approved by the county medical program director, to include appropriate evaluation for individual knowledge and skills. The first responder, emergency medical technician, or emergency medical services provider agency may elect a program of continuing education and a written and practical examination instead of meeting the ongoing training and evaluation requirements;

(d) Procedures for reciprocity with other states or national certifying agencies;

(e) Review and approval or disapproval of training programs; and

(f) Adoption of standards for numbers and qualifications of instructional personnel required for first responder and emergency medical technician training programs;

(4) Prescribe minimum requirements for liability insurance to be carried by licensed services except that this requirement shall not apply to public bodies; and

(5) Certify emergency medical program directors. [1993 c 254 § 1; 1990 c 269 § 24; 1988 c 111 § 1; 1987 c 214 § 7.]

Severability—1990 c 269: See RCW 70.168.901.

18.73.101 Variance from requirements. The secretary may grant a variance from a provision of this chapter if no detriment to health and safety would result from the variance and compliance is expected to cause reduction or loss of existing emergency medical services. Variances may be granted for a period of no more than one year. A variance may be renewed by the secretary upon approval of the committee. [1987 c 214 § 9.]

18.73.120 Certificate of advanced first aid qualification. The secretary shall recognize a current certificate of advanced first aid qualification for those who provide proof of advanced Red Cross training or its equivalent. [1979 ex.s. c 261 § 12; 1973 1st ex.s. c 208 § 12.]

18.73.130 Ambulance and aid vehicles—Operators or directors licenses. An ambulance operator, ambulance director, aid vehicle operator or aid director may not operate a service in the state of Washington without holding a license for such operation, issued by the secretary when such operation is consistent with the state-wide and regional emergency medical services and trauma care plans established pursuant to chapter 70.168 RCW, indicating the general area to be served and the number of vehicles to be used, with the following exceptions:

(1) The United States government;

(2) Ambulance operators and ambulance directors providing service in other states when bringing patients into this state;

(3) Owners of businesses in which ambulance or aid vehicles are used exclusively on company property but occasionally in emergencies may transport patients to hospitals not on company property; and

(4) Operators of vehicles pressed into service for transportation of patients in emergencies when licensed

ambulances are not available or cannot meet overwhelming demand.

The license shall be valid for a period of two years and shall be renewed on request provided the holder has consistently complied with the regulations of the department and the department of licensing and provided also that the needs of the area served have been met satisfactorily. The license shall not be transferable. [1992 c 128 § 2; 1990 c 269 § 25; 1987 c 214 § 10; 1979 ex.s. c 261 § 13; 1979 c 158 § 61; 1973 1st ex.s. c 208 § 13.]

Severability—1990 c 269: See RCW 70.168.901.

Effective date—1973 1st ex.s. c 208: See RCW 18.73.910.

18.73.140 Ambulance and aid vehicles—Licenses. The secretary shall issue an ambulance or aid vehicle license for each vehicle so designated. The license shall be for a period of two years and may be reissued on expiration if the vehicle and its equipment meet requirements in force at the time of expiration of the license period. The license may be revoked if the ambulance or aid vehicle is found to be operating in violation of the regulations promulgated by the department or without required equipment. The license shall be terminated automatically if the vehicle is sold or transferred to the control of anyone not currently licensed as an ambulance or aid vehicle operator or director. The license number shall be prominently displayed on each vehicle. [1992 c 128 § 3; 1987 c 214 § 11; 1979 ex.s. c 261 § 14; 1973 1st ex.s. c 208 § 14.]

Effective date—1973 1st ex.s. c 208: See RCW 18.73.910.

18.73.145 Ambulance and aid vehicles—Self-inspection program. The secretary shall adopt a self-inspection program to assure compliance with minimum standards for vehicles and for medical equipment and personnel on all licensed vehicles. The self-inspection shall coincide with the vehicle licensing cycle and shall be recorded on forms provided by the department. The department may perform an on-site inspection of any licensed service or vehicles as needed. [1987 c 214 § 13.]

18.73.150 Ambulance personnel requirements. Any ambulance operated as such shall operate with sufficient personnel for adequate patient care, at least one of whom shall be an emergency medical technician under standards promulgated by the secretary. The emergency medical technician shall have responsibility for its operation and for the care of patients both before they are placed aboard the vehicle and during transit. If there are two or more emergency medical technicians operating the ambulance, a nondriving medical technician shall be in command of the vehicle. The emergency medical technician in command of the vehicle shall be in the patient compartment and in attendance to the patient.

The driver of the ambulance shall have at least a certificate of advanced first aid qualification recognized by the secretary pursuant to RCW 18.73.120 unless there are at least two certified emergency medical technicians in attendance of the patient, in which case the driver shall not be required to have such certificate. [1992 c 128 § 4; 1979 ex.s. c 261 § 15; 1973 1st ex.s. c 208 § 15.]

Effective date—1973 1st ex.s. c 208: See RCW 18.73.910.

18.73.170 Aid vehicles—Personnel—Use. The aid vehicle shall be operated in accordance with standards promulgated by the secretary, by at least one person holding a certificate recognized under RCW 18.73.120.

The aid vehicle may be used for transportation of patients only when it is impossible or impractical to obtain an ambulance or when a wait for arrival of an ambulance would place the life of the patient in jeopardy. If so used, the vehicle shall be under the command of a person holding a certificate recognized pursuant to RCW 18.73.081 other than the driver. [1987 c 214 § 12; 1979 ex.s. c 261 § 17; 1973 1st ex.s. c 208 § 17.]

Effective date—1973 1st ex.s. c 208: See RCW 18.73.910.

18.73.180 Other transportation vehicles. Other vehicles not herein defined by this chapter shall not be used for transportation of patients who must be carried on a stretcher or who may require medical attention en route, except that such transportation may be used when a disaster creates a situation that cannot be served by licensed ambulances. [1987 c 214 § 14; 1979 ex.s. c 261 § 18; 1973 1st ex.s. c 208 § 18.]

Effective date—1973 1st ex.s. c 208: See RCW 18.73.910.

18.73.190 Violations—Penalties. Any person who violates any of the provisions of this chapter and for which a penalty is not provided shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars for each day of the violation, or may be imprisoned in the county jail not exceeding six months. [1987 c 214 § 15; 1973 1st ex.s. c 208 § 19.]

Effective date—1973 1st ex.s. c 208: See RCW 18.73.910.

18.73.200 Administrative procedure act applicable. The administrative procedure act, chapter 34.05 RCW, shall wherever applicable govern the rights, remedies, and procedures respecting the administration of this chapter. [1973 1st ex.s. c 208 § 21.]

18.73.240 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, shall govern the issuance and denial of credentials, unauthorized practice, and the discipline of persons credentialed under this chapter. The secretary shall act as the disciplinary authority under this chapter. Disciplinary action shall be initiated against a person credentialed under this chapter in a manner consistent with the responsibilities and duties of the medical program director under whom such person is responsible. [1992 c 128 § 5.]

18.73.900 Severability—1973 1st ex.s. c 208. If any provision of this 1973 act, or the application thereof to any person or circumstance is held invalid, this invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1973 1st ex.s. c 208 § 20.]

18.73.901 Severability—1987 c 214. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 214 § 26.]

18.73.910 Effective dates—1973 1st ex.s. c 208. The provisions of sections 1 through 8, inclusive, 11, 12, 20, 21, 22, and 23 of this 1973 act shall take effect on July 1, 1973. The provisions of sections 9, 10, and 13 through 19, inclusive, shall take effect on January 1, 1976. [1973 1st ex.s. c 208 § 22.]

Chapter 18.74 PHYSICAL THERAPY

Sections

- 18.74.003 Regulation of health care professions—Criteria.
- 18.74.005 Purpose.
- 18.74.010 Definitions.
- 18.74.012 Consultation with health care practitioner not required for certain treatments.
- 18.74.015 Referral to health care practitioners—When required.
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- 18.74.135 Insurance coverage and benefits not required or regulated.
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- 18.74.900 Severability—1949 c 239.
- 18.74.910 Severability—1961 c 64.
- 18.74.911 Severability—1983 c 116.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Lien of doctors: Chapter 60.44 RCW.

18.74.003 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.74.005 Purpose. In order to safeguard the public safety and welfare, to protect the public from being misled by incompetent, unethical, and unauthorized persons, and to assure the highest degree of professional conduct and competency, it is the purpose of this chapter to strengthen existing regulation of persons offering physical therapy services to the public. [1983 c 116 § 1.]

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

(1) "Board" means the board of physical therapy created by RCW 18.74.020.

(2) "Department" means the department of health.

(3) "Physical therapy" means the treatment of any bodily or mental condition of any person by the use of the physical, chemical, and other properties of heat, cold, air, light, water, electricity, sound, massage, and therapeutic exercise, which includes posture and rehabilitation procedures; the performance of tests and measurements of neuromuscular function as an aid to the diagnosis or treatment of any human condition; performance of treatments on the basis of test findings after consultation with and periodic review by an authorized health care practitioner except as provided in RCW 18.74.012; supervision of selective forms of treatment by trained supportive personnel; and provision of consultative services for health, education, and community agencies. The use of Roentgen rays and radium for diagnostic and therapeutic purposes, the use of electricity for surgical purposes, including cauterization, and the use of spinal manipulation or manipulative mobilization of the spine and its immediate articulations, are not included under the term "physical therapy" as used in this chapter.

(4) "Physical therapist" means a person who practices physical therapy as defined in this chapter but does not include massage operators as defined in RCW 18.108.010.

(5) "Secretary" means the secretary of health.

(6) Words importing the masculine gender may be applied to females.

(7) "Authorized health care practitioner" means and includes licensed physicians, osteopathic physicians, chiropractors, naturopaths, *podiatrists, and dentists: PROVIDED, HOWEVER, That nothing herein shall be construed as altering the scope of practice of such practitioners as defined in their respective licensure laws. [1991 c 12 § 1; (1991 c 3 §§ 172, 173 repealed by 1991 sp.s. c 11 § 2); (1990 c 297 § 17 repealed by 1991 c 12 § 6); 1988 c 185 § 1; 1983 c 116 § 2; 1961 c 64 § 1; 1949 c 239 § 1; Rem. Supp. 1949 § 10163-1.]

***Reviser's note:** The term "podiatrists" was changed to "podiatric physicians and surgeons" by 1990 c 147.

Effective dates—1991 c 12 §§ 1, 2, 3, 6: "(1) Sections 1, 2, and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1991.

(2) Section 3 of this act shall take effect January 1, 1992." [1991 c 12 § 7.]

Number and gender: RCW 1.12.050.

18.74.012 Consultation with health care practitioner not required for certain treatments. Notwithstanding the provisions of *RCW 18.74.010(4), a consultation and periodic review by an authorized health care practitioner is not required for treatment of neuromuscular or musculoskeletal conditions: PROVIDED, That a physical therapist may only provide treatment utilizing orthoses that support, align, prevent, or correct any structural problems intrinsic to the foot or ankle by referral or consultation from an authorized health care practitioner. [1991 c 12 § 2; 1990 c 297 § 19; 1988 c 185 § 2.]

***Reviser's note:** RCW 18.74.010 was amended by 1991 c 12 § 1 and subsection (4) was renumbered as subsection (3).

Effective dates—1991 c 12 §§ 1, 2, 3, 6: See note following RCW 18.74.010.

18.74.015 Referral to health care practitioners—When required. (1) Physical therapists shall refer persons under their care to authorized health care practitioners if they have reasonable cause to believe symptoms or conditions are present which require services beyond the scope of their practice or for which physical therapy is contraindicated.

(2) A violation of this section is unprofessional conduct under this chapter and chapter 18.130 RCW. [1988 c 185 § 3.]

18.74.020 Board created—Members—Staff assistance—Compensation and travel expenses. The state board of physical therapy is hereby created. The board shall consist of five members who shall be appointed by the governor. Of the initial appointments, two shall be appointed for a term of two years, two for a term of three years, and one for a term of four years. Thereafter, all appointments shall be for terms of four years. Four members of the board shall be physical therapists licensed under this chapter and residing in this state, shall have not less than five years' experience in the practice of physical therapy, and shall be actively engaged in practice within two years of appointment. The fifth member shall be appointed from the public at large, shall have an interest in the rights of consumers of health services, and shall not be or have been a member of any other licensing board, a licensee of any health occupation board, an employee of any health facility nor derive his or her primary livelihood from the provision of health services at any level of responsibility. In the event that a member of the board for any reason cannot complete his or her term of office, another appointment shall be made by the governor in accordance with the procedure stated above to fill the remainder of the term. No member may serve for more than two successive four-year terms.

The secretary of health shall furnish such secretarial, clerical and other assistance as the board may require. Each member of the board shall, in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060, be compensated in accordance with RCW 43.03.240. [1991 c 3 § 174; 1984 c 287 § 46; 1983 c 116 § 3; 1979 c 158 § 62; 1975-'76 2nd ex.s. c 34 § 44; 1949 c 239 § 2; Rem. Supp. 1949 § 10163-2.]

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

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

Secretary of health or designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.74.023 Board—Powers and duties. The board has the following powers and duties:

(1) To develop and administer, or approve, or both, examinations to applicants for a license under this chapter.

(2) To pass upon the qualifications of applicants for a license and to certify to the secretary duly qualified applicants.

(3) To make such rules not inconsistent with the laws of this state as may be deemed necessary or proper to carry out the purposes of this chapter.

(4) To establish and administer requirements for continuing competency, which shall be a prerequisite to renewing a license under this chapter.

(5) To keep an official record of all its proceedings, which record shall be evidence of all proceedings of the board which are set forth therein.

(6) To adopt rules not inconsistent with the laws of this state, when it deems appropriate, in response to questions put to it by professional health associations, physical therapists, and consumers in this state concerning the authority of physical therapists to perform particular acts.

(7) To adopt rules to define and specify the education and training requirements for physical therapist assistants and physical therapy aides. [1995 c 299 § 1; 1995 c 198 § 9. Prior: 1991 c 12 § 3; 1991 c 3 § 175; 1986 c 259 § 124; 1983 c 116 § 4.]

Reviser's note: This section was amended by 1995 c 198 § 9 and by 1995 c 299 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—1991 c 12 §§ 1, 2, 3, 6: See note following RCW 18.74.010.

Severability—1986 c 259: See note following RCW 18.130.010.

18.74.025 Standards for appropriateness of physical therapy care—Violation. Pursuant to the board's power in RCW 18.74.023(3), the board is directed to adopt rules relating to standards for appropriateness of physical therapy care. Violation of the standards adopted by rule under this section is unprofessional conduct under this chapter and chapter 18.130 RCW. [1991 c 12 § 5.]

18.74.027 Board—Officers—Meetings—Quorum. The board shall elect from its members a chairperson and vice chairperson-secretary, who shall serve for one year and until their successors are elected. The board shall meet at least once a year and upon the call of the chairperson at such times and places as the chairperson designates. Three members constitute a quorum of the full board for the transaction of any business. Meetings of the board shall be open and public, except the board may hold executive sessions to the extent permitted by chapter 42.30 RCW. [1983 c 116 § 5.]

18.74.029 Application of Uniform Disciplinary Act. The Uniform Disciplinary Act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses and interim permits, and the discipline of licensees and holders of interim permits under this chapter. [1993 c 133 § 2; 1987 c 150 § 47; 1986 c 259 § 123.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.74.030 Qualifications of applicants. An applicant for a license as a physical therapist shall have the following minimum qualifications:

(1) Be of good moral character; and

(2) Have obtained either (a) a baccalaureate degree in physical therapy from an institution of higher learning approved by the board or (b) a baccalaureate degree from an institution of higher learning and a certificate or advanced degree from a school of physical therapy approved by the board.

The applicant shall present proof of qualification to the board in the manner and on the forms prescribed by it. [1983 c 116 § 6; 1961 c 64 § 2; 1949 c 239 § 3; Rem. Supp. 1949 § 10163-3.]

18.74.035 Examinations—Scope—Time and place. All qualified applicants for a license as a physical therapist shall be examined by the board at such time and place as the board may determine. The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities. The examination shall embrace the following subjects: The applied sciences of anatomy, neuroanatomy, kinesiology, physiology, pathology, psychology, physics; physical therapy, as defined in this chapter, applied to medicine, neurology, orthopedics, pediatrics, psychiatry, surgery; medical ethics; technical procedures in the practice of physical therapy as defined in this chapter; and such other subjects as the board may deem useful to test the applicant's fitness to practice physical therapy, but not including the adjustment or manipulation of the spine or use of a thrusting force as mobilization. Examinations shall be held within the state at least once a year, at such time and place as the board shall determine. An applicant who fails an examination may apply for reexamination upon payment of a reexamination fee determined by the secretary. [1995 c 198 § 10; 1991 c 3 § 176; 1983 c 116 § 7; 1961 c 64 § 3.]

18.74.040 Licenses. The secretary of health shall license as a physical therapist, and shall furnish a license to each applicant who successfully passes the examination for licensure as a physical therapist. [1991 c 3 § 177; 1983 c 116 § 8; 1949 c 239 § 4; Rem. Supp. 1949 § 10163-4.]

18.74.050 Licenses—Fees. The secretary shall furnish a license upon the authority of the board to any person who applies and who has qualified under the provisions of this chapter. At the time of applying, the applicant shall comply with administrative procedures, administrative requirements, and fees established pursuant to RCW 43.70.250 and 43.70.280. No person registered or licensed on July 24, 1983, as a physical therapist shall be required to pay an additional fee for a license under this chapter. [1996 c 191 § 59; 1991 c 3 § 178; 1985 c 7 § 63; 1983 c 116 § 9; 1975 1st ex.s. c 30 § 65; 1961 c 64 § 4; 1949 c 239 § 5; Rem. Supp. 1949 § 10163-5.]

18.74.060 Licensure by endorsement. Upon the recommendation of the board, the secretary shall license as a physical therapist and shall furnish a license to any person who is a physical therapist registered or licensed under the laws of another state or territory, or the District of Columbia, if the qualifications for such registration or license required of the applicant were substantially equal to the requirements under this chapter. At the time of making application, the

applicant shall comply with administrative procedures, administrative requirements, and fees established pursuant to RCW 43.70.250 and 43.70.280. [1996 c 191 § 60; 1991 c 3 § 179; 1985 c 7 § 64; 1983 c 116 § 10; 1975 1st ex.s. c 30 § 66; 1961 c 64 § 5; 1949 c 239 § 6; Rem. Supp. 1949 § 10163-6.]

18.74.065 Licenses—Issuance to persons licensed or registered before July 24, 1983. Any person holding a valid license or certificate of registration to practice physical therapy issued by authority of this state prior to July 24, 1983, shall be issued a license under this chapter. [1983 c 116 § 11.]

18.74.070 Renewal of license. Every licensed physical therapist shall apply to the secretary for a renewal of the license and pay to the state treasurer a fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 61; 1991 c 3 § 180; 1983 c 116 § 12; 1975 1st ex.s. c 30 § 67; 1971 ex.s. c 266 § 13; 1961 c 64 § 6; 1949 c 239 § 7; Rem. Supp. 1949 § 10163-7.]

18.74.075 Interim permits. (1) The department, upon approval by the board, shall issue an interim permit authorizing an applicant for licensure who meets the minimum qualifications stated in RCW 18.74.030 to practice physical therapy under graduate supervision pending notification of the results of the first licensure examination for which the applicant is eligible, but not to exceed six months.

(2) For purposes of this section, "graduate supervision" means supervision of a holder of an interim permit by a licensed physical therapist who is on the premises at all times. Graduate supervision shall include consultation regarding evaluation, treatment plan, treatment program, and progress of each assigned patient at appropriate intervals and be documented by cosignature of notes by the licensed physical therapist. RCW 18.74.012 is not applicable for holders of interim permits.

(3) If the holder of the interim permit fails the examination, the permit expires upon notification and is not renewable. [1993 c 133 § 1.]

18.74.085 Advertising of spinal manipulation or mobilization prohibited. (1) Physical therapists shall not advertise that they perform spinal manipulation or manipulative mobilization of the spine.

(2) A violation of this section is unprofessional conduct under this chapter and chapter 18.130 RCW. [1988 c 185 § 4.]

18.74.090 False advertising—Use of name and words—License required—Prosecutions of violations. A person who is not licensed with the secretary of health as a physical therapist under the requirements of this chapter shall not represent him or herself as being so licensed and shall not use in connection with his or her name the words or letters "P.T.", "R.P.T.", "L.P.T.", "physical therapy", "physiotherapy", "physical therapist" or "physiotherapist", or any other letters, words, signs, numbers, or insignia indicating or implying that he or she is a physical therapist. No person may practice physical therapy without first having a

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valid license. Nothing in this chapter prohibits any person licensed in this state under any other act from engaging in the practice for which he or she is licensed. It shall be the duty of the prosecuting attorney of each county to prosecute all cases involving a violation of this chapter arising within his or her county. The attorney general may assist in such prosecution and shall appear at all hearings when requested to do so by the board. [1991 c 3 § 181; 1987 c 150 § 48; 1986 c 259 § 125; 1983 c 116 § 18; 1961 c 64 § 8; 1949 c 239 § 9; Rem. Supp. 1949 § 10163-9.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

False advertising: Chapter 9.04 RCW.

18.74.095 False advertising—Injunctions. If any person violates the provisions of this chapter, the attorney general, prosecuting attorney, the secretary, the board, or any citizen of the same county, may maintain an action in the name of the state to enjoin such person from practicing or holding himself or herself out as practicing physical therapy. The injunction shall not relieve criminal prosecution but the remedy by injunction shall be in addition to the liability of such offender for criminal prosecution and the suspension or revocation of his or her license. [1991 c 3 § 182; 1983 c 116 § 19; 1961 c 64 § 9.]

18.74.120 Record of proceedings—Register. The secretary of health shall keep a record of proceedings under this chapter and a register of all persons licensed under it. The register shall show the name of every living licensed physical therapist, his or her last known place of residence, and the date and number of his or her license as a physical therapist. [1991 c 3 § 183; 1983 c 116 § 21; 1979 c 158 § 63; 1977 c 75 § 11; 1949 c 239 § 12; Rem. Supp. 1949 § 10163-12.]

18.74.125 Construction of chapter—Activities not prohibited—Use of letters or words in connection with name. Nothing in this chapter shall prohibit any person licensed in this state under any other act from engaging in the practice for which he is licensed. Nothing in this chapter shall prohibit any person who, at any time prior to January 1, 1961 was practicing any healing or manipulative art in the state of Washington and designating the same as physical therapy or physiotherapy, from continuing to do so after the passage of this amendatory act: PROVIDED, That no such person shall represent himself as being registered and shall not use in connection with his name the words or letters "registered" or "licensed" or "R.P.T." [1961 c 64 § 10.]

Reviser's note: The language "after the passage of this amendatory act" refers to chapter 64, Laws of 1961 which passed the House March 1, 1961, passed the Senate February 27, 1961, approved by the governor March 6, 1961, and became effective at midnight June 7, 1961.

18.74.130 Exemptions. This chapter does not prohibit or regulate:

(1) The practice of physical therapy by students enrolled in approved schools as may be incidental to their course of study so long as such activities do not go beyond the scope of practice defined by this chapter.

(2) Auxiliary services provided by physical therapy aides carrying out duties necessary for the support of physical therapy including those duties which involve minor physical therapy services when performed under the direct supervision of licensed physical therapists so long as such activities do not go beyond the scope of practice defined by this chapter.

(3) The practice of physical therapy by licensed or registered physical therapists of other states or countries while appearing as clinicians of bona fide educational seminars sponsored by physical therapy, medical, or other healing art professional associations so long as such activities do not go beyond the scope of practice defined by this chapter.

(4) The practice of physical therapists in the armed services or employed by any other branch of the federal government. [1983 c 116 § 22.]

18.74.135 Insurance coverage and benefits not required or regulated. This chapter shall not be construed to restrict the ability of any insurance entity regulated by Title 48 RCW, or any state agency or program from limiting or controlling the utilization of physical therapy services by the use of any type of gatekeeper function; nor shall it be construed to require or prohibit that individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person licensed under this chapter. For the purpose of this chapter, "gatekeeper function" means any provision in a contract which establishes a threshold requirement, such as a recommendation from a case manager or a primary care provider, which must be satisfied before a covered person is eligible to receive benefits under the contract. [1988 c 185 § 5.]

18.74.140 Practice setting not restricted. Nothing in this chapter restricts the ability of physical therapists to work in the practice setting of their choice. [1991 c 12 § 4.]

18.74.900 Severability—1949 c 239. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable. [1949 c 239 § 13.]

18.74.910 Severability—1961 c 64. If any provision of this amendatory act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this amendatory act which can be given effect without the invalid provision or application, and to this end the provisions of this amendatory act are declared to be severable. [1961 c 64 § 11.]

18.74.911 Severability—1983 c 116. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 116 § 24.]

Chapter 18.76

POISON INFORMATION CENTERS

Sections

18.76.010	Purpose.
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18.76.030	Poison information center—State-wide program.
18.76.041	Consulting with other poison programs.
18.76.050	Rules and standards.
18.76.060	Poison center medical director—Poison information specialist—Certification required.
18.76.070	Immunity from liability.
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18.76.090	Use of gifts and grants.
18.76.100	Certificate suspension—Nonpayment or default on educational loan or scholarship.
18.76.900	Severability—1987 c 214.

18.76.010 Purpose. The legislature finds that accidental and purposeful exposure to drugs, poisons, and toxic substances continues to be a severe health problem in the state of Washington. It further finds that a significant reduction in the consequences of such accidental exposures has occurred as a result of the services provided by poison information centers.

The purpose of this chapter is to reduce morbidity and mortality associated with overdose and poisoning incidents by providing emergency telephone assistance and treatment referral to victims of such incidents, by providing immediate treatment information to health care professionals, and public education and prevention programs. Further, the purpose is to improve utilization of drugs by providing information to health professionals relating to appropriate therapeutic drug use.

The legislature recognizes that enhanced cooperation between the emergency medical system and poison control centers will aid in responding to emergencies resulting from exposure to drugs, poisons, and toxic substances, and that, by providing telephone assistance to individuals with possible exposure to these substances, the need for emergency room and professional office visits will be reduced. As a result the cost of health care to those who may have exposures to drugs, poisons, and toxic substances will be avoided and appropriate treatment will be assured. [1993 c 343 § 1; 1987 c 214 § 16; 1980 c 178 § 1. Formerly RCW 18.73.210.]

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

- (1) "Department" means the department of health.
- (2) "Poison information center medical director" means a person who: (a) Is licensed to practice medicine and surgery under chapter 18.71 RCW or osteopathic medicine and surgery under chapter 18.57 RCW; (b) is certified by the secretary under standards adopted under RCW 18.76.050; and (c) provides services enumerated under RCW 18.76.030, and is responsible for supervision of poison information specialists.

(3) "Poison information specialist" means a person who provides services enumerated under RCW 18.76.030 under the supervision of a poison information center medical

director and is certified by the secretary under standards adopted under RCW 18.76.050.

(4) "Secretary" means the secretary of health. [1996 c 178 § 7; 1991 c 3 § 184; 1987 c 214 § 19.]

Effective date—1996 c 178: See note following RCW 18.35.110.

18.76.030 Poison information center—State-wide program. The department shall, in a manner consistent with this chapter, provide support for the state-wide program of poison and drug information services. These services shall, no later than June 30, 1993, be centralized in and coordinated by a single nonprofit center to be located in a place determined by the secretary. The services of this center shall be:

(1) Twenty-four hour emergency telephone management and treatment referral of victims of poisoning and overdose incidents, to include determining whether treatment can be accomplished at the scene of the incident or transport to an emergency treatment or other facility is required, and carrying out telephone follow-up to assure that adequate care is provided;

(2) Providing information to health professionals involved in management of poisoning and overdose victims;

(3) Coordination and development of community education programs designed to inform the public and members of the health professions of poison prevention and treatment methods and to improve awareness of poisoning and overdose problems, occupational risks, and environmental exposures; and

(4) Coordination of outreach units whose primary functions shall be to inform the public about poison problems and prevention methods, how to utilize the poison center, and other toxicology issues. [1993 c 343 § 2; 1987 c 214 § 17; 1980 c 178 § 2. Formerly RCW 18.73.220.]

18.76.041 Consulting with other poison programs. The department shall establish a system for consulting with other state and local agency programs concerned with poisons and poisonings, incidents involving exposures to potentially poisonous substances, and other toxicological matters to develop the most coordinated and consistent response to such situations as is reasonably possible. [1993 c 343 § 3.]

18.76.050 Rules and standards. The secretary with the advice of the emergency medical services and trauma care steering committee established under RCW 18.73.050 shall adopt rules, under chapter 34.05 RCW, prescribing:

(1) Standards for the operation of a poison information center;

(2) Standards and procedures for certification, recertification and decertification of poison center medical directors and poison information specialists; and

(3) Standards and procedures for reciprocity with other states or national certifying agencies. [1990 c 269 § 21; 1987 c 214 § 20.]

Severability—1990 c 269: See RCW 70.168.901.

18.76.060 Poison center medical director—Poison information specialist—Certification required. (1) A person may not act as a poison center medical director or

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perform the duties of poison information specialists of a poison information center without being certified by the secretary under this chapter.

(2) Notwithstanding subsection (1) of this section, if a poison center medical director terminates certification or is decertified, that poison center medical director's authority may be delegated by the department to any other person licensed to practice medicine and surgery under chapter 18.71 RCW or osteopathic medicine and surgery under chapter 18.57 RCW for a period of thirty days, or until a new poison center medical director is certified, whichever comes first. [1996 c 178 § 8; 1993 c 343 § 4; 1987 c 214 § 21.]

Effective date—1996 c 178: See note following RCW 18.35.110.

18.76.070 Immunity from liability. (1) No act done or omitted in good faith while performing duties as a poison center medical director or poison information specialist of a poison information center shall impose any liability on the poison center, its officers, the poison center medical director, the poison information specialist, or other employees.

(2) This section:

(a) Applies only to acts or omissions committed or omitted in the performance of duties which are within the area of responsibility and expertise of the poison center medical director or poison information specialist.

(b) Does not relieve the poison center or any person from any duty imposed by law for the designation or training of a person certified under this chapter.

(c) Does not apply to any act or omission which constitutes gross negligence or wilful or wanton conduct. [1987 c 214 § 22.]

18.76.080 Department to defend personnel. The department shall defend any poison center medical director or poison information specialist for any act or omission subject to RCW 18.76.070. [1987 c 214 § 23.]

18.76.090 Use of gifts and grants. The center may receive gifts, grants, and endowments from public or private sources that may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the center and spend gifts, grants, or endowments or any income from the public or private sources according to their terms. [1993 c 343 § 5.]

18.76.100 Certificate suspension—Nonpayment or default on educational loan or scholarship. The secretary shall suspend the certificate of any person who has been certified by a lending agency and reported to the secretary for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's certificate shall not be reissued until the person provides the secretary a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the

lending agency. If the person has continued to meet all other requirements for certification during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the secretary may impose. [1996 c 293 § 13.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.76.900 Severability—1987 c 214. See RCW 18.73.901.

Chapter 18.79 NURSING CARE

Sections

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18.79.901	Headings and captions not law—1994 sp.s. c 9.
18.79.902	Effective date—1994 sp.s. c 9.

18.79.010 Purpose. It is the purpose of the nursing care quality assurance commission to regulate the competency and quality of professional health care providers under its jurisdiction by establishing, monitoring, and enforcing qualifications for licensing, consistent standards of practice, continuing competency mechanisms, and discipline. Rules, policies, and procedures developed by the commission must promote the delivery of quality health care to the residents of the state of Washington. [1994 sp.s. c 9 § 401.]

18.79.020 Definitions. Unless a different meaning is plainly required by the context, the definitions set forth in this section apply throughout this chapter.

(1) "Commission" means the Washington state nursing care quality assurance commission.

(2) "Department" means the department of health.

(3) "Secretary" means the secretary of health or the secretary's designee.

(4) "Diagnosis," in the context of nursing practice, means the identification of, and discrimination between, the person's physical and psychosocial signs and symptoms that are essential to effective execution and management of the nursing care regimen.

(5) "Diploma" means written official verification of completion of an approved nursing education program.

(6) "Nurse" or "nursing," unless otherwise specified as a practical nurse or practical nursing, means a registered nurse or registered nursing. [1994 sp.s. c 9 § 402.]

18.79.030 Licenses required—Titles. (1) It is unlawful for a person to practice or to offer to practice as a registered nurse in this state unless that person has been licensed under this chapter. A person who holds a license to practice as a registered nurse in this state may use the title "registered nurse" and the abbreviation "R.N." No other person may assume that title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using them is a registered nurse.

(2) It is unlawful for a person to practice or to offer to practice as an advanced registered nurse practitioner or as a nurse practitioner in this state unless that person has been licensed under this chapter. A person who holds a license to practice as an advanced registered nurse practitioner in this state may use the titles "advanced registered nurse practitioner" and "nurse practitioner" and the abbreviations "A.R.N.P." and "N.P." No other person may assume those titles or use those abbreviations or any other words, letters, signs, or figures to indicate that the person using them is an advanced registered nurse practitioner or nurse practitioner.

(3) It is unlawful for a person to practice or to offer to practice as a licensed practical nurse in this state unless that person has been licensed under this chapter. A person who holds a license to practice as a licensed practical nurse in this state may use the title "licensed practical nurse" and the abbreviation "L.P.N." No other person may assume that title or use that abbreviation or any other words, letters, signs, or figures to indicate that the person using them is a licensed practical nurse. [1994 sp.s. c 9 § 403.]

18.79.040 "Registered nursing practice" defined—Exceptions. (1) "Registered nursing practice" means the performance of acts requiring substantial specialized knowledge, judgment, and skill based on the principles of the biological, physiological, behavioral, and sociological sciences in either:

(a) The observation, assessment, diagnosis, care or counsel, and health teaching of the ill, injured, or infirm, or in the maintenance of health or prevention of illness of others;

(b) The performance of such additional acts requiring education and training and that are recognized by the medical and nursing professions as proper and recognized by the commission to be performed by registered nurses licensed under this chapter and that are authorized by the commission through its rules;

(c) The administration, supervision, delegation, and evaluation of nursing practice. However, nothing in this

subsection affects the authority of a hospital, hospital district, medical clinic, or office, concerning its administration and supervision;

(d) The teaching of nursing;

(e) The executing of medical regimen as prescribed by a licensed physician and surgeon, dentist, osteopathic physician and surgeon, podiatric physician and surgeon, physician assistant, osteopathic physician assistant, or advanced registered nurse practitioner.

(2) Nothing in this section prohibits a person from practicing a profession for which a license has been issued under the laws of this state or specifically authorized by any other law of the state of Washington.

(3) This section does not prohibit (a) the nursing care of the sick, without compensation, by an unlicensed person who does not hold himself or herself out to be a registered nurse, (b) the practice of licensed practical nursing by a licensed practical nurse, or (c) the practice of a nursing assistant, providing delegated nursing tasks under chapter 18.88A RCW. [1995 1st sp.s. c 18 § 50; 1994 sp.s. c 9 § 404.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

18.79.050 "Advanced registered nursing practice" defined—Exceptions. "Advanced registered nursing practice" means the performance of the acts of a registered nurse and the performance of an expanded role in providing health care services as recognized by the medical and nursing professions, the scope of which is defined by rule by the commission. Upon approval by the commission, an advanced registered nurse practitioner may prescribe legend drugs and controlled substances contained in Schedule V of the Uniform Controlled Substances Act, chapter 69.50 RCW.

Nothing in this section prohibits a person from practicing a profession for which a license has been issued under the laws of this state or specifically authorized by any other law of the state of Washington.

This section does not prohibit (1) the nursing care of the sick, without compensation, by an unlicensed person who does not hold himself or herself out to be an advanced registered nurse practitioner, or (2) the practice of registered nursing by a licensed registered nurse or the practice of licensed practical nursing by a licensed practical nurse. [1994 sp.s. c 9 § 405.]

18.79.060 "Licensed practical nursing practice" defined—Exceptions. "Licensed practical nursing practice" means the performance of services requiring the knowledge, skill, and judgment necessary for carrying out selected aspects of the designated nursing regimen under the direction and supervision of a licensed physician and surgeon, dentist, osteopathic physician and surgeon, physician assistant, osteopathic physician assistant, podiatric physician and surgeon, advanced registered nurse practitioner, or registered nurse.

Nothing in this section prohibits a person from practicing a profession for which a license has been issued under the laws of this state or specifically authorized by any other law of the state of Washington.

This section does not prohibit the nursing care of the sick, without compensation, by an unlicensed person who

does not hold himself or herself out to be a licensed practical nurse. [1994 sp.s. c 9 § 406.]

18.79.070 Commission established—Membership—Qualifications. (1) The state nursing care quality assurance commission is established, consisting of eleven members to be appointed by the governor to four-year terms. No person may serve as a member of the commission for more than two consecutive full terms.

(2) There must be three registered nurse members, two advanced registered nurse practitioner members, three licensed practical nurse members, two public members, and one nonvoting midwife member licensed under chapter 18.50 RCW, on the commission. Each member of the commission must be a citizen of the United States and a resident of this state.

(3) Registered nurse members of the commission must:

(a) Be licensed as registered nurses under this chapter; and

(b) Have had at least five years' experience in the active practice of nursing and have been engaged in that practice within two years of appointment.

(4) Advanced registered nurse practitioner members of the commission must:

(a) Be licensed as advanced registered nurse practitioners under this chapter; and

(b) Have had at least five years' experience in the active practice of advanced registered nursing and have been engaged in that practice within two years of appointment.

(5) Licensed practical nurse members of the commission must:

(a) Be licensed as licensed practical nurses under this chapter; and

(b) Have had at least five years' actual experience as a licensed practical nurse and have been engaged in practice as a practical nurse within two years of appointment.

(6) Public members of the commission may not be a member of any other health care licensing board or commission, or have a fiduciary obligation to a facility rendering health services regulated by the commission, or have a material or financial interest in the rendering of health services regulated by the commission.

(7) The nonvoting licensed midwife member of the commission must:

(a) Be licensed as a midwife under chapter 18.50 RCW; and

(b) Have had at least five years' actual experience as a licensed midwife and have been engaged in practice as a midwife within two years of appointment.

In appointing the initial members of the commission, it is the intent of the legislature that, to the extent possible, the governor appoint the existing members of the board of nursing and the board of practical nursing repealed under chapter 9, Laws of 1994 sp. sess. The governor may appoint initial members of the commission to staggered terms of from one to four years. Thereafter, all members shall be appointed to full four-year terms. Members of the commission hold office until their successors are appointed. [1994 sp.s. c 9 § 407.]

18.79.080 Commission—Order of removal—Vacancy. The governor may remove a member of the commission for neglect of duty, misconduct, malfeasance or misfeasance in office, or for incompetency or unprofessional conduct as defined in chapter 18.130 RCW. Whenever the governor is satisfied that a member of the commission has been guilty of neglect of duty, misconduct, malfeasance or misfeasance in office, or of incompetency or unprofessional conduct, the governor shall file with the secretary of state a statement of the causes for and the order of removal from office, and the secretary shall forthwith send a certified copy of the statement of causes and order of removal to the last known post office address of the member. If a vacancy occurs on the commission, the governor shall appoint a replacement member to fill the remainder of the unexpired term. [1994 sp.s. c 9 § 408.]

18.79.090 Commission—Compensation. Each commission member shall be compensated in accordance with RCW 43.03.240 and shall be paid travel expenses when away from home in accordance with RCW 43.03.050 and 43.03.060. [1994 sp.s. c 9 § 409.]

18.79.100 Commission—Officers—Meetings. The commission shall annually elect officers from among its members. The commission shall meet at least quarterly at times and places it designates. It shall hold such other meetings during the year as may be deemed necessary to transact its business. A majority of the commission members appointed and serving constitutes a quorum at a meeting. All meetings of the commission must be open and public, except that the commission may hold executive sessions to the extent permitted by chapter 42.30 RCW.

Carrying a motion or resolution, adopting a rule, or passing a measure requires the affirmative vote of a majority of a quorum of the commission. The commission may appoint panels consisting of at least three members. A quorum for transaction of any business by a panel is a minimum of three members. A majority vote of a quorum of the panel is required to transact business delegated to it by the commission. [1994 sp.s. c 9 § 410.]

18.79.110 Commission—Duties and powers—Rules—Successor to boards. The commission shall keep a record of all of its proceedings and make such reports to the governor as may be required. The commission shall define by rules what constitutes specialized and advanced levels of nursing practice as recognized by the medical and nursing profession. The commission may adopt rules or issue advisory opinions in response to questions put to it by professional health associations, nursing practitioners, and consumers in this state concerning the authority of various categories of nursing practitioners to perform particular acts.

The commission shall approve curricula and shall establish criteria for minimum standards for schools preparing persons for licensing as registered nurses, advanced registered nurse practitioners, and licensed practical nurses under this chapter. The commission shall approve such schools of nursing as meet the requirements of this chapter and the commission, and the commission shall approve establishment of basic nursing education programs and shall

establish criteria as to the need for and the size of a program and the type of program and the geographical location. The commission shall establish criteria for proof of reasonable currency of knowledge and skill as a basis for safe practice after three years' inactive or lapsed status. The commission shall establish criteria for licensing by endorsement. The commission shall determine examination requirements for applicants for licensing as registered nurses, advanced registered nurse practitioners, and licensed practical nurses under this chapter, and shall certify to the secretary for licensing duly qualified applicants.

The commission shall adopt such rules under chapter 34.05 RCW as are necessary to fulfill the purposes of this chapter.

The commission is the successor in interest of the board of nursing and the board of practical nursing. All contracts, undertakings, agreements, rules, regulations, decisions, orders, and policies of the former board of nursing or the board of practical nursing continue in full force and effect under the commission until the commission amends or rescinds those rules, regulations, decisions, orders, or policies.

The members of the commission are immune from suit in an action, civil or criminal, based on its disciplinary proceedings or other official acts performed in good faith as members of the commission.

Whenever the workload of the commission requires, the commission may request that the secretary appoint pro tempore members of the commission. When serving, pro tempore members of the commission have all of the powers, duties, and immunities, and are entitled to all of the emoluments, including travel expenses, of regularly appointed members of the commission. [1994 sp.s. c 9 § 411.]

18.79.120 Application of Uniform Disciplinary Act. The Uniform Disciplinary Act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1994 sp.s. c 9 § 412.]

18.79.130 Executive director—Staff. The secretary shall appoint, after consultation with the commission, an executive director who shall act to carry out this chapter. The secretary shall also employ such professional, secretarial, clerical, and other assistants as may be necessary to effectively administer this chapter. The secretary shall fix the compensation and provide for travel expenses for the executive director and all such employees, in accordance with RCW 43.03.050 and 43.03.060. [1994 sp.s. c 9 § 413.]

18.79.140 Executive director—Qualifications. The executive director must be a graduate of an approved nursing education program and of a college or university, with a masters' degree, and currently licensed as a registered nurse under this chapter; have a minimum of eight years' experience in nursing in any combination of administration and nursing education; and have been actively engaged in the practice of registered nursing or nursing education within two years immediately before the time of appointment. [1994 sp.s. c 9 § 414.]

18.79.150 Schools and programs—Requirements—Approval. An institution desiring to conduct a school of registered nursing or a school or program of practical nursing, or both, shall apply to the commission and submit evidence satisfactory to the commission that:

(1) It is prepared to carry out the curriculum approved by the commission for basic registered nursing or practical nursing, or both; and

(2) It is prepared to meet other standards established by law and by the commission.

The commission shall make, or cause to be made, such surveys of the schools and programs, and of institutions and agencies to be used by the schools and programs, as it determines are necessary. If in the opinion of the commission, the requirements for an approved school of registered nursing or a school or program of practical nursing, or both, are met, the commission shall approve the school or program. [1994 sp.s. c 9 § 415.]

18.79.160 Applicants—Required documentation—Criteria—Rules. (1) An applicant for a license to practice as a registered nurse shall submit to the commission:

(a) An attested written application on a department form;

(b) Written official evidence of a diploma from an approved school of nursing; and

(c) Any other official records specified by the commission.

(2) An applicant for a license to practice as an advanced registered nurse practitioner shall submit to the commission:

(a) An attested written application on a department form;

(b) Written official evidence of completion of an advanced registered nurse practitioner training program meeting criteria established by the commission; and

(c) Any other official records specified by the commission.

(3) An applicant for a license to practice as a licensed practical nurse shall submit to the commission:

(a) An attested written application on a department form;

(b) Written official evidence that the applicant is over the age of eighteen;

(c) Written official evidence of a high school diploma or general education development certificate or diploma;

(d) Written official evidence of completion of an approved practical nursing program, or its equivalent; and

(e) Any other official records specified by the commission.

(4) At the time of submission of the application, the applicant for a license to practice as a registered nurse, advanced registered nurse practitioner, or licensed practical nurse must not be in violation of chapter 18.130 RCW or this chapter.

(5) The commission shall establish by rule the criteria for evaluating the education of all applicants. [1994 sp.s. c 9 § 416.]

18.79.170 Examination—Rules. An applicant for a license to practice as a registered nurse, advanced registered nurse practitioner, or licensed practical nurse must pass an

examination in subjects determined by the commission. The examination may be supplemented by an oral or practical examination. The commission shall establish by rule the requirements for applicants who have failed the examination to qualify for reexamination. [1994 sp.s. c 9 § 417.]

18.79.180 Interim permits—License—Expiration upon failure. When authorized by the commission, the department shall issue an interim permit authorizing the applicant to practice registered nursing, advanced registered nursing, or licensed practical nursing, as appropriate, from the time of verification of the completion of the school or training program until notification of the results of the examination. Upon the applicant passing the examination, and if all other requirements established by the commission for licensing are met, the department shall issue the applicant a license to practice registered nursing, advanced registered nursing, or licensed practical nursing, as appropriate. If the applicant fails the examination, the interim permit expires upon notification to the applicant, and is not renewable. The holder of an interim permit is subject to chapter 18.130 RCW. [1994 sp.s. c 9 § 418.]

18.79.190 Reciprocity—Foreign programs—Examination. Upon approval of the application by the commission, the department shall issue a license by endorsement without examination to practice as a registered nurse or as a licensed practical nurse to a person who is licensed as a registered nurse or licensed practical nurse under the laws of another state, territory, or possession of the United States, and who meets all other qualifications for licensing.

An applicant who has graduated from a school or program of nursing outside the United States and is licensed as a registered nurse or licensed practical nurse, or their equivalents, outside the United States must meet all qualifications required by this chapter and pass examinations as determined by the commission. [1994 sp.s. c 9 § 419.]

18.79.200 License procedures, requirements, fees. An applicant for a license to practice as a registered nurse, advanced registered nurse practitioner, or licensed practical nurse shall comply with administrative procedures, administrative requirements, and fees as determined under RCW 43.70.250 and 43.70.280. [1996 c 191 § 62; 1994 sp.s. c 9 § 420.]

18.79.210 License renewal—Procedures, requirements, fees. A license issued under this chapter must be renewed, except as provided in this chapter. The licensee shall comply with administrative procedures, administrative requirements, and fees as determined under RCW 43.70.250 and 43.70.280. [1996 c 191 § 63; 1994 sp.s. c 9 § 421.]

18.79.230 Temporary retirement—Renewal—Fee—Qualification. A person licensed under this chapter who desires to retire temporarily from registered nursing practice, advanced registered nursing practice, or licensed practical nursing practice in this state shall send a written notice to the secretary.

Upon receipt of the notice the department shall place the name of the person on inactive status. While remaining on

this status the person shall not practice in this state any form of nursing provided for in this chapter. When the person desires to resume practice, the person shall apply to the commission for renewal of the license and pay a renewal fee to the state treasurer. Persons on inactive status for three years or more must provide evidence of knowledge and skill of current practice as required by the commission or as provided in this chapter. [1994 sp.s. c 9 § 423.]

18.79.240 Construction. (1) In the context of the definition of registered nursing practice and advanced registered nursing practice, this chapter shall not be construed as:

(a) Prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers, so long as they do not practice registered nursing within the meaning of this chapter;

(b) Preventing a person from the domestic administration of family remedies or the furnishing of nursing assistance in case of emergency;

(c) Prohibiting the practice of nursing by students enrolled in approved schools as may be incidental to their course of study or prohibiting the students from working as nursing aides;

(d) Prohibiting auxiliary services provided by persons carrying out duties necessary for the support of nursing services, including those duties that involve minor nursing services for persons performed in hospitals, nursing homes, or elsewhere under the direction of licensed physicians or the supervision of licensed registered nurses;

(e) Prohibiting the practice of nursing in this state by a legally qualified nurse of another state or territory whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six months in length, if the person does not represent or hold himself or herself out as a registered nurse licensed to practice in this state;

(f) Prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of a church by adherents of the church so long as they do not engage in the practice of nursing as defined in this chapter;

(g) Prohibiting the practice of a legally qualified nurse of another state who is employed by the United States government or a bureau, division, or agency thereof, while in the discharge of his or her official duties;

(h) Permitting the measurement of the powers or range of human vision, or the determination of the accommodation and refractive state of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses for the aid thereof;

(i) Permitting the prescribing or directing the use of, or using, an optical device in connection with ocular exercises, visual training, vision training, or orthoptics;

(j) Permitting the prescribing of contact lenses for, or the fitting and adaptation of contact lenses to, the human eye;

(k) Prohibiting the performance of routine visual screening;

(l) Permitting the practice of dentistry or dental hygiene as defined in chapters 18.32 and 18.29 RCW, respectively;

(m) Permitting the practice of chiropractic as defined in chapter 18.25 RCW including the adjustment or manipulation of the articulation of the spine;

(n) Permitting the practice of podiatric medicine and surgery as defined in chapter 18.22 RCW;

(o) Permitting the performance of major surgery, except such minor surgery as the commission may have specifically authorized by rule adopted in accordance with chapter 34.05 RCW;

(p) Permitting the prescribing of controlled substances as defined in Schedules I through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW, except as provided in (r) of this subsection;

(q) Prohibiting the determination and pronouncement of death;

(r) Prohibiting advanced registered nurse practitioners, approved by the commission as certified registered nurse anesthetists from selecting, ordering, or administering controlled substances as defined in Schedules II through IV of the Uniform Controlled Substances Act, chapter 69.50 RCW, consistent with their commission-recognized scope of practice; subject to facility-specific protocols, and subject to a request for certified registered nurse anesthetist anesthesia services issued by a physician licensed under chapter 18.71 RCW, an osteopathic physician and surgeon licensed under chapter 18.57 RCW, a dentist licensed under chapter 18.32 RCW, or a podiatric physician and surgeon licensed under chapter 18.22 RCW; the authority to select, order, or administer Schedule II through IV controlled substances being limited to those drugs that are to be directly administered to patients who require anesthesia for diagnostic, operative, obstetrical, or therapeutic procedures in a hospital, clinic, ambulatory surgical facility, or the office of a practitioner licensed under chapter 18.71, 18.22, 18.36, 18.36A, 18.57, 18.57A, or 18.32 RCW; "select" meaning the decision-making process of choosing a drug, dosage, route, and time of administration; and "order" meaning the process of directing licensed individuals pursuant to their statutory authority to directly administer a drug or to dispense, deliver, or distribute a drug for the purpose of direct administration to a patient, under instructions of the certified registered nurse anesthetist. "Protocol" means a statement regarding practice and documentation concerning such items as categories of patients, categories of medications, or categories of procedures rather than detailed case-specific formulas for the practice of nurse anesthesia.

(2) In the context of the definition of licensed practical nursing practice, this chapter shall not be construed as:

(a) Prohibiting the incidental care of the sick by domestic servants or persons primarily employed as housekeepers, so long as they do not practice practical nursing within the meaning of this chapter;

(b) Preventing a person from the domestic administration of family remedies or the furnishing of nursing assistance in case of emergency;

(c) Prohibiting the practice of practical nursing by students enrolled in approved schools as may be incidental to their course of study or prohibiting the students from working as nursing assistants;

(d) Prohibiting auxiliary services provided by persons carrying out duties necessary for the support of nursing services, including those duties that involve minor nursing

services for persons performed in hospitals, nursing homes, or elsewhere under the direction of licensed physicians or the supervision of licensed registered nurses;

(e) Prohibiting or preventing the practice of nursing in this state by a legally qualified nurse of another state or territory whose engagement requires him or her to accompany and care for a patient temporarily residing in this state during the period of one such engagement, not to exceed six months in length, if the person does not represent or hold himself or herself out as a licensed practical nurse licensed to practice in this state;

(f) Prohibiting nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of a church by adherents of the church so long as they do not engage in licensed practical nurse practice as defined in this chapter;

(g) Prohibiting the practice of a legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof, while in the discharge of his or her official duties. [1994 sp.s. c 9 § 424.]

18.79.250 Advanced registered nurse practitioner—Activities allowed. An advanced registered nurse practitioner under his or her license may perform for compensation nursing care, as that term is usually understood, of the ill, injured, or infirm, and in the course thereof, she or he may do the following things that shall not be done by a person not so licensed, except as provided in RCW 18.79.260 and 18.79.270:

(1) Perform specialized and advanced levels of nursing as recognized jointly by the medical and nursing professions, as defined by the commission;

(2) Prescribe legend drugs and Schedule V controlled substances, as defined in the Uniform Controlled Substances Act, chapter 69.50 RCW, within the scope of practice defined by the commission;

(3) Perform all acts provided in RCW 18.79.260;

(4) Hold herself or himself out to the public or designate herself or himself as an advanced registered nurse practitioner or as a nurse practitioner. [1994 sp.s. c 9 § 425.]

18.79.260 Registered nurse—Activities allowed. A registered nurse under his or her license may perform for compensation nursing care, as that term is usually understood, of the ill, injured, or infirm, and in the course thereof, she or he may do the following things that shall not be done by a person not so licensed, except as provided in RCW 18.79.270 and 18.88A.210:

(1) At or under the general direction of a licensed physician and surgeon, dentist, osteopathic physician and surgeon, naturopathic physician, podiatric physician and surgeon, physician assistant, osteopathic physician assistant, or advanced registered nurse practitioner acting within the scope of his or her license, administer medications, treatments, tests, and inoculations, whether or not the severing or penetrating of tissues is involved and whether or not a degree of independent judgment and skill is required. Such direction must be for acts which are within the scope of registered nursing practice;

(2) Delegate to other persons the functions outlined in subsection (1) of this section in accordance with chapter 18.88A RCW;

(3) Instruct nurses in technical subjects pertaining to nursing;

(4) Hold herself or himself out to the public or designate herself or himself as a registered nurse. [1995 1st sp.s. c 18 § 51; 1995 c 295 § 1; 1994 sp.s. c 9 § 426.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Effective date—1995 c 295: "This act shall take effect August 1, 1996." [1995 c 295 § 4.]

18.79.270 Licensed practical nurse—Activities allowed. A licensed practical nurse under his or her license may perform nursing care, as that term is usually understood, of the ill, injured, or infirm, and in the course thereof may, under the direction of a licensed physician and surgeon, osteopathic physician and surgeon, dentist, naturopathic physician, podiatric physician and surgeon, physician assistant, osteopathic physician assistant, advanced registered nurse practitioner acting under the scope of his or her license, or at the direction and under the supervision of a registered nurse, administer drugs, medications, treatments, tests, injections, and inoculations, whether or not the piercing of tissues is involved and whether or not a degree of independent judgment and skill is required, when selected to do so by one of the licensed practitioners designated in this section, or by a registered nurse who need not be physically present; if the order given is reduced to writing within a reasonable time and made a part of the patient's record. Such direction must be for acts within the scope of licensed practical nurse practice. [1995 c 295 § 2; 1994 sp.s. c 9 § 427.]

Effective date—1995 c 295: See note following RCW 18.79.260.

18.79.280 Medication, tests, treatments allowed. It is not a violation of chapter 18.71 RCW or of chapter 18.57 RCW for a registered nurse, at or under the general direction of a licensed physician and surgeon, or osteopathic physician and surgeon, to administer prescribed drugs, injections, inoculations, tests, or treatment whether or not the piercing of tissues is involved. [1994 sp.s. c 9 § 428.]

18.79.290 Catheterization of students—Rules. (1) In accordance with rules adopted by the commission, public school districts and private schools that offer classes for any of grades kindergarten through twelve may provide for clean, intermittent bladder catheterization of students or assisted self-catheterization of students who are in the custody of the school district or private school at the time. After consultation with staff of the superintendent of public instruction, the commission shall adopt rules in accordance with chapter 34.05 RCW, that provide for the following and such other matters as the commission deems necessary to the proper implementation of this section:

(a) A requirement for a written, current, and unexpired request from a parent, legal guardian, or other person having legal control over the student that the school district or private school provide for the catheterization of the student;

(b) A requirement for a written, current, and unexpired request from a physician licensed under chapter 18.71 or 18.57 RCW, that catheterization of the student be provided for during the hours when school is in session or the hours when the student is under the supervision of school officials;

(c) A requirement for written, current, and unexpired instructions from an advanced registered nurse practitioner or a registered nurse licensed under this chapter regarding catheterization that include (i) a designation of the school district or private school employee or employees who may provide for the catheterization, and (ii) a description of the nature and extent of any required supervision; and

(d) The nature and extent of acceptable training that shall (i) be provided by a physician, advanced registered nurse practitioner, or registered nurse licensed under chapter 18.71 or 18.57 RCW, or this chapter, and (ii) be required of school district or private school employees who provide for the catheterization of a student under this section, except that a licensed practical nurse licensed under this chapter is exempt from training.

(2) This section does not require school districts to provide intermittent bladder catheterization of students. [1994 sp.s. c 9 § 429.]

Catheterization of public and private school students: RCW 28A.210.280 and 28A.210.290.

18.79.300 Department—Rules for administration.

The department, subject to chapter 34.05 RCW, the Washington Administrative Procedure Act, may adopt such reasonable rules as may be necessary to carry out the duties imposed upon it in the administration of this chapter. [1994 sp.s. c 9 § 430.]

18.79.310 Rules, regulations, decisions of previous boards—Effect. As of July 1, 1994, all rules, regulations, decisions, and orders of the board of nursing under chapter 18.88 RCW or the board of practical nursing under chapter 18.78 RCW continue to be in effect under the commission, until the commission acts to modify the rules, regulations, decisions, or orders. [1994 sp.s. c 9 § 431.]

18.79.900 Severability—1994 sp.s. c 9. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 sp.s. c 9 § 904.]

18.79.901 Headings and captions not law—1994 sp.s. c 9. Headings and captions used in this act constitute no part of the law. [1994 sp.s. c 9 § 905.]

18.79.902 Effective date—1994 sp.s. c 9. This act takes effect July 1, 1994. [1994 sp.s. c 9 § 906.]

Chapter 18.83 PSYCHOLOGISTS

Sections

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18.83.005 Regulation of health care professions—Criteria. See chapter 18.120 RCW.

18.83.010 Definitions. When used in this chapter:

(1) The "practice of psychology" means the observation, evaluation, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purposes of preventing or eliminating symptomatic or maladaptive behavior and promoting mental and behavioral health. It includes, but is not limited to, providing the following services to individuals, families, groups, organizations, and the public, whether or not payment is received for services rendered:

(a) Psychological measurement, assessment, and evaluation by means of psychological, neuropsychological, and psychoeducational testing;

(b) Diagnosis and treatment of mental, emotional, and behavioral disorders, and psychological aspects of illness, injury, and disability; and

(c) Counseling and guidance, psychotherapeutic techniques, remediation, health promotion, and consultation within the context of established psychological principles and theories.

This definition does not include the teaching of principles of psychology for accredited educational institutions, or the conduct of research in problems of human or animal behavior.

Nothing in this definition shall be construed as permitting the administration or prescribing of drugs or in any way infringing upon the practice of medicine and surgery as defined in chapter 18.71 RCW.

(2) "Secretary" means the secretary of health.

(3) "Board" means the examining board of psychology.

(4) "Department" means the department of health. [1994 c 35 § 1; 1991 c 3 § 193; 1984 c 279 § 75; 1979 c 158 § 67; 1965 c 70 § 1; 1955 c 305 § 1.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.020 License required—Use of "psychology" or similar terms. (1) To safeguard the people of the state of Washington from the dangers of unqualified and improper practice of psychology, it is unlawful for any person to whom this chapter applies to represent himself or herself to be a psychologist without first obtaining a license as provided in this chapter.

(2) A person represents himself or herself to be a psychologist when the person adopts or uses any title or any description of services which incorporates one or more of the following terms: "psychology," "psychological," "psychologist," or any term of like import. [1986 c 27 § 1; 1965 c 70 § 2; 1955 c 305 § 2.]

18.83.035 Examining board—Composition—Terms—Chairperson. (*Effective until June 30, 2005.*) There is created the examining board of psychology which shall examine the qualifications of applicants for licensing. The board shall consist of seven psychologists and two public members, all appointed by the governor. The public members shall not be and have never been psychologists or in training to be psychologists; they may not have any household member who is a psychologist or in training to be a psychologist; they may not participate or ever have participated in a commercial or professional field related to psychology, nor have a household member who has so participated; and they may not have had within two years before appointment a substantial financial interest in a person regulated by the board. Each psychologist member of the board shall be a citizen of the United States who has actively practiced psychology in the state of Washington for at least three years immediately preceding appointment and who is licensed under this chapter. Board members shall be appointed for a term of five years, except that the terms of the existing appointees shall be adjusted by the governor so that no more than two members' terms expire each year with all subsequent appointments for a five-year term. Upon the death, resignation, or removal of a member, the governor shall appoint a successor to serve for the unexpired term. The board shall elect one of its members to serve as chairperson. [1989 c 226 § 1; 1986 c 27 § 2; 1984 c 279 § 76.]

Board termination and repeal: See RCW 18.83.910 and 18.83.911.
Severability—1984 c 279: See RCW 18.130.901.

18.83.045 Examining board—Generally. (*Effective until June 30, 2005.*) The board shall meet at least once each year and at such other times as the board deems appropriate to properly discharge its duties. All meetings shall be held in Olympia, Washington, or such other places as may be designated by the secretary. Five members of the board shall constitute a quorum, except that oral examinations may be conducted with only three psychologist members. [1991 c 3 § 195; 1984 c 279 § 77.]

Board termination and repeal: See RCW 18.83.910 and 18.83.911.

Severability—1984 c 279: See RCW 18.130.901.

18.83.050 Examining board—Powers and duties. (*Effective until June 30, 2005.*) (1) The board shall adopt such rules as it deems necessary to carry out its functions.

(2) The board shall examine the qualifications of applicants for licensing under this chapter, to determine which applicants are eligible for licensing under this chapter and shall forward to the secretary the names of applicants so eligible.

(3) The board shall administer examinations to qualified applicants on at least an annual basis. The board shall determine the subject matter and scope of the examinations and shall require both written and oral examinations of each applicant, except as provided in RCW 18.83.170. The board may allow applicants to take the written examination upon the granting of their doctoral degree before completion of their internship for supervised experience.

(4) The board shall keep a complete record of its own proceedings, of the questions given in examinations, of the names and qualifications of all applicants, and the names and addresses of all licensed psychologists. The examination paper of such applicant shall be kept on file for a period of at least one year after examination.

(5) The board shall, by rule, adopt a code of ethics for psychologists which is designed to protect the public interest.

(6) The board may require that persons licensed under this chapter as psychologists obtain and maintain professional liability insurance in amounts determined by the board to be practicable and reasonably available. [1994 c 35 § 2; 1991 c 3 § 196; 1986 c 27 § 3; 1984 c 279 § 78; 1965 c 70 § 5; 1955 c 305 § 5.]

Board termination and repeal: See RCW 18.83.910 and 18.83.911.
Severability—1984 c 279: See RCW 18.130.901.

18.83.051 Examining board—Compensation and travel expenses. (*Effective until June 30, 2005.*) Each member of the board shall be compensated in accordance with RCW 43.03.240 and in addition thereto shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 48; 1983 c 168 § 10; 1975-'76 2nd ex.s. c 34 § 48; 1969 ex.s. c 199 § 19; 1965 c 70 § 21.]

Board termination and repeal: See RCW 18.83.910 and 18.83.911.

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

Severability—1983 c 168: See RCW 18.120.910.

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

18.83.054 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter, except that the term "unlicensed practice" shall be defined by RCW 18.83.180 rather than RCW 18.130.020. [1987 c 150 § 51.]

Severability—1987 c 150: See RCW 18.122.901.

18.83.060 Application, examination—Fees. Administrative procedures, administrative requirements, and fees for applications and examinations shall be established as

provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 64; 1991 c 3 § 197; 1984 c 279 § 79; 1975 1st ex.s. c 30 § 72; 1965 c 70 § 6; 1955 c 305 § 6.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.070 Applicants—Qualifications—Examination.

An applicant for a license as "psychologist" must submit proof to the board that:

(1) The applicant is of good moral character.

(2) The applicant holds a doctoral degree from a regionally accredited institution, obtained from an integrated program of graduate study in psychology as defined by rules of the board.

(3) The applicant has had no fewer than two years of supervised experience, at least one of which shall have been obtained subsequent to the granting of the doctoral degree. The board shall adopt rules defining the circumstances under which supervised experience shall qualify the candidate for licensure.

(4) The applicant has passed the written or oral examinations, or both, as prescribed by the board.

Any person holding a valid license to practice psychology in the state of Washington on June 7, 1984, shall be considered licensed under this chapter. [1995 c 198 § 11; 1984 c 279 § 80; 1965 c 70 § 7; 1955 c 305 § 7.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.072 Examinations. (1) Examination of applicants shall be held in Olympia, Washington, or at such other place as designated by the secretary, at least annually at such times as the board may determine.

(2) Any applicant shall have the right to discuss with the board his or her performance on the examination.

(3) Any applicant who fails to make a passing grade on the examination may be allowed to retake the examination. Any applicant who fails the examination a second time must obtain special permission from the board to take the examination again.

(4) The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities. [1996 c 191 § 65; 1995 c 198 § 12; 1991 c 3 § 198; 1984 c 279 § 81; 1971 ex.s. c 266 § 15; 1965 c 70 § 20.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.080 Licenses—Issuance—Display. The board shall forward to the secretary the name of each applicant entitled to a license under this chapter. The secretary shall promptly issue to such applicant a license authorizing such applicant to use the title "psychologist". Each licensed psychologist shall keep his or her license displayed in a conspicuous place in his or her principal place of business. [1996 c 191 § 66; 1991 c 3 § 199; 1986 c 27 § 4; 1965 c 70 § 8; 1955 c 305 § 8.]

18.83.082 Temporary permit. A person, not licensed in this state, who wishes to perform practices under the provisions of this chapter for a period not to exceed ninety days within a calendar year, must petition the board for a temporary permit to perform such practices. If the person is licensed or certified in another state deemed by the board to

have standards equivalent to this chapter, a permit may be issued. No fee shall be charged for such temporary permit. [1996 c 191 § 67; 1984 c 279 § 82; 1975 1st ex.s. c 30 § 73; 1965 c 70 § 23.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.090 Continuing education requirements—License renewal. The board shall establish rules governing mandatory continuing education requirements which shall be met by any psychologist applying for a license renewal. Administrative procedures, administrative requirements, and fees for renewal and reissue of licenses shall be established as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 68; 1991 c 3 § 200; 1984 c 279 § 83; 1977 c 58 § 1; 1975 1st ex.s. c 30 § 74; 1971 ex.s. c 266 § 16; 1965 c 70 § 9; 1955 c 305 § 9.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.105 Certificates of qualification. The board may issue certificates of qualification with appropriate title to applicants who meet all the licensing requirements except the possession of the degree of Doctor of Philosophy or its equivalent in psychology from an accredited educational institution. These certificates of qualification certify that the holder has been examined by the board and is deemed competent to perform certain functions within the practice of psychology under the periodic direct supervision of a psychologist licensed by the board. Such functions will be specified on the certificate issued by the board. Such applicant shall comply with administrative procedures, administrative requirements, and fees determined under RCW 43.70.250 and 43.70.280. Upon petition by a holder the board of examiners may grant authority to function without immediate supervision. [1996 c 191 § 69; 1991 c 3 § 201; 1985 c 7 § 67; 1975 1st ex.s. c 30 § 75; 1965 c 70 § 22.]

18.83.110 Privileged communications. Confidential communications between a client and a psychologist shall be privileged against compulsory disclosure to the same extent and subject to the same conditions as confidential communications between attorney and client, but this exception is subject to the limitations under RCW 70.96A.140 and 71.05.250. [1989 c 271 § 303; 1987 c 439 § 12; 1965 c 70 § 11; 1955 c 305 § 11.]

Severability—1989 c 271: See note following RCW 9.94A.310.

18.83.115 Duty to disclose information to client. (1) Psychologists licensed under this chapter shall provide clients at the commencement of any program of treatment with accurate disclosure information concerning their practice, in accordance with guidelines developed by the board, which will inform clients of the purposes of and resources available under this chapter, including the right of clients to refuse treatment, the responsibility of clients for choosing the provider and treatment modality which best suits their needs, and the extent of confidentiality provided by this chapter. The disclosure information provided by the psychologist, the receipt of which shall be acknowledged in writing by the psychologist and client, shall include any relevant education and training, the therapeutic orientation of the practice, the

proposed course of treatment where known, any financial requirements, and such other information as the board may require by rule.

(2) In in-patient settings, the health facility shall provide clients with the disclosure statement at the commencement of any program of treatment, and shall post the statement in a conspicuous location accessible to the client.

(3) The board shall provide for modification of the guidelines as appropriate in cases where the client has been referred by the court, a state agency, or other governmental body to a particular provider for specified evaluation or treatment. [1986 c 27 § 9.]

18.83.121 Unprofessional conduct. In addition to those acts defined in chapter 18.130 RCW, the board may take disciplinary action under RCW 18.130.160 for the following reasons:

(1) Failing to maintain the confidentiality of information under RCW 18.83.110;

(2) Violating the ethical code developed by the board under RCW 18.83.050;

(3) Failing to inform prospective research subjects or their authorized representatives of the possible serious effects of participation in research; and failing to undertake reasonable efforts to remove possible harmful effects of participation;

(4) Practicing in an area of psychology for which the person is clearly untrained or incompetent;

(5) Failing to exercise appropriate supervision over persons who practice under the supervision of a psychologist;

(6) Using fraud or deceit in the procurement of the psychology license, or knowingly assisting another in the procurement of such a license through fraud or deceit;

(7) Failing to maintain professional liability insurance when required by the board;

(8) Violating any state statute or administrative rule specifically governing the practice of psychology; or

(9) Gross, wilful, or continued overcharging for professional services. [1987 c 150 § 52.]

Severability—1987 c 150: See RCW 18.122.901.

18.83.135 Examining board—Powers and duties. In addition to the authority prescribed under RCW 18.130.050, the board shall have the following authority:

(1) To maintain records of all activities, and to publish and distribute to all psychologists at least once each year abstracts of significant activities of the committee; and

(2) To obtain the written consent of the complaining client or patient or their legal representative, or of any person who may be affected by the complaint, in order to obtain information which otherwise might be confidential or privileged. [1994 c 35 § 4; 1992 c 12 § 1; 1987 c 150 § 53; 1984 c 279 § 86.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1984 c 279: See RCW 18.130.901.

18.83.155 Examining board—Notice of disciplinary action. The board shall report to appropriate national and state organizations which represent the profession of psy-

chology any disciplinary action. [1994 c 35 § 5; 1987 c 150 § 54; 1984 c 279 § 89.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1984 c 279: See RCW 18.130.901.

18.83.170 Endorsement. Upon compliance with administrative procedures, administrative requirements, and fees determined under RCW 43.70.250 and 43.70.280, the board may grant a license, without written examination, to any applicant who has not previously failed any examination held by the board of psychology of the state of Washington and furnishes evidence satisfactory to the board that the applicant:

(1) Holds a doctoral degree with primary emphasis on psychology from an accredited college or university; and

(2) Is licensed or certified to practice psychology in another state or country in which the requirements for such licensing or certification are, in the judgment of the board, essentially equivalent to those required by this chapter and the rules and regulations of the board. Such individuals must have been licensed or certified in another state for a period of at least two years; or

(3) Is a diplomate in good standing of the American Board of Examiners in Professional Psychology. [1996 c 191 § 70; 1991 c 3 § 202; 1984 c 279 § 92; 1975 1st ex.s. c 30 § 76; 1965 c 70 § 17; 1955 c 305 § 17.]

Severability—1984 c 279: See RCW 18.130.901.

18.83.180 Penalties. It shall be a gross misdemeanor and unlicensed practice for any person to:

(1) Use in connection with his or her name any designation tending to imply that he or she is a licensed psychologist unless duly licensed under or specifically excluded from the provisions of this chapter;

(2) Practice as a licensed psychologist during the time his or her license issued under the provisions of this chapter is suspended or revoked. [1987 c 150 § 55; 1965 c 70 § 18; 1955 c 305 § 18.]

Severability—1987 c 150: See RCW 18.122.901.

18.83.190 Injunction. If any person represents himself or herself to be a psychologist, unless the person is exempt from the provisions of this chapter, without possessing a valid license, certificated qualification, or a temporary permit to do so, or if he or she violates any of the provisions of this chapter, any prosecuting attorney, the secretary, or any citizen of the same county may maintain an action in the name of the state to enjoin such person from representing himself or herself as a psychologist. The injunction shall not relieve the person from criminal prosecution, but the remedy by injunction shall be in addition to the liability of such offender to criminal prosecution and to suspension or revocation of his or her license. [1991 c 3 § 203; 1986 c 27 § 8; 1965 c 70 § 24.]

18.83.200 Exemptions. This chapter shall not apply to:

(1) Any person teaching, lecturing, consulting, or engaging in research in psychology but only insofar as such activities are performed as a part of or are dependent upon

a position in a college or university in the state of Washington.

(2) Any person who holds a valid school psychologist credential from the Washington state board of education but only when such a person is practicing psychology in the course of his or her employment.

(3) Any person employed by a local, state, or federal government agency whose psychologists must qualify for employment under federal or state certification or civil service regulations; but only at those times when that person is carrying out the functions of his or her employment.

(4) Any person who must qualify under the employment requirements of a business or industry and who is employed by a business or industry which is not engaged in offering psychological services to the public, but only when such person is carrying out the functions of his or her employment: PROVIDED, That no person exempt from licensing under this subsection shall engage in the clinical practice of psychology.

(5) Any person who is a student of psychology, psychological intern, or resident in psychology preparing for the profession of psychology under supervision in a training institution or facilities and who is designated by the title such as "psychological trainee," "psychology student," which thereby indicates his or her training status.

(6) Any person who has received a doctoral degree from an accredited institution of higher learning with an adequate major in sociology or social psychology as determined by the board and who has passed comprehensive examinations in the field of social psychology as part of the requirements for the doctoral degree. Such persons may use the title "social psychologist" provided that they file a statement of their education with the board. [1986 c 27 § 10; 1965 c 70 § 19.]

18.83.210 Certain counseling or guidance not prohibited. Nothing in this chapter shall be construed as prohibiting any individual from offering counseling or guidance provided that such individuals do not hold themselves forth as psychologists. [1965 c 70 § 25.]

18.83.900 Severability—1965 c 70. If any provision of this 1965 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the 1965 amendatory act, or the application of the provision to other persons or circumstances is not affected. [1965 c 70 § 26.]

18.83.910 Examining board—Termination. The powers and duties of the examining board of psychology shall be terminated on June 30, 2004, as provided in RCW 18.83.911. [1994 c 35 § 6; 1990 c 297 § 7; 1988 c 288 § 8; 1986 c 27 § 11; 1985 c 7 § 109; 1984 c 279 § 94. Formerly RCW 43.131.323.]

18.83.911 Examining board—Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2005:

(1) Section 76, chapter 279, Laws of 1984, section 2, chapter 27, Laws of 1986, section 1, chapter 226, Laws of 1989 and RCW 18.83.035;

(2) Section 77, chapter 279, Laws of 1984 and RCW 18.83.045;

(3) Section 5, chapter 305, Laws of 1955, section 5, chapter 70, Laws of 1965, section 78, chapter 279, Laws of 1984, section 3, chapter 27, Laws of 1986 and RCW 18.83.050; and

(4) Section 21, chapter 70, Laws of 1965, section 19, chapter 199, Laws of 1969 ex. sess., section 48, chapter 34, Laws of 1975-'76 2nd ex. sess., section 10, chapter 168, Laws of 1983, section 48, chapter 287, Laws of 1984 and RCW 18.83.051. [1994 c 35 § 7; 1990 c 297 § 8.]

Chapter 18.84

RADIOLOGIC TECHNOLOGISTS

Sections

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18.84.901	Effective date—1987 c 412.
18.84.902	Severability—1987 c 412.
18.84.903	Effective date—1991 c 222.

Regulation of health professions—Criteria: Chapter 18.120 RCW.

18.84.010 Legislative intent—Insurance coverage not required. It is the intent and purpose of this chapter to protect the public by the certification and registration of practitioners of radiological technology. By promoting high standards of professional performance, by requiring professional accountability, and by credentialing those persons who seek to provide radiological technology under the title of radiological technologists, and by regulating all persons utilizing ionizing radiation on human beings this chapter identifies those practitioners who have achieved a particular level of competency. Nothing in this chapter shall be construed to require that individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person certified under this chapter.

The legislature finds and declares that this chapter conforms to the guidelines, terms, and definitions for the credentialing of health or health-related professions specified under chapter 18.120 RCW. [1991 c 222 § 1; 1987 c 412 § 1.]

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

- (1) "Department" means the department of health.
- (2) "Secretary" means the secretary of health.
- (3) "Licensed practitioner" means any licensed health care practitioner performing services within the person's authorized scope of practice.
- (4) "Radiologic technologist" means an individual certified under this chapter, other than a licensed practitioner, who practices radiologic technology as a:
- (a) Diagnostic radiologic technologist, who is a person who actually handles x-ray equipment in the process of applying radiation on a human being for diagnostic purposes at the direction of a licensed practitioner; or
- (b) Therapeutic radiologic technologist, who is a person who uses radiation-generating equipment for therapeutic purposes on human subjects at the direction of a licensed practitioner; or
- (c) Nuclear medicine technologist, who is a person who prepares radiopharmaceuticals and administers them to human beings for diagnostic and therapeutic purposes and who performs in vivo and in vitro detection and measurement of radioactivity for medical purposes at the direction of a licensed practitioner.
- (5) "Approved school of radiologic technology" means a school of radiologic technology approved by the council on medical education of the American medical association or a school found to maintain the equivalent of such a course of study as determined by the department. Such school may be operated by a medical or educational institution, and for the purpose of providing the requisite clinical experience, shall be affiliated with one or more general hospitals.

(6) "Radiologic technology" means the use of ionizing radiation upon a human being for diagnostic or therapeutic purposes.

(7) "Radiologist" means a physician certified by the American board of radiology or the American osteopathic board of radiology.

(8) "Registered x-ray technician" means a person who is registered with the department, and who applies ionizing radiation at the direction of a licensed practitioner. [1994 sp.s. c 9 § 505; 1991 c 222 § 2; 1991 c 3 § 204; 1987 c 412 § 3.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.84.030 Registration or certificate required. No person may practice radiologic technology without being registered or certified under this chapter, unless that person is a licensed practitioner as defined in RCW 18.84.020(3). A person represents himself or herself to the public as a certified radiological technologist when that person adopts or uses a title or description of services that incorporates one or more of the following items or designations:

- (1) Certified radiologic technologist or CRT, for persons so certified under this chapter;
- (2) Certified radiologic therapy technologist, CRTT, or CRT, for persons certified in the therapeutic field;
- (3) Certified radiologic diagnostic technologist, CRDT, or CRT, for persons certified in the diagnostic field; or
- (4) Certified nuclear medicine technologist, CNMT, or CRT, for persons certified as nuclear medicine technologists. [1991 c 222 § 3; 1987 c 412 § 2.]

18.84.040 Powers of secretary—Application of Uniform Disciplinary Act—Ad hoc advisers. (1) In addition to any other authority provided by law, the secretary may:

- (a) Adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;
- (b) Set all registration, certification, and renewal fees in accordance with RCW 43.70.250;
- (c) Establish forms and procedures necessary to administer this chapter;
- (d) Evaluate and designate those schools from which graduation will be accepted as proof of an applicant's eligibility to receive a certificate;
- (e) Determine whether alternative methods of training are equivalent to formal education, and to establish forms, procedures, and criteria for evaluation of an applicant's alternative training to determine the applicant's eligibility to receive a certificate;
- (f) Issue a certificate to any applicant who has met the education, training, and conduct requirements for certification; and
- (g) Issue a registration to an applicant who meets the requirement for a registration.

(2) The secretary may hire clerical, administrative, and investigative staff as needed to implement this chapter.

(3) The Uniform Disciplinary Act, chapter 18.130 RCW, governs the issuance and denial of registrations and certifications, unregistered and uncertified practice, and the discipline of registrants and certificants under this chapter. The secretary is the disciplining authority under this chapter.

(4) The secretary may appoint ad hoc members of the profession to serve in an ad hoc advisory capacity to the secretary in carrying out this chapter. The members will serve for designated times and provide advice on matters specifically identified and requested by the secretary. The members shall be compensated in accordance with RCW 43.03.220 and reimbursed for travel expenses under RCW 43.03.040 and 43.03.060. [1994 sp.s. c 9 § 506; 1991 c 222 § 11; 1991 c 3 § 205; 1987 c 412 § 5.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Health professions advisory committee: RCW 18.138.120.

18.84.050 Record of proceedings. The secretary shall keep an official record of all proceedings, a part of which record shall consist of a register of all applicants for certification under this chapter, with the result of each application. [1991 c 3 § 206; 1987 c 412 § 6.]

18.84.070 Secretary and ad hoc committee immune from liability. The secretary, ad hoc committee members, or individuals acting on their behalf are immune from suit in any civil action based on any certification or disciplinary proceedings or other official acts performed in the course of their duties. [1994 sp.s. c 9 § 507; 1991 c 3 § 208; 1987 c 412 § 8.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.84.080 Certification—Qualifications. (1) The secretary shall issue a certificate to any applicant who

demonstrates to the secretary's satisfaction, that the following requirements have been met:

(a) Graduation from an approved school or successful completion of alternate training that meets the criteria established by the secretary; and

(b) Good moral character.

(2) Applicants shall be subject to the grounds for denial or issuance of a conditional license under chapter 18.130 RCW.

(3) The secretary shall establish by rule what constitutes adequate proof of meeting the requirements for certification and for designation of certification in a particular field of radiologic technology. [1991 c 3 § 209; 1987 c 412 § 9.]

18.84.090 Certification—Approval of schools and training. The secretary shall establish by rule the standards and procedures for approval of schools and alternate training, and may contract with individuals or organizations having expertise in the profession or in education to assist in evaluating those applying for approval. The standards and procedures set shall apply equally to schools and training within the United States and those in foreign jurisdictions. [1994 sp.s. c 9 § 508; 1991 c 3 § 210; 1987 c 412 § 10.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.84.100 Certification—Application form—Fee. Applications for certification must be submitted on forms provided by the secretary. The secretary may require any information and documentation that reasonably relates to the determination of whether the applicant meets the requirements for certification provided for in this chapter and chapter 18.130 RCW. Each applicant shall comply with administrative procedures, administrative requirements, and fees determined by the secretary as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 71; 1991 c 3 § 211; 1987 c 412 § 11.]

18.84.110 Renewal of certificates. The secretary shall establish the administrative procedures, administrative requirements, and fees for renewal of certificates as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 72; 1994 sp.s. c 9 § 509; 1991 c 3 § 212; 1987 c 412 § 12.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.84.120 Registration—Fee—Requirements. The secretary may issue a registration to an applicant who submits, on forms provided by the department, the applicant's name, the address, occupational title, name and location of business where applicant performs his or her services, and other information as determined by the secretary, including information necessary to determine whether there are grounds for denial of registration under this chapter or chapter 18.130 RCW. Each applicant shall pay a fee as determined by the secretary as provided in RCW 43.70.250 and 43.70.280. The secretary shall establish the administrative procedures, administrative requirements, and fees for registration and for renewal of registrations as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 73; 1991 c 222 § 4.]

(1996 Ed.)

18.84.130 Educational material. The secretary may provide educational materials and training to registered x-ray technicians, certified radiologic technologists, licensed practitioners and the public concerning, but not limited to, health risks associated with ionizing radiation, proper radiographic techniques, and x-ray equipment maintenance. The secretary may charge fees to recover the cost of providing educational materials and training. [1991 c 222 § 5.]

18.84.140 Application of chapter—Exemption for authorized scope of practice. Nothing in this chapter may be construed to prohibit or restrict the practice of a profession by a person who is either registered, certified, licensed, or similarly regulated under the laws of this state who is performing services within the person's authorized scope of practice. [1991 c 222 § 6.]

18.84.150 Application of chapter—Exemption for dentists. This chapter does not apply to practitioners licensed under chapter 18.32 RCW or unlicensed persons supervised by persons licensed under chapter 18.32 RCW. [1991 c 222 § 7.]

18.84.160 Application of chapter—Exemption for chiropractors. This chapter does not apply to practitioners licensed under chapter 18.25 RCW or unlicensed persons supervised by persons licensed under chapter 18.25 RCW. [1991 c 222 § 8.]

18.84.170 Registration deadline. Persons required to register under this chapter must be registered by January 1, 1992. [1991 c 222 § 10.]

18.84.901 Effective date—1987 c 412. This act shall take effect October 1, 1987. [1987 c 412 § 17.]

18.84.902 Severability—1987 c 412. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 412 § 21.]

18.84.903 Effective date—1991 c 222. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991. [1991 c 222 § 14.]

Chapter 18.85

REAL ESTATE BROKERS AND SALESPERSONS

Sections

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Department of licensing, division of real estate in business and professions administration: RCW 46.01.050.

Excise tax on real estate sales: Chapter 82.45 RCW.

Real estate salesman or broker on commission not subject to unemployment compensation: RCW 50.04.230.

18.85.010 Definitions. In this chapter words and phrases have the following meanings unless otherwise apparent from the context:

(1) "Real estate broker," or "broker," means a person, while acting for another for commissions or other compensation or the promise thereof, or a licensee under this chapter while acting in his or her own behalf, who:

(a) Sells or offers for sale, lists or offers to list, buys or offers to buy real estate or business opportunities, or any interest therein, for others;

(b) Negotiates or offers to negotiate, either directly or indirectly, the purchase, sale, exchange, lease, or rental of real estate or business opportunities, or any interest therein, for others;

(c) Negotiates or offers to negotiate, either directly or indirectly, the purchase, sale, or exchange of a used mobile home in conjunction with the purchase, sale, exchange, rental, or lease of the land upon which the used mobile home is located;

(d) Advertises or holds himself or herself out to the public by any oral or printed solicitation or representation that he or she is so engaged; or

(e) Engages, directs, or assists in procuring prospects or in negotiating or closing any transaction which results or is calculated to result in any of these acts;

(2) "Real estate salesperson" or "salesperson" means any natural person employed, either directly or indirectly, by a real estate broker, or any person who represents a real estate broker in the performance of any of the acts specified in subsection (1) of this section;

(3) An "associate real estate broker" is a person who has qualified as a "real estate broker" who works with a broker and whose license states that he or she is associated with a broker;

(4) The word "person" as used in this chapter shall be construed to mean and include a corporation or copartnership, except where otherwise restricted;

(5) "Business opportunity" shall mean and include business, business opportunity and good will of an existing business or any one or combination thereof;

(6) "Commission" means the real estate commission of the state of Washington;

(7) "Director" means the director of licensing;

(8) "Real estate multiple listing association" means any association of real estate brokers:

(a) Whose members circulate listings of the members among themselves so that the properties described in the listings may be sold by any member for an agreed portion of the commission to be paid; and

(b) Which require in a real estate listing agreement between the seller and the broker, that the members of the real estate multiple listing association shall have the same rights as if each had executed a separate agreement with the seller;

(9) "Clock hours of instruction" means actual hours spent in classroom instruction in any tax supported, public vocational-technical institution, community college, or any other institution of higher learning or a correspondence course from any of the aforementioned institutions certified by such institution as the equivalent of the required number of clock hours, and the real estate commission may certify courses of instruction other than in the aforementioned institutions; and

(10) "Incapacitated" means the physical or mental inability to perform the duties of broker prescribed by this chapter. [1987 c 332 § 1; 1981 c 305 § 1; 1979 c 158 § 68; 1977 ex.s. c 370 § 1; 1973 1st ex.s. c 57 § 1; 1972 ex.s. c 139 § 1; 1969 c 78 § 1; 1953 c 235 § 1; 1951 c 222 § 1; 1943 c 118 § 1; 1941 c 252 § 2; Rem. Supp. 1943 § 8340-25. Prior: 1925 ex.s. c 129 § 4.]

18.85.030 Employees. The director shall appoint an adequate staff to assist him. [1972 ex.s. c 139 § 2; 1951 c 222 § 2; 1945 c 111 § 1, part; 1941 c 252 § 5, part; Rem. Supp. 1945 § 8340-28, part.]

18.85.040 Director—General powers and duties—Disciplinary action. (1) The director, with the advice and approval of the commission, may issue rules and regulations to govern the activities of real estate brokers, associate real estate brokers and salespersons, consistent with this chapter, fix the times and places for holding examinations of applicants for licenses and prescribe the method of conducting them.

(2) The director shall enforce all laws, rules and regulations relating to the licensing of real estate brokers, associate real estate brokers, and salespersons, grant or deny licenses to real estate brokers, associate real estate brokers, and salespersons, and hold hearings. The director may impose any one or more of the following sanctions: Suspend or revoke licenses, deny applications for licenses, fine violators, or require the completion of a course in a selected aspect of real estate practice relevant to the provision of this chapter or rule violated. The director may deny, suspend or revoke the authority of a broker to act as the designated broker of persons who commit violations of the real estate license law or of the rules and regulations.

(3) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions.

(4) The director shall institute a program of real estate education including, but not limited to, instituting a program of education at institutions of higher education in Washington. The overall program shall include establishing minimum levels of ongoing education for licensees relating to the practice of real estate by real estate brokers and salespersons under this chapter. The program may also include the development or implementation of curricula courses, educational materials, or approaches to education relating to real estate when required, approved, or certified for continuing education credit. The director may enter into contracts with other persons or entities, whether publicly or privately owned or operated, to assist in developing or implementing the real estate education program.

(5) The director shall charge a fee, as prescribed by the director by rule, for the certification of courses of instruction, instructors, and schools. [1992 c 92 § 1; 1988 c 205 § 2; 1987 c 332 § 2; 1972 ex.s. c 139 § 3; 1953 c 235 § 2; 1951 c 222 § 3; 1941 c 252 § 4; Rem. Supp. 1941 § 8340-27. Prior: 1925 ex.s. c 129 § 2.]

Effective date—1992 c 92: "This act shall take effect July 1, 1993." [1992 c 92 § 5.]

18.85.050 Director and employees business interest prohibited. Neither the director nor any employees, shall be interested in any real estate business regulated by *this 1972 amendatory act: PROVIDED, That if any real estate broker, associate real estate broker, or salesman is employed by the director or by the commission as an employee, the license of such broker, associate real estate broker, or salesman shall not be revoked, suspended, or canceled by reason thereof. [1972 ex.s. c 139 § 4; 1953 c 235 § 3; 1951 c 222 § 4; 1945

c 111 § 1, part; 1941 c 252 § 5, part; Rem. Supp. 1945 § 8340-28, part.]

***Reviser's note:** "This 1972 amendatory act" [1972 ex.s. c 139] consists of the amendments to RCW 18.85.010, 18.85.030, 18.85.040, 18.85.050, 18.85.060, 18.85.071, 18.85.090, 18.85.100, 18.85.110, 18.85.130, 18.85.140, 18.85.150, 18.85.161, 18.85.170, 18.85.190, 18.85.210, 18.85.230, 18.85.271, 18.85.290, and the enactment of RCW 18.85.095, 18.85.155, and 18.85.920.

18.85.055 Licensure of state employees conducting real estate transactions. No person licensed under this chapter who is employed by the state and who is conducting real estate transactions on behalf of the state may hold an active license under this chapter. [1987 c 514 § 2.]

Severability—1987 c 514: See RCW 18.118.900.

18.85.060 Director's seal. The director shall adopt a seal with the words real estate director, state of Washington, and such other device as he may approve engraved thereon, by which he shall authenticate the proceedings of his office. Copies of all records and papers in the office of the director certified to be a true copy under the hand and seal of the director shall be received in evidence in all cases equally and with like effect as the originals. The director may deputize one or more of his assistants to certify records and papers. [1972 ex.s. c 139 § 5; 1941 c 252 § 8; RRS § 8340-31. Prior: 1925 ex.s. c 129 § 7.]

18.85.071 Real estate commission created—Qualifications, terms, appointment of members—Vacancies. There is established the real estate commission of the state of Washington, consisting of the director of the commission and six commission members who shall act in an advisory capacity to the director.

The six commission members shall be appointed by the governor in the following manner: For a term of six years each, with the exception of the first appointees, who shall be appointed one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, and one for a term of six years, with all other subsequent appointees to be appointed for a six year term. At least two of the commission members shall be selected from the area in the state west of the Cascade mountain range and at least two shall be selected from that area of the state east of the Cascade mountain range. No commission member shall be appointed who has had less than five years experience in the sale, operation, or management of real estate in this state, or has had at least three years experience in investigative work of a similar nature, preferably in connection with the administration of real estate license law of this state or elsewhere. Any vacancies on the commission shall be filled by appointment by the governor for the unexpired term. [1972 ex.s. c 139 § 6; 1953 c 235 § 17.]

18.85.080 Commission—Compensation and travel expenses. The six board members of the commission shall be compensated in accordance with RCW 43.03.240, plus travel expenses in accordance with RCW 43.03.050 and 43.03.060 when they shall be called into session by the director or when presiding at examinations for applicants for licenses or when otherwise engaged in the business of the

commission. [1984 c 287 § 49; 1975-'76 2nd ex.s. c 34 § 49; 1953 c 235 § 4; 1951 c 222 § 6; 1941 c 252 § 14; Rem. Supp. 1941 § 8340-37.]

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

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

18.85.085 Commission—Educational conferences—Examinations of applicants for licenses. The commission shall have authority to hold educational conferences for the benefit of the industry, and shall conduct examinations of applicants for licenses under this chapter. It shall be charged with the preparation of such examinations and shall administer them at least once a month, with not less than six examinations per year in each of the following six areas of the state: Northwest Washington, southwest Washington, northeast Washington, southeast Washington, north central Washington, and south central Washington. [1977 ex.s. c 24 § 1; 1953 c 235 § 18.]

18.85.090 Broker's license—Requirements—Exception. (1) The minimum requirements for an individual to receive a broker's license are that the individual:

(a) Is eighteen years of age or older;
 (b) Has a high school diploma or its equivalent;
 (c) Has had a minimum of two years of actual experience as a full-time real estate salesperson in this state or in another state having comparable requirements within the five years previous to applying for the broker's license examination or is, in the opinion of the director, otherwise and similarly qualified, or is otherwise qualified by reason of practical experience in a business allied with or related to real estate;

(d) Except as provided in RCW 18.85.097, has furnished proof, as the director may require, that the applicant has successfully completed one hundred twenty hours of instruction in real estate. Instruction must include one course in brokerage management, one course in real estate law, one course in business management, and one elective course. Each course must be completed within five years prior to applying for the broker's license examination, be at least thirty clock hours, and be approved by the director. The applicant must pass a course examination, approved by the director for each course used to satisfy the broker's license requirement; and

(e) Has passed the broker's license examination.

(2) Nothing in this section applies to persons who are licensed as brokers under any real estate law in Washington that exists prior to this law's enactment, but only if their license has not been subsequently canceled or revoked. [1994 c 291 § 1; 1985 c 162 § 1; 1972 ex.s. c 139 § 8; 1953 c 235 § 5; 1951 c 222 § 7; 1941 c 252 § 15; Rem. Supp. 1941 § 8340-38.]

Effective date—1994 c 291: "This act shall take effect July 1, 1995." [1994 c 291 § 5.]

18.85.095 Salespersons—Requirements—Renewal—Exception. (1) The minimum requirements for an individual to receive a salesperson's license are that the individual:

(a) Is eighteen years of age or older;

(b) Except as provided in *RCW 18.85.087, has furnished proof, as the director may require, that the applicant has successfully completed a sixty clock-hour course, approved by the director, in real estate fundamentals. The applicant must pass a course examination approved by the director. This course must be completed within five years prior to applying for the salesperson's license examination; and

(c) Has passed a salesperson's license examination.

(2) The minimum requirements for a salesperson to be issued the first renewal of a license are that the salesperson:

(a) Has furnished proof, as the director may require, that the salesperson has successfully completed a thirty clock-hour course, from a prescribed curriculum approved by the director, in real estate practices. The salesperson must pass a course examination approved by the director. This course shall be commenced after issuance of a first license; and

(b) Has furnished proof, as the director may require, that the salesperson has completed an additional thirty clock hours of continuing education in compliance with RCW 18.85.165. Courses for continuing education clock-hour credit shall be commenced after issuance of a first license.

(3) Nothing in this section applies to persons who are licensed as salespersons under any real estate law in Washington which exists prior to this law's enactment, but only if their license has not been subsequently canceled or revoked. [1994 c 291 § 2; 1988 c 205 § 3; 1987 c 332 § 3; 1985 c 162 § 2; 1977 ex.s. c 370 § 2; 1972 ex.s. c 139 § 7.]

*Reviser's note: The reference to RCW 18.85.087 appears to be erroneous. RCW 18.85.097 was apparently intended.

Effective date—1994 c 291: See note following RCW 18.85.090.

18.85.097 Substitution of educational requirements—Rules. The director may allow for substitution of the clock-hour requirements in RCW 18.85.090(1)(d) and 18.85.095(1)(b), if the director makes a determination that the individual is otherwise and similarly qualified by reason of completion of equivalent educational coursework in any institution of higher education as defined in RCW 28B.10.016 or any degree-granting institution as defined in RCW 28B.85.010 approved by the director. The director shall establish by rule, guidelines for determining equivalent educational coursework. [1994 c 291 § 4; 1987 c 332 § 18.]

Effective date—1994 c 291: See note following RCW 18.85.090.

18.85.100 License required—Prerequisite to suit for commission. It shall be unlawful for any person to act as a real estate broker, associate real estate broker, or real estate salesman without first obtaining a license therefor, and otherwise complying with the provisions of this chapter.

No suit or action shall be brought for the collection of compensation as a real estate broker, associate real estate broker, or real estate salesman, without alleging and proving that the plaintiff was a duly licensed real estate broker, associate real estate broker, or real estate salesman prior to the time of offering to perform any such act or service or procuring any promise or contract for the payment of compensation for any such contemplated act or service. [1972 ex.s. c 139 § 9; 1951 c 222 § 8. Formerly: (i) 1941 c 252 § 6; Rem. Supp. 1941 § 8340-29. (ii) 1941 c 252 § 25; Rem. Supp. 1941 § 8340-48.]

18.85.110 Exemptions from licensing. This chapter shall not apply to (1) any person who purchases property and/or a business opportunity for his own account, or that of a group of which he is a member, or who, as the owner or part owner of property, and/or a business opportunity, in any way disposes of the same; nor, (2) any duly authorized attorney in fact acting without compensation, or an attorney at law in the performance of his duties; nor, (3) any receiver, trustee in bankruptcy, executor, administrator, guardian, or any person acting under the order of any court, or selling under a deed of trust; nor, (4) any secretary, bookkeeper, accountant, or other office personnel who does not engage in any conduct or activity specified in any of the definitions under RCW 18.85.010; nor, (5) any owner of rental or lease property, members of the owner's family whether or not residing on such property, or a resident manager of a complex of residential dwelling units wherein such manager resides; nor, (6) any person who manages residential dwelling units on an incidental basis and not as his principal source of income so long as that person does not advertise or hold himself out to the public by any oral or printed solicitation or representation that he is so engaged; nor, (7) only with respect to the rental or lease of individual storage space, any person who owns or manages a self-service storage facility as defined under chapter 19.150 RCW. [1989 c 161 § 1; 1988 c 240 § 20; 1977 ex.s. c 370 § 9; 1972 ex.s. c 139 § 10; 1951 c 222 § 9; 1941 c 252 § 3; Rem. Supp. 1941 § 8340-26. Prior: 1925 ex.s. c 129 § 4.]

Severability—1988 c 240: See RCW 19.150.904.

18.85.120 Applications—Conditions—Fees. Any person desiring to be a real estate broker, associate real estate broker, or real estate salesperson, must pass an examination as provided in this chapter. Such person shall make application for an examination and for a license on a form prescribed by the director. Concurrently, the applicant shall:

(1) Pay an examination fee as prescribed by the director by rule.

(2) If the applicant is a corporation, furnish a certified copy of its articles of incorporation, and a list of its officers and directors and their addresses. If the applicant is a foreign corporation, the applicant shall furnish a certified copy of certificate of authority to conduct business in the state of Washington, a list of its officers and directors and their addresses, and evidence of current registration with the secretary of state. If the applicant is a copartnership, the applicant shall furnish a list of the members thereof and their addresses.

(3) Furnish such other proof as the director may require concerning the honesty, truthfulness, and good reputation, as well as the identity, which may include fingerprints, of any applicants for a license, or of the officers of a corporation making the application. [1987 c 332 § 4; 1980 c 72 § 1; 1979 c 25 § 1. Prior: 1977 ex.s. c 370 § 3; 1977 ex.s. c 24 § 2; 1973 1st ex.s. c 42 § 1; 1953 c. 235 § 6; 1951 c 222 § 10. Formerly: (i) 1947 c 203 § 1, part; 1945 c 111 § 3, part; 1943 c 118 § 2, part; 1941 c 252 § 11, part; Rem. Supp. 1947 § 8340-34, part; prior: 1925 ex.s. c 129 §§ 10, 11. (ii) 1947 c 203 § 3; 1945 c 111 § 6; 1941 c 252 § 16; Rem. Supp. 1947 § 8340-39.]

18.85.130 Examinations—Scope—Manual—Moneys from sale. The director shall provide each original applicant for a license with a manual containing a sample list of questions and answers pertaining to real estate law and the operation of the business and may provide the same at cost to any licensee or to other members of the public. The director shall ascertain by written examination, that each applicant, and in case of a corporation, or copartnership, that each officer, agent, or member thereof whom it proposes to act as licensee, has:

(1) Appropriate knowledge of the English language, including reading, writing, spelling, and arithmetic;

(2) An understanding of the principles of real estate conveyancing, the general purposes and legal effect of deeds, mortgages, land contracts of sale, exchanges, rental and option agreements, and leases;

(3) An understanding of the principles of land economics and appraisals;

(4) An understanding of the obligations between principal and agent;

(5) An understanding of the principles of real estate practice and the canons of business ethics pertaining thereto; and,

(6) An understanding of the provisions of this chapter.

The examination for real estate brokers shall be more exacting than that for real estate salesmen.

All moneys received for the sale of the manual to licensees and members of the public shall be placed in the real estate commission fund to be returned to the current biennium operating budget. [1972 ex.s. c 139 § 11; 1951 c 222 § 11. Formerly: 1947 c 203 § 2, part; 1945 c 111 § 4, part; 1941 c 252 § 12, part; Rem. Supp. 1947 § 8340-35, part.]

18.85.140 License fees—Expiration—Renewal—Identification cards. Before receiving his or her license every real estate broker, every associate real estate broker, and every real estate salesperson must pay a license fee as prescribed by the director by rule. Every license issued under the provisions of this chapter expires on the applicant's second birthday following issuance of the license. Licenses issued to partnerships expire on a date prescribed by the director by rule. Licenses issued to corporations expire on a date prescribed by the director by rule, except that if the corporation registration or certificate of authority filed with the secretary of state expires, the real estate broker's license issued to the corporation shall expire on that date. Licenses must be renewed every two years on or before the date established under this section and a biennial renewal license fee as prescribed by the director by rule must be paid.

If the application for a renewal license is not received by the director on or before the renewal date, a penalty fee as prescribed by the director by rule shall be paid. Acceptance by the director of an application for renewal after the renewal date shall not be a waiver of the delinquency.

The license of any person whose license renewal fee is not received within one year from the date of expiration shall be canceled. This person may obtain a new license by satisfying the procedures and requirements as prescribed by the director by rule.

The director shall issue to each active licensee a license and a pocket identification card in such form and size as he or she shall prescribe. [1991 c 225 § 2; 1989 c 161 § 2; 1987 c 332 § 5; 1979 c 25 § 2. Prior: 1977 ex.s. c 370 § 4; 1977 ex.s. c 24 § 3; 1972 ex.s. c 139 § 12; 1953 c 235 § 7; 1951 c 222 § 12. Formerly: (i) 1947 c 203 § 2, part; 1945 c 111 § 4, part; 1941 c 252 § 12, part; Rem. Supp. 1947 § 8340-35, part. (ii) 1947 c 203 § 1, part; 1945 c 111 § 3, part; 1943 c 118 § 2, part; 1941 c 252 § 11, part; Rem. Supp. 1947 § 8340-34, part; prior: 1925 ex.s. c 129 §§ 10, 11.]

Effective date—1989 c 161 § 2: "Section 2 of this act shall take effect January 1, 1991." [1989 c 161 § 4.]

18.85.150 Temporary permits. A temporary broker's permit may, in the discretion of the director, be issued to the legally accredited representative of a deceased or incapacitated broker, the senior qualified salesman in that office or other qualified representative of the deceased or incapacitated broker, which shall be valid for a period not exceeding four months and in the case of a partnership or a corporation, the same rule shall prevail in the selection of a person to whom a temporary broker's permit may be issued. [1979 c 25 § 3. Prior: 1977 ex.s. c 370 § 5; 1977 ex.s. c 24 § 4; 1972 ex.s. c 139 § 13; 1953 c 235 § 8; 1951 c 222 § 13; prior: (i) 1947 c 203 § 2, part; 1945 c 111 § 4, part; 1941 c 252 § 12, part; Rem. Supp. 1947 § 8340-35, part. (ii) 1947 c 203 § 1, part; 1945 c 111 § 3, part; 1943 c 118 § 2, part; 1941 c 252 § 11, part; Rem. Supp. 1947 § 8340-34, part; prior: 1925 ex.s. c 129 §§ 10, 11.]

18.85.155 Responsibility for conduct of subordinates. Responsibility for any salesman, associate broker or branch manager in conduct covered by this chapter shall rest with the broker to which such licensees shall be licensed.

In addition to the broker, a branch manager shall bear responsibility for salesmen and associate brokers operating under the branch manager at a branch office. [1977 ex.s. c 370 § 6; 1972 ex.s. c 139 § 14.]

18.85.165 Licenses—Continuing education. All real estate brokers and salespersons shall furnish proof as the director may require that they have successfully completed a total of thirty clock hours of instruction every two years in real estate courses approved by the director in order to renew their licenses. Up to fifteen clock hours of instruction beyond the thirty hours in two years may be carried forward for credit in a subsequent two-year period. To count towards this requirement, a course shall be commenced within thirty-six months before the proof date for renewal. Examinations shall not be required to fulfill any part of the education requirement in this section. This section shall apply to renewal dates after January 1, 1991. [1991 c 225 § 1; 1988 c 205 § 1.]

18.85.170 Licenses—Restrictions as to use—Exceptions. No license issued under the provisions of this chapter shall authorize any person other than the person to whom it is issued to do any act by virtue thereof nor to operate in any other manner than under his own name except:

(1) When a license is issued to a corporation it shall entitle one officer thereof, to be named by the corporation in its application, who shall qualify the same as any other agent, to act as a real estate broker on behalf of said corporation, without the payment of additional fees;

(2) When a license is issued to a copartnership it shall entitle one member thereof to be named in the application, who shall qualify to act as a real estate broker on behalf of the copartnership, without the payment of additional license fees;

(3) A licensed broker, associate broker, or salesman may operate and/or advertise under a name other than the one under which the license is issued by obtaining the written consent of the director to do so;

(4) A broker may establish one or more branch offices under a name or names different from that of the main office if the name or names are approved by the director, so long as each branch office is clearly identified as a branch or division of the main office. No broker may establish branch offices under more than three names. Both the name of the branch office and of the main office must clearly appear on the sign identifying the office, if any, and in any advertisement or on any letterhead of any stationery or any forms, or signs used by the real estate firm on which either the name of the main or branch offices appears. [1972 ex.s. c 139 § 16; 1951 c 222 § 14; 1945 c 111 § 2; 1941 c 252 § 10; Rem. Supp. 1945 § 8340-33. Prior: 1925 ex.s. c 129 § 9.]

18.85.180 Licenses—Office required—Display of license. Every licensed real estate broker must have and maintain an office in this state accessible to the public which shall serve as his office for the transaction of business. Any office so established must comply with the zoning requirements of city or county ordinances and the broker's license must be prominently displayed therein. [1957 c 52 § 41; 1951 c 222 § 15. Prior: 1947 c 203 § 4, part; 1945 c 111 § 7, part; 1943 c 118 § 4, part; 1941 c 252 § 18, part; Rem. Supp. 1947 § 8340-41, part; prior: 1925 ex.s. c 129 § 12, part.]

18.85.190 Licenses—Branch office. A real estate broker may apply to the director for authority to establish one or more branch offices under the same name as the main office upon the payment of a fee as prescribed by the director by rule. The director shall issue a duplicate license for each of the branch offices showing the location of the main office and the particular branch. Each duplicate license shall be prominently displayed in the office for which it is issued. Each branch office shall be required to have a branch manager who shall be an associate broker authorized by the designated broker to perform the duties of a branch manager.

A branch office license shall not be required where real estate sales activity is conducted on and, limited to a particular subdivision or tract, if a licensed office or branch office is located within thirty-five miles of the subdivision or tract. [1989 c 161 § 3; 1987 c 332 § 6; 1977 ex.s. c 24 § 5; 1972 ex.s. c 139 § 17; 1957 c 52 § 42. Prior: 1947 c 203 § 4, part; 1945 c 111 § 7, part; 1943 c 118 § 4, part; 1941

c 252 § 18, part; Rem. Supp. 1947 § 8340-41, part; prior: 1925 ex.s. c 129 § 12, part.]

18.85.200 Licenses—Change of location. Notice in writing shall be given to the director of any change by a real estate broker, associate broker, or salesperson of his or her business location or of any branch office. Upon the surrender of the original license for the business or the duplicate license applicable to a branch office, and a payment of a fee as prescribed by the director by rule, the director shall issue a new license or duplicate license, as the case may be, covering the new location. [1987 c 332 § 7; 1971 ex.s. c 266 § 17; 1957 c 52 § 43. Prior: 1947 c 203 § 4, part; 1945 c 111 § 7, part; 1943 c 118 § 4, part; 1941 c 252 § 18, part; Rem. Supp. 1947 § 8340-41, part; prior: 1925 ex.s. c 129 § 12, part.]

18.85.210 Licenses—Annual list—Compilation—Distribution. The director may publish annually a list of names and addresses of brokers and salesmen licensed under the provisions hereof, together with a copy of this chapter and such information relative to the enforcement of the provisions hereof as he may deem of interest to the public; and he may mail one copy thereof to each licensed broker. [1972 ex.s. c 139 § 18; 1953 c 235 § 10; 1947 c 203 § 8; 1941 c 252 § 27; Rem. Supp. 1947 § 8340-50. Prior: 1925 ex.s. c 129 § 22.]

18.85.215 Inactive licenses. (1) Any license issued under this chapter and not otherwise revoked shall be deemed "inactive" at any time it is delivered to the director. Until reissued under this chapter, the holder of an inactive license shall be deemed to be unlicensed.

(2) An inactive license may be renewed on the same terms and conditions as an active license, except that a person with an inactive license need not comply with the education requirements of RCW 18.85.095(2)(a) or 18.85.165. Failure to renew shall result in cancellation in the same manner as an active license.

(3) An inactive license may be placed in an active status upon completion of an application as provided by the director and upon compliance with this chapter and the rules adopted pursuant thereto. If a holder has an inactive license for more than three years, the holder must show proof of successfully completing a thirty clock hour course in real estate within one year prior to the application for active status. Holders employed by the state and conducting real estate transactions on behalf of the state are exempt from this course requirement.

(4) The provisions of this chapter relating to the denial, suspension, and revocation of a license shall be applicable to an inactive license as well as an active license, except that when proceedings to suspend or revoke an inactive license have been initiated, the license shall remain inactive until the proceedings have been completed. [1994 c 291 § 3; 1988 c 205 § 4. Prior: 1987 c 514 § 1; 1987 c 332 § 17; 1985 c 162 § 4; 1977 ex.s. c 370 § 8.]

Effective date—1994 c 291: See note following RCW 18.85.090.

Severability—1987 c 514: See RCW 18.118.900.

18.85.220 License fees—Real estate commission account. All fees required under this chapter shall be set by the director in accordance with RCW 43.24.086 and shall be paid to the state treasurer. All fees paid under the provisions of this chapter shall be placed in the real estate commission account in the state treasury. All money derived from fines imposed under this chapter shall be deposited in the real estate education account created by RCW 18.85.317. [1993 c 50 § 1; 1991 c 277 § 1; 1987 c 332 § 8; 1967 c 22 § 1; 1953 c 235 § 11; 1941 c 252 § 7; Rem. Supp. 1941 § 8340-30.]

Effective date—1993 c 50: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 50 § 5.]

Effective date—1991 c 277: "This act shall take effect July 1, 1993." [1991 c 277 § 3.]

18.85.225 License suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the license of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 14.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.85.230 Disciplinary action—Grounds. (*Effective until January 1, 1997.*) The director may, upon his or her own motion, and shall upon verified complaint in writing by any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker, associate real estate broker, or real estate salesperson, regardless of whether the transaction was for his or her own account or in his or her capacity as broker, associate real estate broker, or real estate salesperson, and may impose any one or more of the following sanctions: Suspend or revoke, levy a fine not to exceed one thousand dollars for each offense, require the completion of a course in a selected area of real estate practice relevant to the section of this chapter or rule violated, or deny the license of any holder or applicant who is guilty of:

(1) Obtaining a license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the director;

(2) Violating any of the provisions of this chapter or any lawful rules or regulations made by the director pursuant thereto or violating a provision of chapter 64.36, 19.105, or 58.19 RCW or the rules adopted under those chapters;

(3) Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses: PROVIDED, That for the purposes of this section being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended;

(4) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions or promises purport to be made or to be performed by either the licensee or his or her principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions or promises;

(5) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device whereby any other person lawfully relies upon the word, representation or conduct of the licensee;

(6) Accepting the services of, or continuing in a representative capacity, any associate broker or salesperson who has not been granted a license, or after his or her license has been revoked or during a suspension thereof;

(7) Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title, to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract or other evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefor, shall be prima facie evidence of such conversion;

(8) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book or record in his or her possession for inspection of the director or his or her authorized representatives acting by authority of law;

(9) Continuing to sell any real estate, or operating according to a plan of selling, whereby the interests of the public are endangered, after the director has, by order in writing, stated objections thereto;

(10) Committing any act of fraudulent or dishonest dealing or a crime involving moral turpitude, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter;

(11) Advertising in any manner without affixing the broker's name as licensed, and in the case of a salesperson or associate broker, without affixing the name of the broker as licensed for whom or under whom the salesperson or associate broker operates, to the advertisement; except, that a real estate broker, associate real estate broker, or real estate salesperson advertising their personally owned real property must only disclose that they hold a real estate license;

(12) Accepting other than cash or its equivalent as earnest money unless that fact is communicated to the owner prior to his or her acceptance of the offer to purchase, and such fact is shown in the earnest money receipt;

(13) Charging or accepting compensation from more than one party in any one transaction without first making full disclosure in writing of all the facts to all the parties interested in the transaction;

(14) Accepting, taking or charging any undisclosed commission, rebate or direct profit on expenditures made for the principal;

(15) Accepting employment or compensation for appraisal of real property contingent upon reporting a predetermined value;

(16) Issuing an appraisal report on any real property in which the broker, associate broker, or salesperson has an interest unless his or her interest is clearly stated in the appraisal report;

(17) Misrepresentation of his or her membership in any state or national real estate association;

(18) Discrimination against any person in hiring or in sales activity, on the basis of race, color, creed or national origin, or violating any of the provisions of any state or federal antidiscrimination law;

(19) Failing to keep an escrow or trustee account of funds deposited with him or her relating to a real estate transaction, for a period of three years, showing to whom paid, and such other pertinent information as the director may require, such records to be available to the director, or his or her representatives, on demand, or upon written notice given to the bank;

(20) Failing to preserve for three years following its consummation records relating to any real estate transaction;

(21) Failing to furnish a copy of any listing, sale, lease or other contract relevant to a real estate transaction to all signatories thereof at the time of execution;

(22) Acceptance by a branch manager, associate broker, or salesperson of a commission or any valuable consideration for the performance of any acts specified in this chapter, from any person, except the licensed real estate broker with whom he or she is licensed;

(23) To direct any transaction involving his or her principal, to any lending institution for financing or to any escrow company, in expectation of receiving a kickback or rebate therefrom, without first disclosing such expectation to his or her principal;

(24) Buying, selling, or leasing directly, or through a third party, any interest in real property without disclosing in writing that he or she holds a real estate license;

(25) In the case of a broker licensee, failing to exercise adequate supervision over the activities of his or her licensed associate brokers and salespersons within the scope of this chapter;

(26) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness or incompetency;

(27) Acting as a mobile home and travel trailer dealer or salesperson, as defined in RCW 46.70.011 as now or hereafter amended, without having a license to do so;

(28) Failing to assure that the title is transferred under chapter 46.12 RCW when engaging in a transaction involv-

ing a mobile home as a broker, associate broker, or salesperson; or

(29) Violation of an order to cease and desist which is issued by the director under this chapter. [1990 c 85 § 1; 1988 c 205 § 5. Prior: 1987 c 370 § 15; 1987 c 332 § 9; 1979 c 25 § 4; prior: 1977 ex.s. c 261 § 1; 1977 ex.s. c 204 § 1; 1972 ex.s. c 139 § 19; 1967 c 22 § 3; 1953 c 235 § 12; 1951 c 222 § 16; 1947 c 203 § 5; 1945 c 111 § 8; 1943 c 118 § 5; 1941 c 252 § 19; Rem. Supp. 1947 § 8340-42; prior: 1925 ex.s. c 129 § 13.]

False advertising: Chapter 9.04 RCW.

Obstructing justice: Chapter 9A.72 RCW.

18.85.230 Disciplinary action—Grounds. (*Effective January 1, 1997.*) The director may, upon his or her own motion, and shall upon verified complaint in writing by any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate broker, associate real estate broker, or real estate salesperson, regardless of whether the transaction was for his or her own account or in his or her capacity as broker, associate real estate broker, or real estate salesperson, and may impose any one or more of the following sanctions: Suspend or revoke, levy a fine not to exceed one thousand dollars for each offense, require the completion of a course in a selected area of real estate practice relevant to the section of this chapter or rule violated, or deny the license of any holder or applicant who is guilty of:

(1) Obtaining a license by means of fraud, misrepresentation, concealment, or through the mistake or inadvertence of the director;

(2) Violating any of the provisions of this chapter or any lawful rules or regulations made by the director pursuant thereto or violating a provision of chapter 64.36, 19.105, or 58.19 RCW or RCW 18.86.030 or the rules adopted under those chapters or section;

(3) Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses: PROVIDED, That for the purposes of this section being convicted shall include all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended;

(4) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions or promises purport to be made or to be performed by either the licensee or his or her principal and the licensee then knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions or promises;

(5) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme or device whereby any other person lawfully relies upon the word, representation or conduct of the licensee;

(6) Accepting the services of, or continuing in a representative capacity, any associate broker or salesperson who has not been granted a license, or after his or her license has been revoked or during a suspension thereof;

(7) Conversion of any money, contract, deed, note, mortgage, or abstract or other evidence of title, to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, abstract or other evidence of title within thirty days after the owner thereof is entitled thereto, and makes demand therefor, shall be prima facie evidence of such conversion;

(8) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book or record in his or her possession for inspection of the director or his or her authorized representatives acting by authority of law;

(9) Continuing to sell any real estate, or operating according to a plan of selling, whereby the interests of the public are endangered, after the director has, by order in writing, stated objections thereto;

(10) Committing any act of fraudulent or dishonest dealing or a crime involving moral turpitude, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter;

(11) Advertising in any manner without affixing the broker's name as licensed, and in the case of a salesperson or associate broker, without affixing the name of the broker as licensed for whom or under whom the salesperson or associate broker operates, to the advertisement; except, that a real estate broker, associate real estate broker, or real estate salesperson advertising their personally owned real property must only disclose that they hold a real estate license;

(12) Accepting other than cash or its equivalent as earnest money unless that fact is communicated to the owner prior to his or her acceptance of the offer to purchase, and such fact is shown in the earnest money receipt;

(13) Charging or accepting compensation from more than one party in any one transaction without first making full disclosure in writing of all the facts to all the parties interested in the transaction;

(14) Accepting, taking or charging any undisclosed commission, rebate or direct profit on expenditures made for the principal;

(15) Accepting employment or compensation for appraisal of real property contingent upon reporting a predetermined value;

(16) Issuing an appraisal report on any real property in which the broker, associate broker, or salesperson has an interest unless his or her interest is clearly stated in the appraisal report;

(17) Misrepresentation of his or her membership in any state or national real estate association;

(18) Discrimination against any person in hiring or in sales activity, on the basis of race, color, creed or national origin, or violating any of the provisions of any state or federal antidiscrimination law;

(19) Failing to keep an escrow or trustee account of funds deposited with him or her relating to a real estate transaction, for a period of three years, showing to whom paid, and such other pertinent information as the director may require, such records to be available to the director, or his or her representatives, on demand, or upon written notice given to the bank;

(20) Failing to preserve for three years following its consummation records relating to any real estate transaction;

(21) Failing to furnish a copy of any listing, sale, lease or other contract relevant to a real estate transaction to all signatories thereof at the time of execution;

(22) Acceptance by a branch manager, associate broker, or salesperson of a commission or any valuable consideration for the performance of any acts specified in this chapter, from any person, except the licensed real estate broker with whom he or she is licensed;

(23) To direct any transaction involving his or her principal, to any lending institution for financing or to any escrow company, in expectation of receiving a kickback or rebate therefrom, without first disclosing such expectation to his or her principal;

(24) Buying, selling, or leasing directly, or through a third party, any interest in real property without disclosing in writing that he or she holds a real estate license;

(25) In the case of a broker licensee, failing to exercise adequate supervision over the activities of his or her licensed associate brokers and salespersons within the scope of this chapter;

(26) Any conduct in a real estate transaction which demonstrates bad faith, dishonesty, untrustworthiness or incompetency;

(27) Acting as a mobile home and travel trailer dealer or salesperson, as defined in RCW 46.70.011 as now or hereafter amended, without having a license to do so;

(28) Failing to assure that the title is transferred under chapter 46.12 RCW when engaging in a transaction involving a mobile home as a broker, associate broker, or salesperson; or

(29) Violation of an order to cease and desist which is issued by the director under this chapter. [1996 c 179 § 18; 1990 c 85 § 1; 1988 c 205 § 5. Prior: 1987 c 370 § 15; 1987 c 332 § 9; 1979 c 25 § 4; prior: 1977 ex.s. c 261 § 1; 1977 ex.s. c 204 § 1; 1972 ex.s. c 139 § 19; 1967 c 22 § 3; 1953 c 235 § 12; 1951 c 222 § 16; 1947 c 203 § 5; 1945 c 111 § 8; 1943 c 118 § 5; 1941 c 252 § 19; Rem. Supp. 1947 § 8340-42; prior: 1925 ex.s. c 129 § 13.]

Effective date—1996 c 179: See RCW 18.86.902.

False advertising: Chapter 9.04 RCW.

Obstructing justice: Chapter 9A.72 RCW.

18.85.240 Disciplinary action—Director's delegation of authority. The director may deputize one or more assistants to perform his or her duties with reference to disciplinary action. [1988 c 205 § 6; 1987 c 332 § 10; 1957 c 52 § 45. Prior: 1945 c 111 § 9, part; 1941 c 252 § 20, part; 1925 ex.s. c 129 § 14, part; Rem. Supp. 1945 § 8340-43, part.]

18.85.251 Disciplinary action—Procedure—Investigation—Hearing. The disciplinary proceedings shall

be had on motion of the director or after a statement in writing verified by some person or persons familiar with the facts upon which the proposed disciplinary action is based has been filed with the director. Upon receipt of such statement or accusation, the director shall make a preliminary investigation of the facts charged to determine whether the statement or accusation is sufficient. If the director shall determine the statement or accusation is sufficient to require formal action, the director shall thereupon set the matter for hearing at a specified time and place. A copy of such order setting time and place and a copy of the verified statement shall be served upon the licensee or applicant involved not less than twenty days before the day appointed in the order for said hearing. The department of licensing, the licensee or applicant accused, and the person making the accusation may be represented by counsel at such a hearing. The director or an administrative law judge appointed under chapter 34.12 RCW shall hear and receive pertinent evidence and testimony. [1988 c 205 § 7; 1987 c 332 § 11; 1981 c 67 § 22; 1951 c 222 § 23.]

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

18.85.261 Disciplinary action—Hearing—Conduct of. If the licensed person or applicant accused does not appear at the time and place appointed for the hearing in person or by counsel, the hearing officer may proceed and determine the facts of the accusation in his or her absence. The proceedings may be conducted at places within the state convenient to all persons concerned as determined by the director, and may be adjourned from day to day or for longer periods. The hearing officer shall cause a transcript of all such proceedings to be kept by a reporter and shall upon request after completion thereof, furnish a copy of such transcript to the licensed person or applicant accused in such proceedings at the expense of the licensee or applicant. The hearing officer shall certify the transcript of proceedings to be true and correct. If the director finds that the statement or accusation is not proved by a fair preponderance of evidence, the director shall notify the licensee or applicant and the person making the accusation and shall dismiss the case. [1987 c 332 § 12; 1951 c 222 § 24.]

18.85.271 Disciplinary action—Order—Judicial review. If the director shall decide, after such hearing, that the evidence supports the accusation by a preponderance of evidence, the director may impose sanctions authorized under RCW 18.85.040. In such event the director shall enter an order to that effect and shall file the same in his or her office and immediately mail a copy thereof to the affected party at the address of record with the department. Such order shall not be operative for a period of ten days from the date thereof. Any licensee or applicant aggrieved by a final decision by the director in an adjudicative proceeding, whether such decision is affirmative or negative in form, is entitled to a judicial review in the superior court under the provisions of the Administrative Procedure Act, chapter 34.05 RCW. Upon instituting appeal in the superior court, the appellant shall give a cash bond to the state of Washington, which bond shall be filed with the clerk of the court, in the sum of five hundred dollars to be approved by the judge

of said court, conditioned to pay all costs that may be awarded against such appellant in the event of an adverse decision, such bond and notice to be filed within thirty days from the date of the director's decision. [1989 c 175 § 66; 1988 c 205 § 8; 1987 c 332 § 13; 1972 ex.s. c 139 § 20; 1951 c 222 § 25.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.85.281 Appeal—As stay of order—Transcript.

The filing of such notice and bond shall supersede the order of the director until the final determination of such appeal. The director shall prepare at appellant's expense and shall certify a transcript of the whole record to the director's office of all matters involved in the appeal, which shall be thereupon delivered by the director to the court in which the appeal is pending. The appellant shall be notified of the filing of the transcript and the cost thereof and shall within fifteen days thereafter pay the cost of said transcript. If the cost is not paid in full within fifteen days the appeal shall be dismissed. [1951 c 222 § 26.]

18.85.290 Automatic termination of stay—Further appeal. If said appellant shall fail to perfect his appeal or fail to pay the expense of preparing the transcript as provided herein, said stay of proceedings shall automatically terminate.

An aggrieved party may secure review of a final judgment of the superior court under *this 1972 amendatory act by appeal therefrom. Such appeal shall be taken in the manner provided by law for appeals from the superior court in other civil cases. [1972 ex.s. c 139 § 21; 1971 c 81 § 62; 1957 c 52 § 46; 1951 c 222 § 17. Prior: 1945 c 111 § 9, part; 1941 c 252 § 20, part; Rem. Supp. 1945 § 8340-43, part; prior: 1925 ex.s. c 129 § 14, part.]

***Reviser's note:** "This 1972 amendatory act," see note following RCW 18.85.050.

18.85.300 Bonds—Remedy upon—Limit of liability.

Every bond given under the provisions of this chapter, after approval by the director, shall be filed in his office. Any person who may be damaged by the wrongful conversion of trust funds by any real estate broker, associate real estate broker, or real estate salesman, shall, in addition to other legal remedies, have a right of action on such bond for all damages not exceeding five thousand dollars against a broker or one thousand dollars against a salesman. The aggregate liability of the surety upon the bond of any real estate broker, associate real estate broker, or real estate salesman for all claims which may arise thereunder shall not exceed the sum specified therein. [1951 c 222 § 18; 1943 c 118 § 3; 1941 c 252 § 17; Rem. Supp. 1943 § 8340-40. Prior: 1925 ex.s. c 129 § 11.]

Embezzlement: Chapter 9A.56 RCW.

18.85.310 Broker's records—Separate accounts—Interest-bearing trust accounts—Disposition of interest.

(1) Every licensed real estate broker shall keep adequate records of all real estate transactions handled by or through the broker. The records shall include, but are not limited to, a copy of the earnest money receipt, and an itemization of the broker's receipts and disbursements with each transac-

tion. These records and all other records hereinafter specified shall be open to inspection by the director or the director's authorized representatives.

(2) Every real estate broker shall also deliver or cause to be delivered to all parties signing the same, at the time of signing, conformed copies of all earnest money receipts, listing agreements and all other like or similar instruments signed by the parties, including the closing statement.

(3) Every real estate broker shall also keep separate real estate fund accounts in a recognized Washington state depository authorized to receive funds in which shall be kept separate and apart and physically segregated from licensee broker's own funds, all funds or moneys of clients which are being held by such licensee broker pending the closing of a real estate sale or transaction, or which have been collected for said client and are being held for disbursement for or to said client and such funds shall be deposited not later than the first banking day following receipt thereof.

(4) Separate accounts comprised of clients' funds required to be maintained under this section, with the exception of property management trust accounts, shall be interest-bearing accounts from which withdrawals or transfers can be made without delay, subject only to the notice period which the depository institution is required to reserve by law or regulation.

(5) Every real estate broker shall maintain a pooled interest-bearing escrow account for deposit of client funds, with the exception of property management trust accounts, which are nominal. As used in this section, a "nominal" deposit is a deposit of not more than five thousand dollars.

The interest accruing on this account, net of any reasonable and appropriate financial institution service charges or fees, shall be paid to the state treasurer for deposit in the Washington housing trust fund created in RCW 43.185.030 and the real estate education account created in RCW 18.85.317. Appropriate service charges or fees are those charges made by financial institutions on other demand deposit or "now" accounts. An agent may, but shall not be required to, notify the client of the intended use of such funds.

(6) All client funds not required to be deposited in the account specified in subsection (5) of this section shall be deposited in:

(a) A separate interest-bearing trust account for the particular client or client's matter on which the interest will be paid to the client; or

(b) The pooled interest-bearing trust account specified in subsection (5) of this section if the parties to the transaction agree.

The department of licensing shall promulgate regulations which will serve as guidelines in the choice of an account specified in subsection (5) of this section or an account specified in this subsection.

(7) For an account created under subsection (5) of this section, an agent shall direct the depository institution to:

(a) Remit interest or dividends, net of any reasonable and appropriate service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the state treasurer for deposit in the housing trust fund created by RCW 43.185.030 and the real estate education account created in RCW 18.85.317; and

(b) Transmit to the director of community, trade, and economic development a statement showing the name of the person or entity for whom the remittance is spent, the rate of interest applied, and the amount of service charges deducted, if any, and the account balance(s) of the period in which the report is made, with a copy of such statement to be transmitted to the depositing person or firm.

(8) The director shall forward a copy of the reports required by subsection (7) of this section to the department of licensing to aid in the enforcement of the requirements of this section consistent with the normal enforcement and auditing practices of the department of licensing.

(9) This section does not relieve any real estate broker from any obligation with respect to the safekeeping of clients' funds.

(10) Any violation by a real estate broker of any of the provisions of this section, or RCW 18.85.230, shall be grounds for revocation of the licenses issued to the broker. [1995 c 399 § 7; 1993 c 50 § 2; 1988 c 286 § 2; 1987 c 513 § 1; 1957 c 52 § 44; 1953 c 235 § 13; 1951 c 222 § 19. Prior: 1947 c 203 § 4, part; 1945 c 111 § 7, part; 1943 c 118 § 4, part; 1941 c 252 § 18, part; Rem. Supp. 1947 § 8340-41, part; prior: 1925 ex.s. c 129 § 12, part.]

Effective date—1993 c 50: See note following RCW 18.85.220.

Effective date—1987 c 513: "This act shall take effect January 1, 1988." [1987 c 513 § 15.]

Severability—1987 c 513: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 513 § 13.]

18.85.315 Distribution of interest from brokers' trust accounts. Remittances received by the treasurer pursuant to RCW 18.85.310 shall be divided between the housing trust fund created by RCW 43.185.030, which shall receive seventy-five percent and the real estate education account created by RCW 18.85.317, which shall receive twenty-five percent. [1993 c 50 § 3; 1987 c 513 § 9.]

Effective date—1993 c 50: See note following RCW 18.85.220.

Effective date—Severability—1987 c 513: See notes following RCW 18.85.310.

18.85.317 Real estate education account. The real estate education account is created in the custody of the state treasurer. All moneys received for credit to this account pursuant to RCW 18.85.315 and all moneys derived from fines imposed under this chapter shall be deposited into the account. Any fund balance remaining in the real estate commission account attributable to moneys received under RCW 18.85.315 and moneys derived from fines imposed under this chapter as of July 1, 1993, shall be transferred to the real estate education account. Expenditures from the account may be made only upon the authorization of the director or a duly authorized representative of the director, and may be used only for the purposes of carrying out the director's programs for education of real estate licensees and others in the real estate industry as described in RCW 18.85.040(4). All expenses and costs relating to the implementation or administration of, or payment of contract fees or charges for, the director's real estate education programs may be paid from this account. The account is subject to appropriation under chapter 43.88 RCW. [1993 c 50 § 4.]

Effective date—1993 c 50: See note following RCW 18.85.220.

18.85.320 Salespersons, associate brokers—Termination of services. The license of a real estate salesperson or associate real estate broker shall be retained at all times by his or her designated broker and when any real estate salesperson or associate real estate broker ceases to represent his or her broker his or her license shall cease to be in force. Notice of such termination shall be given by the broker to the director and such notice shall be accompanied by and include the surrender of the salesperson's or associate real estate broker's license. Failure of any broker to promptly notify the director of such salesperson's or associate real estate broker's termination after demand by the affected salesperson or associate real estate broker shall work a forfeiture of the broker's license. Upon application of the salesperson or associate real estate broker and the payment of a fee as prescribed by the director by rule, the director shall issue a new license for the unexpired term, if such salesperson or associate real estate broker is otherwise entitled thereto. When a real estate salesperson's or associate real estate broker's services shall be terminated by his or her broker for a violation of any of the provisions of RCW 18.85.230, a written statement of the facts in reference thereto shall be filed forthwith with the director by the broker. [1987 c 332 § 14; 1953 c 235 § 14; 1947 c 203 § 7; 1943 c 118 § 7; 1941 c 252 § 26; Rem. Supp. 1947 § 8340-49. Prior: 1925 ex.s. c 129 § 21.]

18.85.330 Sharing commissions. It shall be unlawful for any licensed broker to pay any part of his commission or other compensation to any person who is not a licensed real estate broker in any state of the United States or its possessions or any province of the Dominion of Canada, or to a real estate salesman not licensed to do business for such broker; or for any licensed salesman to pay any part of his commission or other compensation to any person, whether licensed or not, except through his broker. [1953 c 235 § 15; 1943 c 118 § 6; 1941 c 252 § 24; Rem. Supp. 1943 § 8340-47.]

18.85.340 Violations—Penalty. Any person acting as a real estate broker, associate real estate broker, or real estate salesman, without a license, or violating any of the provisions of this chapter, shall be guilty of a gross misdemeanor. [1951 c 222 § 20; 1941 c 252 § 23; Rem. Supp. 1941 § 8340-46. Prior: 1925 ex.s. c 129 § 17.]

18.85.343 Violations—Cease and desist orders. (1) The director may issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated a provision of this chapter or a lawful order or rule of the director.

(2) If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, he may issue a temporary cease and desist order. Before issuing the temporary cease and desist order, whenever possible the director shall give notice by telephone or otherwise of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include a provision that a hearing will be held

upon request to determine whether or not the order will become permanent.

At the time the temporary cease and desist order is served, the licensee shall be notified that he is entitled to request a hearing for the sole purpose of determining whether or not the public interest imperatively requires that the temporary cease and desist order be continued or modified pending the outcome of the hearing to determine whether or not the order will become permanent. The hearing shall be held within thirty days after the department receives the request for hearing, unless the licensee requests a later hearing. A licensee may secure review of any decision rendered at a temporary cease and desist order review hearing in the same manner as an adjudicative proceeding. [1989 c 175 § 67; 1977 ex.s. c 261 § 2.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.85.345 Attorney general as legal advisor. The attorney general shall render to the director opinions upon all questions of law relating to the construction or interpretation of this chapter, or arising in the administration thereof, that may be submitted to him by the director, and shall act as attorney for the director in all actions and proceedings brought by or against him under or pursuant to any provisions of this chapter. [1941 c 252 § 9; Rem. Supp. 1941 § 8340-32. Prior: 1925 ex.s. c 129 § 8.]

18.85.350 Enforcement provisions. The director may prefer a complaint for violation of any section of this chapter before any court of competent jurisdiction.

The prosecuting attorney of each county shall prosecute any violation of the provisions of this chapter which occurs in his county, and if the prosecuting attorney fails to act, the director may request the attorney general to take action in lieu of the prosecuting attorney.

Process issued by the director shall extend to all parts of the state, and may be served by any person authorized to serve process of courts of record, or may be mailed by registered mail to the licensee's last business address of record in the office of the director.

Whenever the director believes from evidence satisfactory to him that any person has violated any of the provisions of this chapter, or any order, license, decision, demand or requirement, or any part or provision thereof, he may bring an action, in the superior court in the county wherein such person resides, against such person to enjoin any such person from continuing such violation or engaging therein or doing any act or acts in furtherance thereof. In this action an order or judgment may be entered awarding such preliminary or final injunction as may be proper.

The director may petition the superior court in any county in this state for the immediate appointment of a receiver to take over, operate or close any real estate office in this state which is found, upon inspection of its books and records to be operating in violation of the provisions of this chapter, pending a hearing as herein provided. [1967 c 22 § 2; 1957 c 52 § 48; 1953 c 235 § 16. Prior: (i) 1941 c 252 § 21, part; Rem. Supp. 1941 § 8340-44, part. (ii) 1947 c 203 § 6; 1941 c 252 § 22; Rem. Supp. 1947 § 8340-45.]

18.85.360 Witnesses—Depositions—Fees—Subpoenas. The director may administer oaths; certify to all official acts; subpoena and bring before him any person in this state as a witness; compel the production of books and papers; and take the testimony of any person by deposition in the manner prescribed for procedure of the superior courts in civil cases, in any hearing in any part of the state.

Each witness, who appears by order of the director, shall receive for his attendance the fees and mileage allowed to a witness in civil cases in the superior court. Witness fees shall be paid by the party at whose request the witness is subpoenaed.

If a witness, who has not been required to attend at the request of any party, is subpoenaed by the director, his fees and mileage shall be paid from funds appropriated for the use of the real estate department in the same manner as other expenses of the department are paid. [1957 c 52 § 49. Prior: 1941 c 252 § 21, part; Rem. Supp. 1941 § 8340-44, part.]

18.85.400 Multiple listing associations—Entrance requirements. Each real estate multiple listing association shall submit to the real estate commission for approval or disapproval its entrance requirements. No later than sixty days after receipt of the real estate multiple listing associations entrance requirements the commission shall, with the directors approval, approve or disapprove the said entrance requirements. In no event shall the real estate commission approve any entrance requirements which shall be more restrictive on the person applying to join a real estate multiple listing association than the following:

(1) Require the applicant at the time of application and admission to be a licensed broker under chapter 18.85 RCW;

(2) Require the applicant, if all members of the real estate multiple listing association are so required, to obtain and maintain a policy of insurance, containing specified coverage within designated limits protecting members from claims by sellers who have made keys to their premises available to members for access to their properties, against losses arising from damage to or theft of contents of such properties;

(3) Require the applicant to pay an initiation fee computed by dividing an amount equal to five times the book value of the real estate multiple listing association concerned (exclusive of any value for listings and exclusive of all investments not related to the operation of the real estate multiple listing association and exclusive of all real estate), by the number of real estate broker members of said organization: PROVIDED, That in no event shall the initiation fee exceed twenty-five hundred dollars;

(4) Require the applicant for membership to have been:

(a) A broker in the territory of the real estate multiple listing association for a period of one year; or

(b) An associate broker with one year's experience in the area of the real estate multiple listing association, who in addition has had one year's experience as a broker in any other area of the state.

(5) Require the applicant to follow any other rules of the association which apply to all the members of such association: PROVIDED, That such other rules do not violate federal or state law: PROVIDED, That nothing in

*this 1969 amendatory act shall be construed to limit the authority of any real estate multiple listing association to engage in any activities which are not otherwise prohibited by law. [1969 c 78 § 2.]

*Reviser's note: "This 1969 amendatory act" consists of this section and the 1969 c 78 amendment to RCW 18.85.010.

18.85.450 Land development representative—Registration—Minimum requirements. The director shall issue a land development representative registration for any applicant, upon application made by the employing real estate broker, on a form provided by the department. The minimum requirements for an individual to be registered as a land development representative are that the applicant shall:

- (1) Be eighteen years of age or older; and
- (2) Furnish such proof as the director may require concerning the applicant's honesty, good reputation, and identification which may include finger prints. [1987 c 332 § 15; 1977 ex.s. c 24 § 6.]

18.85.460 Land development representative—Registration issued to employing broker—Display—Fee—Transferability—Period of validity. The registration for a land development representative shall be issued to and retained by the employing broker and shall be displayed as set forth in this chapter for licenses. A fee as prescribed by the director by rule shall accompany each application for registration. Each registration shall be valid for a period of one year from date of issue or until employment with the broker is terminated, whichever occurs first. No registration may be transferred to another broker, nor may a representative be registered to more than one broker at a time. Upon the termination of employment of any representative the broker shall release and return the registration of that representative to the department. [1987 c 332 § 16; 1977 ex.s. c 24 § 7.]

18.85.470 Land development representative—Authorized activities—"Land development" defined. (1) The activity of a land development representative registered with a broker under this chapter shall be restricted to land developments as defined in this section and limited to:

- (a) Disseminating information;
 - (b) Contacting prospective purchasers; and
 - (c) Transporting prospective purchasers to the land development site.
- (2) This section shall not be construed to authorize any representative to:
- (a) Engage in the selling of real estate;
 - (b) Negotiate for or bind the broker in any agreement relating to the sale of real estate;
 - (c) Receive or handle funds;
 - (d) Assist in preparation of documentation attendant upon sale of real estate; or
 - (e) Engage in any other conduct or activity specified in any of the definitions under RCW 18.85.010, except as provided by subsection (1) of this section.

(3) The words "land development" as used in this chapter mean land which is divided, for the purpose of disposition, into ten or more parcels on which no residential

structure exists at the time it is offered for sale. [1977 ex.s. c 24 § 8.]

18.85.480 Land development representative—Responsibility of employing broker—Violations. Full responsibility for the activities of the land development representative registered under this chapter shall rest with the employing broker. The director may deny, suspend, or revoke the registration of any representative or the license of the employing broker for any violation of this chapter by the representative. [1977 ex.s. c 24 § 9.]

18.85.900 Severability—1941 c 252. If any section, subdivision, sentence or clause in this act shall be held invalid or unconstitutional, such fact shall not affect the validity of the remaining portions of this act. [1941 c 252 § 28.]

18.85.910 Severability—1951 c 222. The provisions of this act are to be severable and if any section, subdivision or clause of this act shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of the act. [1951 c 222 § 27.]

18.85.920 Severability—1972 ex.s. c 139. The provisions of this 1972 amendatory act are to be severable and if any section, subdivision, or clause of this act shall be held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of the act. [1972 ex.s. c 139 § 22.]

Chapter 18.86

REAL ESTATE BROKERAGE RELATIONSHIPS

Sections

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18.86.901	Captions not law—1996 c 179.
18.86.902	Effective date—1996 c 179.

18.86.010 Definitions. (*Effective January 1, 1997.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency relationship" means the agency relationship created under this chapter or by written agreement between a licensee and a buyer and/or seller relating to the performance of real estate brokerage services by the licensee.

(2) "Agent" means a licensee who has entered into an agency relationship with a buyer or seller.

(3) "Business opportunity" means and includes a business, business opportunity, and goodwill of an existing business, or any one or combination thereof.

(4) "Buyer" means an actual or prospective purchaser in a real estate transaction, or an actual or prospective tenant in a real estate rental or lease transaction, as applicable.

(5) "Buyer's agent" means a licensee who has entered into an agency relationship with only the buyer in a real estate transaction, and includes subagents engaged by a buyer's agent.

(6) "Confidential information" means information from or concerning a principal of a licensee that:

(a) Was acquired by the licensee during the course of an agency relationship with the principal;

(b) The principal reasonably expects to be kept confidential;

(c) The principal has not disclosed or authorized to be disclosed to third parties;

(d) Would, if disclosed, operate to the detriment of the principal; and

(e) The principal personally would not be obligated to disclose to the other party.

(7) "Dual agent" means a licensee who has entered into an agency relationship with both the buyer and seller in the same transaction.

(8) "Licensee" means a real estate broker, associate real estate broker, or real estate salesperson, as those terms are defined in chapter 18.85 RCW.

(9) "Material fact" means information that substantially adversely affects the value of the property or a party's ability to perform its obligations in a real estate transaction, or operates to materially impair or defeat the purpose of the transaction. The fact or suspicion that the property, or any neighboring property, is or was the site of a murder, suicide or other death, rape or other sex crime, assault or other violent crime, robbery or burglary, illegal drug activity, gang-related activity, political or religious activity, or other act, occurrence, or use not adversely affecting the physical condition of or title to the property is not a material fact.

(10) "Principal" means a buyer or a seller who has entered into an agency relationship with a licensee.

(11) "Real estate brokerage services" means the rendering of services for which a real estate license is required under chapter 18.85 RCW.

(12) "Real estate transaction" or "transaction" means an actual or prospective transaction involving a purchase, sale, option, or exchange of any interest in real property or a business opportunity, or a lease or rental of real property. For purposes of this chapter, a prospective transaction does not exist until a written offer has been signed by at least one of the parties.

(13) "Seller" means an actual or prospective seller in a real estate transaction, or an actual or prospective landlord in a real estate rental or lease transaction, as applicable.

(14) "Seller's agent" means a licensee who has entered into an agency relationship with only the seller in a real estate transaction, and includes subagents engaged by a seller's agent.

(15) "Subagent" means a licensee who is engaged to act on behalf of a principal by the principal's agent where the principal has authorized the agent in writing to appoint subagents. [1996 c 179 § 1.]

18.86.020 Agency relationship. (Effective January 1, 1997.) (1) A licensee who performs real estate brokerage services for a buyer is a buyer's agent unless the:

(a) Licensee has entered into a written agency agreement with the seller;

(b) Licensee has entered into a subagency agreement with the seller's agent;

(c) Licensee has entered into a written agency agreement with both parties;

(d) Licensee is the seller or one of the sellers; or

(e) Parties agree otherwise in writing after the licensee has complied with RCW 18.86.030(1)(f).

(2) In a transaction in which different licensees affiliated with the same broker represent different parties, the broker is a dual agent, and must obtain the written consent of both parties as required under RCW 18.86.060. In such a case, each licensee shall solely represent the party with whom the licensee has an agency relationship, unless all parties agree in writing that both licensees are dual agents.

(3) A licensee may work with a party in separate transactions pursuant to different relationships, including, but not limited to, representing a party in one transaction and at the same time not representing that party in a different transaction involving that party, if the licensee complies with this chapter in establishing the relationships for each transaction. [1996 c 179 § 2.]

18.86.030 Duties of licensee. (Effective January 1, 1997.) (1) Regardless of whether the licensee is an agent, a licensee owes to all parties to whom the licensee renders real estate brokerage services the following duties, which may not be waived:

(a) To exercise reasonable skill and care;

(b) To deal honestly and in good faith;

(c) To present all written offers, written notices and other written communications to and from either party in a timely manner, regardless of whether the property is subject to an existing contract for sale or the buyer is already a party to an existing contract to purchase;

(d) To disclose all existing material facts known by the licensee and not apparent or readily ascertainable to a party; provided that this subsection shall not be construed to imply any duty to investigate matters that the licensee has not agreed to investigate;

(e) To account in a timely manner for all money and property received from or on behalf of either party;

(f) To provide a pamphlet on the law of real estate agency in the form prescribed in RCW 18.86.120 to all parties to whom the licensee renders real estate brokerage services, before the party signs an agency agreement with the licensee, signs an offer in a real estate transaction handled by the licensee, consents to dual agency, or waives any rights, under RCW 18.86.020(1)(e), 18.86.040(1)(e), 18.86.050(1)(e), or 18.86.060(2)(e) or (f), whichever occurs earliest; and

(g) To disclose in writing to all parties to whom the licensee renders real estate brokerage services, before the party signs an offer in a real estate transaction handled by the licensee, whether the licensee represents the buyer, the seller, both parties, or neither party. The disclosure shall be set forth in a separate paragraph entitled "Agency Disclo-

sure" in the agreement between the buyer and seller or in a separate writing entitled "Agency Disclosure."

(2) Unless otherwise agreed, a licensee owes no duty to conduct an independent inspection of the property or to conduct an independent investigation of either party's financial condition, and owes no duty to independently verify the accuracy or completeness of any statement made by either party or by any source reasonably believed by the licensee to be reliable. [1996 c 179 § 3.]

18.86.031 Violation of licensing law. (*Effective January 1, 1997.*) A violation of RCW 18.86.030 is a violation of RCW 18.85.230. [1996 c 179 § 14.]

18.86.040 Seller's agent—Duties. (*Effective January 1, 1997.*) (1) Unless additional duties are agreed to in writing signed by a seller's agent, the duties of a seller's agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) of this subsection:

(a) To be loyal to the seller by taking no action that is adverse or detrimental to the seller's interest in a transaction;

(b) To timely disclose to the seller any conflicts of interest;

(c) To advise the seller to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;

(d) Not to disclose any confidential information from or about the seller, except under subpoena or court order, even after termination of the agency relationship; and

(e) Unless otherwise agreed to in writing after the seller's agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a seller's agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale.

(2) A seller's agent may show alternative properties not owned by the seller to prospective buyers and may list competing properties for sale without breaching any duty to the seller. [1996 c 179 § 4.]

18.86.050 Buyer's agent—Duties. (*Effective January 1, 1997.*) (1) Unless additional duties are agreed to in writing signed by a buyer's agent, the duties of a buyer's agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) of this subsection:

(a) To be loyal to the buyer by taking no action that is adverse or detrimental to the buyer's interest in a transaction;

(b) To timely disclose to the buyer any conflicts of interest;

(c) To advise the buyer to seek expert advice on matters relating to the transaction that are beyond the agent's expertise;

(d) Not to disclose any confidential information from or about the buyer, except under subpoena or court order, even after termination of the agency relationship; and

(e) Unless otherwise agreed to in writing after the buyer's agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a property for the buyer; except that a buyer's agent is not obligated to:

(i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the buyer's agent.

(2) A buyer's agent may show properties in which the buyer is interested to other prospective buyers without breaching any duty to the buyer. [1996 c 179 § 5.]

18.86.060 Dual agent—Duties. (*Effective January 1, 1997.*) (1) A licensee may act as a dual agent only with the written consent of both parties to the transaction after the dual agent has complied with RCW 18.86.030(1)(f), which consent must include a statement of the terms of compensation.

(2) Unless additional duties are agreed to in writing signed by a dual agent, the duties of a dual agent are limited to those set forth in RCW 18.86.030 and the following, which may not be waived except as expressly set forth in (e) and (f) of this subsection:

(a) To take no action that is adverse or detrimental to either party's interest in a transaction;

(b) To timely disclose to both parties any conflicts of interest;

(c) To advise both parties to seek expert advice on matters relating to the transaction that are beyond the dual agent's expertise;

(d) Not to disclose any confidential information from or about either party, except under subpoena or court order, even after termination of the agency relationship;

(e) Unless otherwise agreed to in writing after the dual agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a buyer for the property; except that a dual agent is not obligated to seek additional offers to purchase the property while the property is subject to an existing contract for sale; and

(f) Unless otherwise agreed to in writing after the dual agent has complied with RCW 18.86.030(1)(f), to make a good faith and continuous effort to find a property for the buyer; except that a dual agent is not obligated to: (i) Seek additional properties to purchase while the buyer is a party to an existing contract to purchase; or (ii) show properties as to which there is no written agreement to pay compensation to the dual agent.

(3) A dual agent may show alternative properties not owned by the seller to prospective buyers and may list competing properties for sale without breaching any duty to the seller.

(4) A dual agent may show properties in which the buyer is interested to other prospective buyers without breaching any duty to the buyer. [1996 c 179 § 6.]

18.86.070 Duration of agency relationship. (*Effective January 1, 1997.*) (1) The agency relationships set forth in this chapter commence at the time that the licensee undertakes to provide real estate brokerage services to a principal and continue until the earliest of the following:

(a) Completion of performance by the licensee;

(b) Expiration of the term agreed upon by the parties; or

(c) Termination of the relationship by mutual agreement of the parties.

(2) Except as otherwise agreed to in writing, a licensee owes no further duty after termination of the agency relationship, other than the duties of:

- (a) Accounting for all moneys and property received during the relationship; and
- (b) Not disclosing confidential information. [1996 c 179 § 7.]

18.86.080 Compensation. (*Effective January 1, 1997.*) (1) In any real estate transaction, the broker's compensation may be paid by the seller, the buyer, a third party, or by sharing the compensation between brokers.

(2) An agreement to pay or payment of compensation does not establish an agency relationship between the party who paid the compensation and the licensee.

(3) A seller may agree that a seller's agent may share with another broker the compensation paid by the seller.

(4) A buyer may agree that a buyer's agent may share with another broker the compensation paid by the buyer.

(5) A broker may be compensated by more than one party for real estate brokerage services in a real estate transaction, if those parties consent in writing at or before the time of signing an offer in the transaction.

(6) A buyer's agent or dual agent may receive compensation based on the purchase price without breaching any duty to the buyer.

(7) Nothing contained in this chapter obligates a buyer or seller to pay compensation to a licensee, unless the buyer or seller has entered into a written agreement with the licensee specifying the terms of such compensation. [1996 c 179 § 8.]

18.86.090 Vicarious liability. (*Effective January 1, 1997.*) (1) A principal is not liable for an act, error, or omission by an agent or subagent of the principal arising out of an agency relationship:

- (a) Unless the principal participated in or authorized the act, error, or omission; or
- (b) Except to the extent that: (i) The principal benefited from the act, error, or omission; and (ii) the court determines that it is highly probable that the claimant would be unable to enforce a judgment against the agent or subagent.

(2) A licensee is not liable for an act, error, or omission of a subagent under this chapter, unless the licensee participated in or authorized the act, error or omission. This subsection does not limit the liability of a real estate broker for an act, error, or omission by an associate real estate broker or real estate salesperson licensed to that broker. [1996 c 179 § 9.]

18.86.100 Imputed knowledge and notice. (*Effective January 1, 1997.*) (1) Unless otherwise agreed to in writing, a principal does not have knowledge or notice of any facts known by an agent or subagent of the principal that are not actually known by the principal.

(2) Unless otherwise agreed to in writing, a licensee does not have knowledge or notice of any facts known by a subagent that are not actually known by the licensee. This subsection does not limit the knowledge imputed to a real estate broker of any facts known by an associate real estate

broker or real estate salesperson licensed to such broker. [1996 c 179 § 10.]

18.86.110 Application. (*Effective January 1, 1997.*) This chapter supersedes only the duties of the parties under the common law, including fiduciary duties of an agent to a principal, to the extent inconsistent with this chapter. The common law continues to apply to the parties in all other respects. This chapter does not affect the duties of a licensee while engaging in the authorized or unauthorized practice of law as determined by the courts of this state. This chapter shall be construed broadly. [1996 c 179 § 11.]

18.86.120 Pamphlet on the law of real estate agency—Content. (*Effective January 1, 1997.*) The pamphlet required under RCW 18.86.030(1)(f) shall consist of the entire text of RCW 18.86.010 through 18.86.030, 18.86.040 through 18.86.110, and 18.86.900 with a separate cover page. The pamphlet shall be 8 1/2 by 11 inches in size, the text shall be in print no smaller than 10-point type, the cover page shall be in print no smaller than 12-point type, and the title of the cover page "The Law of Real Estate Agency" shall be in print no smaller than 18-point type. The cover page shall be in the following form:

The Law of Real Estate Agency

This pamphlet describes your legal rights in dealing with a real estate broker or salesperson. Please read it carefully before signing any documents.

The following is only a brief summary of the attached law:

Sec. 1. Definitions. Defines the specific terms used in the law.

Sec. 2. Relationships between Licensees and the Public. States that a licensee who works with a buyer or tenant represents that buyer or tenant—unless the licensee is the listing agent, a seller's subagent, a dual agent, the seller personally or the parties agree otherwise. Also states that in a transaction involving two different licensees affiliated with the same broker, the broker is a dual agent and each licensee solely represents his or her client—unless the parties agree in writing that both licensees are dual agents.

Sec. 3. Duties of a Licensee Generally. Prescribes the duties that are owed by all licensees, regardless of who the licensee represents. Requires disclosure of the licensee's agency relationship in a specific transaction.

Sec. 4. Duties of a Seller's Agent. Prescribes the additional duties of a licensee representing the seller or landlord only.

Sec. 5. Duties of a Buyer's Agent. Prescribes the additional duties of a licensee representing the buyer or tenant only.

Sec. 6. Duties of a Dual Agent. Prescribes the additional duties of a licensee representing both parties in the same transaction, and requires the written consent of both parties to the licensee acting as a dual agent.

Sec. 7. Duration of Agency Relationship. Describes when an agency relationship begins and ends. Provides that the duties of accounting and confidentiality continue after the termination of an agency relationship.

Sec. 8. Compensation. Allows brokers to share compensation with cooperating brokers. States that payment of compensation does not necessarily establish an agency relationship. Allows brokers to receive compensation from more than one party in a transaction with the parties' consent.

Sec. 9. Vicarious Liability. Eliminates the common law liability of a party for the conduct of the party's agent or subagent, unless the agent or subagent is insolvent. Also limits the liability of a broker for the conduct of a subagent associated with a different broker.

Sec. 10. Imputed Knowledge and Notice. Eliminates the common law rule that notice to or knowledge of an agent constitutes notice to or knowledge of the principal.

Sec. 11. Interpretation. This law replaces the fiduciary duties owed by an agent to a principal under the common law, to the extent that it conflicts with the common law.

Sec. 12. Effective Date. This law generally takes effect on January 1, 1997. [1996 c 179 § 13.]

18.86.900 Effective date—1996 c 179. This chapter shall take effect on January 1, 1997. This chapter does not apply to an agency relationship entered into before January 1, 1997, unless the principal and agent agree in writing that this chapter will, as of January 1, 1997, apply to such agency relationship. [1996 c 179 § 12.]

18.86.901 Captions not law—1996 c 179. Captions used in this chapter do not constitute any part of the law. [1996 c 179 § 15.]

18.86.902 Effective date—1996 c 179. This act shall take effect January 1, 1997. [1996 c 179 § 19.]

Chapter 18.88A NURSING ASSISTANTS

Sections

- 18.88A.010 Legislative declaration.
- 18.88A.020 Definitions.
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- 18.88A.040 Registration and certification.
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- 18.88A.060 Commission—Powers.
- 18.88A.080 Registration requirements.
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- 18.88A.220 Delegation—Program and reimbursement policies.
- 18.88A.230 Delegation—Liability—Reprisal or disciplinary action—Penalty.
- 18.88A.240 Delegation—Complaints.
- 18.88A.900 Severability—1991 c 16.

Health professions advisory committee: RCW 18.138.120.

18.88A.010 Legislative declaration. The legislature takes special note of the contributions made by nursing assistants in health care facilities whose tasks are arduous and whose working conditions may be contributing to the high and often critical turnover among the principal cadre of health care workers who provide for the basic needs of patients. The legislature also recognizes the growing shortage of nurses as the proportion of the elderly population grows and as the acuity of patients in hospitals and nursing homes becomes generally more severe.

The legislature finds and declares that occupational nursing assistants should have a formal system of educational and experiential qualifications leading to career mobility and advancement. The establishment of such a system should bring about a more stabilized work force in health care facilities, as well as provide a valuable resource for recruitment into licensed nursing practice.

The legislature finds that the quality of patient care in health care facilities is dependent upon the competence of the personnel who staff their facilities. To assure the availability of trained personnel in health care facilities the legislature recognizes the need for training programs for nursing assistants.

The legislature declares that the registration of nursing assistants and providing for voluntary certification of those who wish to seek higher levels of qualification is in the interest of the public health, safety, and welfare. [1991 c 16 § 1; 1989 c 300 § 3; 1988 c 267 § 1. Formerly RCW 18.52B.010.]

18.88A.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Department" means the department of health.
- (2) "Secretary" means the secretary of health.
- (3) "Commission" means the Washington nursing care quality assurance commission.

(4) "Nursing assistant" means an individual, regardless of title, who, under the direction and supervision of a registered nurse or licensed practical nurse, assists in the delivery of nursing and nursing-related activities to patients in a health care facility. The two levels of nursing assistants are (a) "nursing assistant-certified," an individual certified under this chapter, (b) "nursing assistant-registered," an individual registered under this chapter.

(5) "Approved training program" means a nursing assistant-certified training program approved by the commission. For community college, vocational-technical institutes, skill centers, and secondary school as defined in chapter 28B.50 RCW, nursing assistant-certified training programs shall be approved by the commission in cooperation with the board for community and technical colleges or the superintendent of public instruction.

(6) "Health care facility" means a nursing home, hospital, hospice care facility, home health care agency,

hospice agency, or other entity for delivery of health care services as defined by the commission.

(7) "Competency evaluation" means the measurement of an individual's knowledge and skills as related to safe, competent performance as a nursing assistant. [1994 sp.s. c 9 § 708; 1991 c 16 § 2; (1991 c 3 § 221 repealed by 1991 sp.s. c 11 § 2); 1989 c 300 § 4; 1988 c 267 § 2. Formerly RCW 18.52B.020.]

Severability—Headings and captions not law—Effective date— 1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Nursing care quality assurance commission: Chapter 18.79 RCW.

18.88A.030 Scope of practice—Voluntary certification—Rules. (1) A nursing assistant may assist in the care of individuals as delegated by and under the direction and supervision of a licensed (registered) nurse or licensed practical nurse.

(2) A health care facility shall not assign a nursing assistant-registered to provide care until the nursing assistant-registered has demonstrated skills necessary to perform competently all assigned duties and responsibilities.

(3) Nothing in this chapter shall be construed to confer on a nursing assistant the authority to administer medication unless delegated as a specific nursing task pursuant to this chapter or to practice as a licensed (registered) nurse or licensed practical nurse as defined in chapter 18.79 RCW.

(4) Certification is voluntary for nursing assistants working in health care facilities other than nursing homes unless otherwise required by state or federal law or regulation.

(5) The commission may adopt rules to implement the provisions of this chapter. [1995 1st sp.s. c 18 § 52; 1994 sp.s. c 9 § 709; 1991 c 16 § 3; 1989 c 300 § 5; 1988 c 267 § 3. Formerly RCW 18.52B.030.]

Conflict with federal requirements—Severability—Effective date— 1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

Severability—Headings and captions not law—Effective date— 1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.88A.040 Registration and certification. (1) No person may practice or represent himself or herself as a nursing assistant-registered by use of any title or description without being registered by the department pursuant to this chapter.

(2) After October 1, 1990, no person may by use of any title or description, practice or represent himself or herself as a nursing assistant-certified without applying for certification, meeting the qualifications, and being certified by the department pursuant to this chapter. [1991 c 16 § 4; 1989 c 300 § 6; 1988 c 267 § 4. Formerly RCW 18.52B.040.]

18.88A.050 Powers of secretary. In addition to any other authority provided by law, the secretary has the authority to:

(1) Set all certification, registration, and renewal fees in accordance with RCW 43.70.250 and to collect and deposit all such fees in the health professions account established under RCW 43.70.320;

(2) Establish forms, procedures, and examinations necessary to administer this chapter;

(3) Hire clerical, administrative, and investigative staff as needed to implement this chapter;

(4) Issue a registration to any applicant who has met the requirements for registration;

(5) After January 1, 1990, issue a certificate to any applicant who has met the education, training, and conduct requirements for certification;

(6) Maintain the official record for the department of all applicants and persons with registrations and certificates;

(7) Exercise disciplinary authority as authorized in chapter 18.130 RCW;

(8) Deny registration to any applicant who fails to meet requirement for registration;

(9) Deny certification to applicants who do not meet the education, training, competency evaluation, and conduct requirements for certification. [1991 c 16 § 6; (1991 c 3 § 222 repealed by 1991 sp.s. c 11 § 2); 1989 c 300 § 7; 1988 c 267 § 6. Formerly RCW 18.52B.060.]

18.88A.060 Commission—Powers. In addition to any other authority provided by law, the commission may:

(1) Determine minimum education requirements and approve training programs;

(2) Prepare, grade, and administer, or determine the nature of, and supervise the grading and administration of, examinations of training and competency for applicants for certification;

(3) Determine whether alternative methods of training are equivalent to approved training programs, and establish forms, procedures, and criteria for evaluation of an applicant's alternative training to determine the applicant's eligibility to take any qualifying examination for certification;

(4) Define and approve any experience requirement for certification;

(5) Adopt rules implementing a continuing competency evaluation program;

(6) Adopt rules to enable it to carry into effect the provisions of this chapter. [1994 sp.s. c 9 § 710; 1991 c 16 § 8; 1989 c 300 § 8; 1988 c 267 § 7. Formerly RCW 18.52B.070.]

Severability—Headings and captions not law—Effective date— 1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.88A.080 Registration requirements. (1) The secretary shall issue a registration to any applicant who pays any applicable fees and submits, on forms provided by the secretary, the applicant's name, address, and other information as determined by the secretary, provided there are no grounds for denial of registration or issuance of a conditional registration under this chapter or chapter 18.130 RCW.

(2) Applicants must file an application with the commission for registration within three days of employment. [1994 sp.s. c 9 § 711; 1991 c 16 § 10; (1991 c 3 § 224 repealed by 1991 sp.s. c 11 § 2); 1989 c 300 § 10; 1988 c 267 § 10. Formerly RCW 18.52B.100.]

Severability—Headings and captions not law—Effective date— 1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.88A.085 Certification of requirements. (1) After January 1, 1990, the secretary shall issue a certificate to any

applicant who demonstrates to the secretary's satisfaction that the following requirements have been met:

(a) Completion of an approved training program or successful completion of alternate training meeting established criteria approved by the commission; and

(b) Successful completion of a competency evaluation.

(2) In addition, applicants shall be subject to the grounds for denial of certification under chapter 18.130 RCW. [1994 sp.s. c 9 § 712; 1991 c 16 § 11.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.88A.090 Examinations. (1) The date and location of examinations shall be established by the secretary. Applicants who have been found by the secretary to meet the requirements for certification shall be scheduled for the next examination following the filing of the application. The secretary shall establish by rule the examination application deadline.

(2) The commission shall examine each applicant, by a written or oral and a manual component of competency evaluation. Examinations shall be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(3) The examination papers, all grading of the papers, and the grading of skills demonstration shall be preserved for a period of not less than one year after the commission has made and published the decisions. All examinations shall be conducted under fair and wholly impartial methods.

(4) Any applicant failing to make the required grade in the first examination may take up to three subsequent examinations as the applicant desires upon prepaying a fee determined by the secretary under RCW 43.70.250 for each subsequent examination. Upon failing four examinations, the secretary may invalidate the original application and require such remedial education before the person may take future examinations.

(5) The commission may approve an examination prepared or administered by a private testing agency or association of licensing agencies for use by an applicant in meeting the credentialing requirements. [1994 sp.s. c 9 § 713; 1991 c 3 § 225; 1989 c 300 § 11; 1988 c 267 § 13. Formerly RCW 18.52B.130.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.88A.100 Waiver of examination for initial applications. The secretary shall waive the competency evaluation and certify a person to practice within the state of Washington if the commission determines that the person meets commonly accepted standards of education and experience for the nursing assistants. This section applies only to those individuals who file an application for waiver by December 31, 1991. [1994 sp.s. c 9 § 714. Prior: 1991 c 16 § 12; 1991 c 3 § 226; 1989 c 300 § 12; 1988 c 267 § 15. Formerly RCW 18.52B.140.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.88A.110 Certificates for applicants credentialed in another state. An applicant holding a credential in

another state may be certified by endorsement to practice in this state without examination if the secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1991 c 16 § 13.]

18.88A.120 Applications for registration and certification—Fee. Applications for registration and certification shall be submitted on forms provided by the secretary. The secretary may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria for registration and certification credentialing provided for in this chapter and chapter 18.130 RCW. Each applicant shall comply with administrative procedures, administrative requirements, and fees determined by the secretary under RCW 43.70.250 and 43.70.280. [1996 c 191 § 74; 1991 c 16 § 14.]

18.88A.130 Renewal of registration or certification. Registrations and certifications shall be renewed according to administrative procedures, administrative requirements, and fees determined by the secretary under RCW 43.70.250 and 43.70.280. [1996 c 191 § 75; 1994 sp.s. c 9 § 715; 1991 c 16 § 15.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.88A.140 Exemptions. Nothing in this chapter may be construed to prohibit or restrict:

(1) The practice by an individual licensed, certified, or registered under the laws of this state and performing services within their authorized scope of practice;

(2) The practice by an individual employed by the government of the United States while engaged in the performance of duties prescribed by the laws of the United States;

(3) The practice by a person who is a regular student in an educational program approved by the secretary, and whose performance of services [is] pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor. [1991 c 16 § 5.]

18.88A.150 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unregistered or uncertified practice, issuance of certificates and registrations, and the discipline of persons registered or with certificates under this chapter. The secretary shall be the disciplinary authority under this chapter. [1991 c 16 § 7.]

18.88A.200 Delegation of nursing care tasks—Legislative finding. The legislature recognizes that nurses have been successfully delegating nursing care tasks to family members and auxiliary staff for many years. The opportunity for a nurse to delegate to nursing assistants qualifying under RCW 18.88A.210 may enhance the viability and quality of care in community health settings for long-term care services and to allow citizens to live as independently as possible with maximum safeguards. [1995 1st sp.s. c 18 § 45.]

Conflict with federal requirements—Severability—Effective date—
1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

18.88A.210 Delegation—Generally—Rules. (1) A nurse may delegate specific care tasks to nursing assistants meeting the requirements of this section and who provide care to individuals in community residential programs for the developmentally disabled certified by the department of social and health services under chapter 71A.12 RCW, to individuals residing in adult family homes licensed under chapter 70.128 RCW, and to individuals residing in boarding homes licensed under chapter 18.20 RCW contracting with the department of social and health services to provide assisted living services pursuant to RCW 74.39A.010.

(2) For the purposes of this section, "nursing assistant" means a nursing assistant-registered or a nursing assistant-certified. Nothing in this section may be construed to affect the authority of nurses to delegate nursing tasks to other persons, including licensed practical nurses, as authorized by law.

(3) Before commencing any specific nursing care tasks authorized under this chapter, the nursing assistant must (a) provide to the delegating nurse a certificate of completion issued by the department of social and health services indicating the completion of basic core training as provided in this section, (b) be regulated by the department of health pursuant to this chapter, subject to the uniform disciplinary act under chapter 18.130 RCW, and (c) meet any additional training requirements identified by the nursing care quality assurance commission and authorized by this section.

(4) A nurse may delegate the following care tasks:

- (a) Oral and topical medications and ointments;
- (b) Nose, ear, eye drops, and ointments;
- (c) Dressing changes and catheterization using clean techniques as defined by the nursing care quality assurance commission;
- (d) Suppositories, enemas, ostomy care;
- (e) Blood glucose monitoring;
- (f) Gastrostomy feedings in established and healed condition.

(5) On or before September 1, 1995, the nursing care quality assurance commission, in conjunction with the professional nursing organizations, shall develop rules for nurse delegation protocols and by December 5, 1995, identify training beyond the core training that is deemed necessary for the delegation of complex tasks and patient care.

(6) Nursing task delegation protocols are not intended to regulate the settings in which delegation may occur but are intended to ensure that nursing care services have a consistent standard of practice upon which the public and profession may rely and to safeguard the authority of the nurse to make independent professional decisions regarding the delegation of a task. Protocols shall include at least the following:

- (a) Ensure that determination of the appropriateness of delegation of a nursing task is at the discretion of the nurse;
- (b) Allow delegation of a nursing care task only for patients who have a stable and predictable condition. "Stable and predictable condition" means a situation, as defined by rule by the nursing care quality assurance commission, in which the patient's clinical and behavioral

status is known and does not require frequent presence and evaluation of a registered nurse;

(c) Assure that the delegations of nursing tasks pursuant to this chapter have the written informed consent of the patient consistent with the provisions for informed consent under chapter 7.70 RCW, as well as with the consent of the delegating nurse and nursing assistant. The delegating nurse shall inform patients of the level of training of all care providers in the setting;

(d) Verify that the nursing assistant has completed the core training;

(e) Require assessment by the nurse of the ability and willingness of the nursing assistant to perform the delegated nursing task in the absence of direct nurse supervision and to refrain from delegation if the nursing assistant is not able or willing to perform the task;

(f) Require the nurse to analyze the complexity of the nursing task that is considered for delegation and determine the appropriate level of training and any need of additional training for the nursing assistant;

(g) Require the teaching of the nursing care task to the nursing assistant including return demonstration under observation while performing the task;

(h) Require a plan of nursing supervision and reevaluation of the delegated nursing task. "Nursing supervision" means that the registered nurse monitors by direct observation the skill and ability of the nursing assistant to perform delegated nursing tasks. Frequency of supervision is at the discretion of the registered nurse but shall occur at least every sixty days;

(i) Require instruction to the nursing assistant that the delegated nursing task is specific to a patient and is not transferable;

(j) Require documentation and written instruction related to the delegated nursing task be provided to the nursing assistant and a copy maintained in the patient record;

(k) Ensure that the nursing assistant is prepared to effectively deal with the predictable outcomes of performing the nursing task;

(l) Include in the delegation of tasks an awareness of the nature of the condition requiring treatment, risks of the treatment, side effects, and interaction of prescribed medications;

(m) Require documentation in the patient's record of the rationale for delegating or not delegating nursing tasks.

(7) A basic core training curriculum on providing care for individuals in community residential programs for the developmentally disabled certified by the department of social and health services under chapter 71A.12 RCW shall be in addition to the training requirements specified in subsection (5) of this section. Basic core training shall be developed and adopted by rule by the secretary of the department of social and health services. The department of social and health services shall appoint an advisory panel to assist in the development of core training comprised of representatives of the following:

- (a) The division of developmental disabilities;
- (b) The nursing care quality assurance commission;
- (c) Professional nursing organizations;
- (d) A state-wide organization of community residential service providers whose members are programs certified by the department under chapter 71A.12 RCW.

(8) A basic core training curriculum on providing care to residents in residential settings licensed under chapter 70.128 RCW, or in assisted living pursuant to RCW 74.39A.010 shall be mandatory for nursing assistants prior to assessment by a nurse regarding the ability and willingness to perform a delegated nursing task. Core training shall be developed and adopted by rule by the secretary of the department of social and health services, in conjunction with an advisory panel. The advisory panel shall be comprised of representatives from, at a minimum, the following:

- (a) The nursing care quality assurance commission;
- (b) Professional nurse organizations;
- (c) A state-wide association of community residential service providers whose members are programs certified by the department under chapter 71A.12 RCW;
- (d) Aging consumer groups;
- (e) Associations representing homes licensed under chapters 70.128 and 18.20 RCW; and
- (f) Associations representing home health, hospice, and home care agencies licensed under chapter 70.127 RCW. [1995 1st sp.s. c 18 § 46.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

18.88A.220 Delegation—Program and reimbursement policies. On or before December 1, 1995, the department of health and the department of social and health services, in consultation with the nursing care quality assurance commission, shall develop and clarify program and reimbursement policies, as well as clarify barriers to current delegation, relating to the ability and authority of a nurse to delegate care tasks in the programs and services operating under their authority.

The nursing care quality assurance commission shall develop model forms that will assist in standardizing the practice of delegation. [1995 1st sp.s. c 18 § 47.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

18.88A.230 Delegation—Liability—Reprisal or disciplinary action—Penalty. (1) The nurse and nursing assistant shall be accountable for their own individual actions in the delegation process. Nurses acting within the protocols of their delegation authority shall be immune from liability for any action performed in the course of their delegation duties. Nursing assistants following written delegation instructions from registered nurses performed in the course of their accurately written, delegated duties shall be immune from liability.

(2) No person may coerce a nurse into compromising patient safety by requiring the nurse to delegate if the nurse determines it is inappropriate to do so. Nurses shall not be subject to any employer reprisal or disciplinary action by the Washington nursing care quality assurance commission for refusing to delegate tasks or refusing to provide the required training for delegation if the nurse determines delegation may compromise patient safety. Nursing assistants shall not be subject to any employer reprisal or disciplinary action by the nursing care quality assurance commission for refusing to accept delegation of a nursing task. No community residential program, adult family home, or boarding home

contracting to provide assisted-living services may discriminate or retaliate in any manner against a person because the person made a complaint or cooperated in the investigation of a complaint.

(3) The department of social and health services shall impose a civil fine of not less than two hundred fifty dollars nor more than one thousand dollars on a community residential program, adult family home, or boarding home under chapter 18, Laws of 1995 1st sp. sess. that knowingly permits an employee to perform a nursing task except as delegated by a nurse pursuant to chapter 18, Laws of 1995 1st sp. sess. [1995 1st sp.s. c 18 § 48.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

18.88A.240 Delegation—Complaints. The aging and adult services administration of the department of social and health services shall establish a toll-free telephone number for receiving complaints regarding delegation of specific nursing tasks to nursing assistants, in conjunction with any other such system maintained for long-term care services. Complaints specifically related to nurse-delegation shall be referred to the nursing care quality assurance commission for appropriate disposition in accordance with established procedures. [1995 1st sp.s. c 18 § 49.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.008.

18.88A.900 Severability—1991 c 16. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 16 § 17.]

Chapter 18.89

RESPIRATORY CARE PRACTITIONERS

Sections

- 18.89.010 Legislative findings—Insurance coverage not mandated.
- 18.89.020 Definitions.
- 18.89.030 Respiratory care practitioner—What constitutes.
- 18.89.040 Scope of practice.
- 18.89.050 Powers of secretary—Application of Uniform Disciplinary Act—Ad hoc advisers.
- 18.89.060 Record of proceedings.
- 18.89.080 Secretary and ad hoc committee immune from liability.
- 18.89.090 Certification—Qualifications.
- 18.89.100 Certification—Competency requirements.
- 18.89.110 Certification—Examination.
- 18.89.120 Certification—Application form—Fee.
- 18.89.130 Certification—Waiver of examination.
- 18.89.140 Renewal of certificates.
- 18.89.900 Effective date of RCW 18.89.030—Application of chapter to rural hospitals.
- 18.89.901 Severability—1987 c 415.

Regulation of health professions—Criteria: Chapter 18.120 RCW.

18.89.010 Legislative findings—Insurance coverage not mandated. The legislature finds that it is necessary to regulate the practice of respiratory care at the level of certification in order to protect the public health and safety. The settings for these services may include, health facilities licensed in this state, clinics, home health agencies,

physicians' offices, and public or community health services. Nothing in this chapter shall be construed to require that individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization provide benefits or coverage for services and supplies provided by a person certified under this chapter. [1987 c 415 § 1.]

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

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of health or the secretary's designee.

(3) "Respiratory care practitioner" means an individual certified under this chapter.

(4) "Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

(5) "Rural hospital" means a hospital located anywhere in the state except the following areas:

(a) The entire counties of Snohomish (including Camano Island), King, Kitsap, Pierce, Thurston, Clark, and Spokane;

(b) Areas within a twenty-mile radius of an urban area with a population exceeding thirty thousand persons; and

(c) Those cities or city-clusters located in rural counties but which for all practical purposes are urban. These areas are Bellingham, Aberdeen-Hoquiam, Longview-Kelso, Wenatchee, Yakima, Sunnyside, Richland-Kennewick-Pasco, and Walla Walla. [1994 sp.s. c 9 § 511; 1991 c 3 § 227; 1987 c 415 § 2.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.89.030 Respiratory care practitioner—What constitutes. A respiratory care practitioner is a person who adopts or uses any title or any description of services which incorporates one or more of the following terms or designations: (1) RT, (2) RCP, (3) respiratory care practitioner, (4) respiratory therapist, (5) respiratory technician, (6) inhalation therapist, or (7) any other words, abbreviation, or insignia indicating that he or she is a respiratory care practitioner. [1987 c 415 § 4.]

18.89.040 Scope of practice. A respiratory care practitioner certified under this chapter is employed in the treatment, management, diagnostic testing, rehabilitation, and care of patients with deficiencies and abnormalities which affect the cardiopulmonary system and associated aspects of other systems, and is under the direct order and under the qualified medical direction of a physician. The practice of respiratory care includes, but is not limited to:

(1) The use and administration of medical gases, exclusive of general anesthesia;

(2) The use of air and oxygen administering apparatus;

(3) The use of humidification and aerosols;

(4) The administration of prescribed pharmacologic agents related to respiratory care;

(5) The use of mechanical or physiological ventilatory support;

(6) Postural drainage, chest percussion, and vibration;

(7) Bronchopulmonary hygiene;

(8) Cardiopulmonary resuscitation as it pertains to establishing airways and external cardiac compression;

(9) The maintenance of natural and artificial airways and insertion, without cutting tissues, of artificial airways, as ordered by the attending physician;

(10) Diagnostic and monitoring techniques such as the measurement of cardiorespiratory volumes, pressures, and flows; and

(11) The drawing and analyzing of arterial, capillary, and mixed venous blood specimens as ordered by the attending physician or an advanced registered nurse practitioner as authorized by the nursing care quality assurance commission under chapter 18.79 RCW. [1994 sp.s. c 9 § 716; 1987 c 415 § 5.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.89.050 Powers of secretary—Application of Uniform Disciplinary Act—Ad hoc advisers. (1) In addition to any other authority provided by law, the secretary may:

(a) Adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;

(b) Set all certification, examination, and renewal fees in accordance with RCW 43.70.250;

(c) Establish forms and procedures necessary to administer this chapter;

(d) Issue a certificate to any applicant who has met the education, training, and examination requirements for certification;

(e) Hire clerical, administrative, and investigative staff as needed to implement this chapter and hire individuals certified under this chapter to serve as examiners for any practical examinations;

(f) Approve those schools from which graduation will be accepted as proof of an applicant's eligibility to take the certification examination;

(g) Prepare, grade, and administer, or determine the nature of, and supervise the grading and administration of, examinations for applicants for certification;

(h) Determine whether alternative methods of training are equivalent to formal education and establish forms, procedures, and criteria for evaluation of an applicant's alternative training to determine the applicant's eligibility to take the examination;

(i) Determine which states have legal credentialing requirements equivalent to those of this state and issue certificates to individuals legally credentialed in those states without examination;

(j) Define and approve any experience requirement for certification; and

(k) Appoint members of the profession to serve in an ad hoc advisory capacity to the secretary in carrying out this chapter. The members will serve for designated times and provide advice on matters specifically identified and requested by the secretary. The members shall be compensated in accordance with RCW 43.03.220 and reimbursed for travel expenses under RCW 43.03.040 and 43.03.060.

(2) The provisions of chapter 18.130 RCW shall govern the issuance and denial of certificates, uncertified practice, and the disciplining of persons certified under this chapter. The secretary shall be the disciplining authority under this

chapter. [1994 sp.s. c 9 § 512; 1991 c 3 § 228; 1987 c 415 § 6.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Health professions advisory committee: RCW 18.138.120.

18.89.060 Record of proceedings. The secretary shall keep an official record of all proceedings, a part of which record shall consist of a register of all applicants for certification under this chapter, with the result of each application. [1991 c 3 § 229; 1987 c 415 § 7.]

18.89.080 Secretary and ad hoc committee immune from liability. The secretary, ad hoc committee members, or individuals acting on their behalf are immune from suit in any civil action based on any certification or disciplinary proceedings, or other official acts performed in the course of their duties. [1994 sp.s. c 9 § 513; 1991 c 3 § 231; 1987 c 415 § 9.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.89.090 Certification—Qualifications. The secretary shall issue a certificate to any applicant who demonstrates to the secretary's satisfaction that the following requirements have been met:

(1) Graduation from a school approved by the secretary or successful completion of alternate training which meets the criteria established by the secretary;

(2) Successful completion of an examination administered or approved by the secretary;

(3) Successful completion of any experience requirement established by the secretary;

(4) Good moral character.

In addition, applicants shall be subject to the grounds for denial or issuance of a conditional certificate under chapter 18.130 RCW.

A person who meets the qualifications to be admitted to the examination for certification as a respiratory care practitioner may practice as a respiratory care practitioner under the supervision of a respiratory care practitioner certified under this chapter between the date of filing an application for certification and the announcement of the results of the next succeeding examination for certification if that person applies for and takes the first examination for which he or she is eligible.

The secretary shall establish by rule what constitutes adequate proof of meeting the criteria. [1991 c 3 § 232; 1987 c 415 § 10.]

18.89.100 Certification—Competency requirements. The secretary shall approve only those persons who have achieved the minimum level of competency as defined by the secretary. The secretary shall establish by rule the standards and procedures for approval of alternate training and shall have the authority to contract with individuals or organizations having expertise in the profession, or in education, to assist in evaluating those applying for approval. The standards and procedures set shall apply equally to schools and training within the United States and those in foreign jurisdictions. [1991 c 3 § 233; 1987 c 415 § 11.]

18.89.110 Certification—Examination. (1) The date and location of the examination shall be established by the secretary. Applicants who have been found by the secretary to meet the other requirements for certification shall be scheduled for the next examination following the filing of the application. However, the applicant shall not be scheduled for any examination taking place sooner than sixty days after the application is filed.

(2) The secretary shall examine each applicant, by means determined most effective, on subjects appropriate to the scope of practice. Such examinations shall be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently, and shall meet generally accepted standards of fairness and validity for certification examinations.

(3) All examinations shall be conducted by the secretary, and all grading of the examinations shall be under fair and wholly impartial methods.

(4) Any applicant who fails to make the required grade in the first examination is entitled to take up to three subsequent examinations, upon compliance with administrative procedures, administrative requirements, and fees determined by the secretary under RCW 43.70.250 and 43.70.280 and such remedial education as is deemed necessary.

(5) The secretary may approve an examination prepared and administered by a private testing agency or association of credentialing boards for use by an applicant in meeting the certification requirement. [1996 c 191 § 76; 1991 c 3 § 234; 1987 c 415 § 12.]

18.89.120 Certification—Application form—Fee. Applications for certification shall be submitted on forms provided by the secretary. The secretary may require any information and documentation which reasonably relates to the need to determine whether the applicant meets the criteria for certification provided in this chapter and chapter 18.130 RCW. All applicants shall comply with administrative procedures, administrative requirements, and fees determined by the secretary under RCW 43.70.250 and 43.70.280. [1996 c 191 § 77; 1991 c 3 § 235; 1987 c 415 § 13.]

18.89.130 Certification—Waiver of examination. (1) The secretary shall waive the examination and grant a certificate to a person engaged in the profession of respiratory care in this state on July 26, 1987, if the secretary determines the person meets commonly accepted standards of education and experience for the profession and has previously achieved an acceptable grade on an approved examination administered by a private testing agency or respiratory care association as established by rule of the secretary.

(2) If an individual is engaged in the practice of respiratory care on July 26, 1987, but has not achieved an acceptable grade on an approved examination administered by a private testing agency, the individual may apply to the secretary for examination. This section shall only apply to those individuals who file an application within one year of July 26, 1987. [1991 c 3 § 236; 1987 c 415 § 14.]

18.89.140 Renewal of certificates. Certificates shall be renewed according to administrative procedures, administrative requirements, and fees determined by the secretary under RCW 43.70.250 and 43.70.280. [1996 c 191 § 78; 1991 c 3 § 237; 1987 c 415 § 15.]

18.89.900 Effective date of RCW 18.89.030—Application of chapter to rural hospitals. RCW 18.89.030 shall take effect September 15, 1987. This chapter shall not affect respiratory care practitioners employed by rural hospitals until September 15, 1988. [1987 c 415 § 20.]

18.89.901 Severability—1987 c 415. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 415 § 21.]

Chapter 18.90 SANITARIANS

Sections

18.90.010 Definitions.

18.90.010 Definitions.

Reviser's note: RCW 18.90.010 was amended by 1979 c 158 § 70 without reference to its repeal by 1979 c 99 § 60, effective June 30, 1982. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Chapter 18.92 VETERINARY MEDICINE, SURGERY, AND DENTISTRY

Sections

18.92.010 Veterinary practice defined.
18.92.012 Authority to dispense legend drugs prescribed by other veterinarians.
18.92.013 Dispensing of drugs by registered personnel.
18.92.015 Definitions.
18.92.021 Veterinary board of governors—Appointment, qualifications, terms, officers—Quorum.
18.92.030 General duties of board.
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18.92.040 Compensation and travel expenses of board members.
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18.92.051 Compliance with chapter required.
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18.92.070 Applications—Procedure—Qualifications—Eligibility to take examination.
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18.92.135 License to practice specialized veterinary medicine.
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18.92.145 License, certificates of registration, permit, examination, and renewal fees.
18.92.150 License—Display.
18.92.230 Use of another's license or diploma a felony—Penalty.
18.92.240 Violations generally—Penalty.
18.92.900 Severability—1941 c 71.

Duty of veterinarians to report diseases: RCW 16.36.080.

18.92.010 Veterinary practice defined. Any person shall be regarded as practicing veterinary medicine, surgery and dentistry within the meaning of this chapter who shall, within this state, (1) by advertisement, or by any notice, sign, or other indication, or by a statement written, printed or oral, in public or private, made, done, or procured by himself or herself, or any other, at his or her request, for him or her, represent, claim, announce, make known or pretend his or her ability or willingness to diagnose or prognose or treat diseases, deformities, defects, wounds, or injuries of animals; (2) or who shall so advertise, make known, represent or claim his or her ability and willingness to prescribe or administer any drug, medicine, treatment, method or practice, or to perform any operation, manipulation, or apply any apparatus or appliance for cure, amelioration, correction or reduction or modification of any animal disease, deformity, defect, wound or injury, for hire, fee, compensation, or reward, promised, offered, expected, received, or accepted directly or indirectly; (3) or who shall within this state diagnose or prognose any animal diseases, deformities, defects, wounds or injuries, for hire, fee, reward, or compensation promised, offered, expected, received, or accepted directly or indirectly; (4) or who shall within this state prescribe or administer any drug, medicine, treatment, method or practice, or perform any operation, or manipulation, or apply any apparatus or appliance for the cure, amelioration, alleviation, correction, or modification of any animal disease, deformity, defect, wound, or injury, for hire, fee, compensation, or reward, promised, offered, expected, received or accepted directly or indirectly; (5) or who performs any manual procedure for the diagnosis of pregnancy, sterility, or infertility upon livestock; (6) or who implants any electronic device for the purpose of establishing or maintaining positive identification of animals.

The opening of an office or place of business for the practice of veterinary medicine, the use of a sign, card, device or advertisement as a practitioner of veterinary medicine or as a person skilled in such practice shall be prima facie evidence of engaging in the practice of veterinary medicine, surgery and dentistry. [1995 c 317 § 1; 1959 c 92 § 1; 1941 c 71 § 1; Rem. Supp. 1941 § 10040-1. Prior: 1907 c 124 § 1. FORMER PART OF SECTION: 1941 c 71 § 21; Rem. Supp. 1941 § 10040-21, now codified as RCW 18.92.015.]

18.92.012 Authority to dispense legend drugs prescribed by other veterinarians. A veterinarian licensed under this chapter may dispense veterinary legend drugs prescribed by other veterinarians licensed under this chapter, so long as, during any year, the total drugs so dispensed do not constitute more than five percent of the total dosage units of legend drugs the veterinarian dispenses and the veterinarian maintains records of his or her dispensing activities consistent with the requirements of chapters 18.64, 69.04, 69.41, and 69.50 RCW. For purposes of this section, a "veterinary legend drug" is a legend drug, as defined in chapter 69.41 RCW, which is either: (1) Restricted to use by licensed veterinarians by any law or regulation of the federal government, or (2) designated by rule by the state

board of pharmacy as being a legend drug that one licensed veterinarian may dispense for another licensed veterinarian under this section. [1991 c 47 § 1.]

18.92.013 Dispensing of drugs by registered personnel. (1) A veterinarian legally prescribing drugs may delegate to a registered veterinary medication clerk or a registered animal technician, while under the veterinarian's direct supervision, certain nondiscretionary functions defined by the board and used in the dispensing of legend and nonlegend drugs (except controlled substances as defined in or under chapter 69.50 RCW) associated with the practice of veterinary medicine. Upon final approval of the packaged prescription following a direct physical inspection of the packaged prescription for proper formulation, packaging, and labeling by the veterinarian, the veterinarian may delegate the delivery of the prescription to a registered veterinary medication clerk or registered animal technician, while under the veterinarian's indirect supervision. Dispensing of drugs by veterinarians, registered animal technicians, and registered veterinary medication clerks shall meet the applicable requirements of chapters 18.64, 69.40, 69.41, and 69.50 RCW and is subject to inspection by the board of pharmacy investigators.

(2) For the purposes of this section:

(a) "Direct supervision" means the veterinarian is on the premises and is quickly and easily available; and

(b) "Indirect supervision" means the veterinarian is not on the premises but has given written or oral instructions for the delegated task. [1993 c 78 § 2.]

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

"Animal technician" means a person who has successfully completed an examination administered by the board and who has either successfully completed a post high school course approved by the board in the care and treatment of animals or had five years' practical experience, acceptable to the board, with a licensed veterinarian.

"Board" means the Washington state veterinary board of governors.

"Department" means the department of health.

"Secretary" means the secretary of the department of health.

"Veterinary medication clerk" means a person who has satisfactorily completed a board-approved training program developed in consultation with the board of pharmacy and designed to prepare persons to perform certain nondiscretionary functions defined by the board and used in the dispensing of legend and nonlegend drugs (except controlled substances as defined in or under chapter 69.50 RCW) associated with the practice of veterinary medicine. [1993 c 78 § 1; 1991 c 332 § 40; 1991 c 3 § 238; 1983 c 102 § 1; 1979 c 158 § 71; 1974 ex.s. c 44 § 1; 1967 ex.s. c 50 § 1; 1959 c 92 § 2; 1941 c 71 § 21; Rem. Supp. 1941 § 10040-21. Formerly RCW 18.92.010, part.]

Captions not law—1991 c 332: See note following RCW 18.130.010.

18.92.021 Veterinary board of governors—Appointment, qualifications, terms, officers—Quorum.

(1) There is created a Washington state veterinary board of governors consisting of six members, five of whom shall be licensed veterinarians, and one of whom shall be a lay member.

(2) The licensed members shall be appointed by the governor. At the time of their appointment the licensed members of the board must be actual residents of the state in active practice as licensed practitioners of veterinary medicine, surgery, and dentistry and must be citizens of the United States. Not more than one licensed member shall be from the same congressional district. The board shall not be deemed to be unlawfully constituted and a member of the board shall not be deemed ineligible to serve the remainder of the member's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts.

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

(3) The lay member shall be appointed by the governor for a five year term and until the lay member's successor is appointed.

(4) A member may be appointed to serve a second term, if that term does not run consecutively. Vacancies in the board shall be filled by the governor, the appointee to hold office for the remainder of the unexpired term.

(5) Officers of the board shall be a chairman and a secretary-treasurer to be chosen by the members of the board from among its members.

(6) Four members of the board shall constitute a quorum at meetings of the board. [1983 c 2 § 2. Prior: 1982 1st ex.s. c 30 § 5; 1982 c 134 § 1; 1979 ex.s. c 31 § 1; 1967 ex.s. c 50 § 2; 1959 c 92 § 3.]

Severability—1983 c 2: See note following RCW 18.71.030.

18.92.030 General duties of board. The board shall develop and administer, or approve, or both, a licensure examination in the subjects determined by the board to be essential to the practice of veterinary medicine, surgery, and dentistry. The board may approve an examination prepared or administered by a private testing agency or association of licensing authorities. The board, under chapter 34.05 RCW, may adopt rules necessary to carry out the purposes of this chapter, including the performance of the duties and responsibilities of animal technicians and veterinary medication clerks. The rules shall be adopted in the interest of good veterinary health care delivery to the consuming public and shall not prevent animal technicians from inoculating an animal. The board also has the power to adopt by rule standards prescribing requirements for veterinary medical facilities and fixing minimum standards of continuing veterinary medical education.

The department is the official office of record. [1995 c 198 § 13; 1993 c 78 § 3; 1986 c 259 § 140; 1983 c 102 § 2; 1982 c 134 § 2; 1981 c 67 § 23; 1974 ex.s. c 44 § 2; 1967 ex.s. c 50 § 3; 1961 c 157 § 2; 1959 c 92 § 4; 1941 c 71 § 4; Rem. Supp. 1941 § 10040-4. FORMER PART OF

SECTION: 1941 c 71 § 9; Rem. Supp. 1941 § 10040-9 now codified as RCW 18.92.035.]

Severability—1986 c 259: See note following RCW 18.130.010.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

18.92.035 Board to certify successful examinees.

The board shall certify to the secretary the names of all applicants who have successfully passed an examination and are entitled to a license to practice veterinary medicine, surgery and dentistry. The secretary shall thereupon issue a license to practice veterinary medicine, surgery and dentistry to such applicant. [1991 c 3 § 239; 1941 c 71 § 9; Rem. Supp. 1941 § 10040-9. Formerly RCW 18.92.030, part.]

18.92.040 Compensation and travel expenses of board members. Each member of the board shall be compensated in accordance with RCW 43.70.250 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. No expense may be incurred by members of the board except in connection with board meetings without prior approval of the secretary. [1991 c 3 § 240; 1984 c 287 § 51; 1983 c 102 § 4; 1975-'76 2nd ex.s. c 34 § 53; 1974 ex.s. c 44 § 3; 1967 ex.s. c 50 § 4; 1959 c 92 § 5; 1941 c 71 § 5; 1913 c 79 § 2; 1907 c 124 § 13; Rem. Supp. 1941 § 10040-5.]

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

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

18.92.046 Application of uniform disciplinary act.

The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 58; 1986 c 259 § 139.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.92.047 Impaired veterinarian program—

Content—License surcharge. (1) To implement an impaired veterinarian program as authorized by RCW 18.130.175, the veterinary board of governors shall enter into a contract with a voluntary substance abuse monitoring program. The impaired veterinarian program may include any or all of the following:

- (a) Contracting with providers of treatment programs;
- (b) Receiving and evaluating reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment;
- (d) Referring impaired veterinarians to treatment programs;
- (e) Monitoring the treatment and rehabilitation of impaired veterinarians including those ordered by the board;
- (f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired veterinarians; and
- (g) Performing other related activities as determined by the board.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of up to twenty-five

dollars on each license issuance or renewal of a new license to be collected by the department of health from every veterinarian licensed under chapter 18.92 RCW. These moneys shall be placed in the health professions account to be used solely for the implementation of the impaired veterinarian program. [1991 c 3 § 241; 1989 c 125 § 2.]

18.92.051 Compliance with chapter required. It is a violation of RCW 18.130.190 for any person to practice the profession of veterinary medicine, surgery, or dentistry in this state, who has not complied with the provisions of this chapter. [1987 c 150 § 59.]

Severability—1987 c 150: See RCW 18.122.901.

18.92.060 Licensing exemptions. Nothing in this chapter applies to:

(1) Commissioned veterinarians in the United States military services or veterinarians employed by Washington state and federal agencies while performing official duties;

(2) A person practicing veterinary medicine upon his or her own animal;

(3) A person advising with respect to or performing the castrating and dehorning of cattle, castrating and docking of sheep, castrating of swine, caponizing of poultry, or artificial insemination of animals;

(4)(a) A person who is a regularly enrolled student in a veterinary school or training course approved under RCW 18.92.015 and performing duties or actions assigned by his or her instructors or working under the direct supervision of a licensed veterinarian during a school vacation period or (b) a person performing assigned duties under the supervision of a veterinarian within the established framework of an internship program recognized by the board;

(5) A veterinarian regularly licensed in another state consulting with a licensed veterinarian in this state;

(6) An animal technician or veterinary medication clerk acting under the supervision and control of a licensed veterinarian. The practice of an animal technician or veterinary medication clerk is limited to the performance of services which are authorized by the board;

(7) An owner being assisted in practice by his or her employees when employed in the conduct of the owner's business;

(8) An owner being assisted in practice by some other person gratuitously;

(9) The implanting in their own animals of any electronic device for identifying animals by established humane societies and animal control organizations that provide appropriate training, as determined by the veterinary board of governors, and/or direct or indirect supervision by a licensed veterinarian;

(10) The implanting of any electronic device by a public fish and wildlife agency for the identification of fish or wildlife. [1995 c 317 § 2; 1993 c 78 § 4; 1974 ex.s. c 44 § 4; 1967 ex.s. c 50 § 5; 1959 c 92 § 13; 1941 c 71 § 20; Rem. Supp. 1941 § 10040-20. Prior: 1907 c 124 § 15.]

18.92.070 Applications—Procedure—Qualifications—Eligibility to take examination. No person, unless registered or licensed to practice veterinary medicine, surgery, and dentistry in this state at the time this

chapter shall become operative, shall begin the practice of veterinary medicine, surgery and dentistry without first applying for and obtaining a license for such purpose from the secretary. In order to procure a license to practice veterinary medicine, surgery, and dentistry in the state of Washington, the applicant for such license shall file his or her application at least sixty days prior to date of examination upon a form furnished by the secretary of health, which, in addition to the fee provided by this chapter, shall be accompanied by satisfactory evidence that he or she is at least eighteen years of age and of good moral character, and by official transcripts or other evidence of graduation from a veterinary college satisfactory to and approved by the board. Said application shall be signed by the applicant and sworn to by him or her before some person authorized to administer oaths. When such application and the accompanying evidence are found satisfactory, the secretary shall notify the applicant to appear before the board for the next examination. In addition, applicants shall be subject to grounds for denial or issuance of a conditional license under chapter 18.130 RCW.

Nothing in this chapter shall preclude the board from permitting a person who has completed a portion of his or her educational program as determined by the board, in a veterinary college recognized by the board, to take the examination or any part thereof prior to satisfying the requirements for application for a license: PROVIDED HOWEVER, That no license shall be issued to such applicant until such requirements are satisfied. [1991 c 3 § 242; 1986 c 259 § 141; 1982 c 134 § 3; 1979 c 158 § 72; 1974 ex.s. c 44 § 5; 1971 ex.s. c 292 § 28; 1941 c 71 § 6; Rem. Supp. 1941 § 10040-6. Formerly RCW 18.92.050, part, 18.92.070, part, and 18.92.080, part.]

Severability—1986 c 259: See note following RCW 18.130.010.

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

18.92.100 Examinations—Time of—Subjects—Manner. Examinations for license to practice veterinary medicine, surgery and dentistry shall be held at least once each year at such times and places as the secretary may authorize and direct. The examination shall be on subjects that are ordinarily included in the curricula of veterinary colleges. All examinees shall be tested by written examination, supplemented by such oral interviews and practical demonstrations as the board deems necessary. [1995 c 198 § 14; 1991 c 3 § 243; 1967 ex.s. c 50 § 6; 1959 c 92 § 7; 1941 c 71 § 7; Rem. Supp. 1941 § 10040-7.]

18.92.115 Reexamination—Fee. Any applicant who shall fail to secure the required grade in his first examination may take the next regular veterinary examination. The fee for reexamination shall be determined by the secretary as provided in RCW 43.70.250. [1991 c 3 § 244; 1985 c 7 § 71; 1975 1st ex.s. c 30 § 82; 1967 ex.s. c 50 § 7; 1959 c 92 § 8; 1941 c 71 § 10; Rem. Supp. 1941 § 10040-10. Prior: 1907 c 124 § 17. Formerly RCW 18.92.090, part.]

18.92.120 License—Temporary certificates, restrictions. Any person who shall make application for examination, as provided by RCW 18.92.070, and who has not previously failed to pass the veterinary examination, and

whose application is found satisfactory by the secretary, may be given a temporary certificate to practice veterinary medicine, surgery and dentistry valid only until the results of the next examination for licenses are available. In addition, applicants shall be subject to the grounds for denial or issuance of a conditional license under chapter 18.130 RCW. No more than one temporary certificate may be issued to any applicant. Such permittee shall be employed by a licensed veterinary practitioner or by the state of Washington. [1991 c 3 § 245; 1986 c 259 § 142; 1967 ex.s. c 50 § 8; 1959 c 92 § 9; 1941 c 71 § 11; 1907 c 124 § 11; Rem. Supp. 1941 § 10040-11.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.92.125 Animal technicians or veterinary medication clerks. No veterinarian who uses the services of an animal technician or veterinary medication clerk shall be considered as aiding and abetting any unlicensed person to practice veterinary medicine. A veterinarian retains professional and personal responsibility for any act which constitutes the practice of veterinary medicine as defined in this chapter when performed by an animal technician or veterinary medication clerk in his or her employ. [1993 c 78 § 5; 1986 c 259 § 143; 1983 c 102 § 5; 1974 ex.s. c 44 § 6.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.92.130 License—Reciprocity with other states—Fee. Any person who has been lawfully licensed to practice veterinary medicine, surgery, and dentistry in another state or territory which has and maintains a standard for the practice of veterinary medicine, surgery and dentistry which is substantially the same as that maintained in this state, and who has been lawfully and continuously engaged in the practice of veterinary medicine, surgery and dentistry for two years or more immediately before filing his or her application to practice in this state and who shall submit to the secretary a duly attested certificate from the examining board of the state or territory in which he or she is registered, certifying to the fact of his or her registration and of his or her being a person of good moral character and of professional attainments, may upon the payment of the fee as provided herein, be granted a license to practice veterinary medicine, surgery and dentistry in this state, without being required to take an examination: PROVIDED, HOWEVER, That no license shall be issued to any applicant, unless the state or territory from which such certificate has been granted to such applicant shall have extended a like privilege to engage in the practice of veterinary medicine, surgery and dentistry within its own borders to veterinarians heretofore and hereafter licensed by this state, and removing to such other state: AND PROVIDED FURTHER, That the secretary of health shall have power to enter into reciprocal relations with other states whose requirements are substantially the same as those provided herein. The board shall make recommendations to the secretary upon all requests for reciprocity. [1991 c 3 § 246; 1959 c 92 § 10; 1941 c 71 § 12; Rem. Supp. 1941 § 10040-12.]

18.92.135 License to practice specialized veterinary medicine. (1) The department may issue a license to

practice specialized veterinary medicine in this state to a veterinarian who:

(a) Submits an application on a form provided by the secretary for a license in a specialty area recognized by the board by rule;

(b) Holds a current certification as a diplomate of a national specialty board or college recognized by the board by rule in the specialty area for which application is submitted;

(c) Is not subject to license investigation, suspension, revocation, or other disciplinary action in any state, United States territory, or province of Canada;

(d) Has successfully completed an examination established by the board regarding this state's laws and rules regulating the practice of veterinary medicine; and

(e) Provides other information and verification required by the board.

(2) A veterinarian licensed to practice specialized veterinary medicine shall not practice outside his or her licensed specialty unless he or she meets licensing requirements established for practicing veterinary medicine, surgery, and dentistry under RCW 18.92.070 and 18.92.100.

(3) The board shall determine by rule the limits of the practice of veterinary medicine, surgery, and dentistry represented by a license to practice specialized veterinary medicine.

(4) The board may deny, revoke, suspend, or modify a license to practice specialized veterinary medicine if the national specialty board or college certifying the licensee denies, revokes, suspends, modifies, withdraws, or otherwise limits the certification or if the certification expires. [1991 c 332 § 41.]

Captions not law—1991 c 332: See note following RCW 18.130.010.

18.92.140 License—Procedures, requirements, fees.

Each person now qualified to practice veterinary medicine, surgery, and dentistry, registered as an animal technician, or registered as a veterinary medication clerk in this state or who becomes licensed or registered to engage in practice shall comply with administrative procedures, administrative requirements, and fees determined as provided in RCW 43.70.250 and 43.70.280. [1996 c 191 § 79; 1993 c 78 § 6; 1991 c 3 § 247; 1985 c 7 § 72; 1983 c 102 § 6; 1941 c 71 § 16; Rem. Supp. 1941 § 10040-16. FORMER PARTS OF SECTION: (i) 1941 c 71 § 17; Rem. Supp. 1941 § 10040-17, now codified as RCW 18.92.142. (ii) 1941 c 71 § 19, part; Rem. Supp. 1941 § 10040-19, part, now codified as RCW 18.92.145.]

18.92.145 License, certificates of registration, permit, examination, and renewal fees. Administrative procedures, administrative requirements, and fees shall be established as provided in RCW 43.70.250 and 43.70.280 for the issuance, renewal, or administration of the following licenses, certificates of registration, permits, duplicate licenses, renewals, or examination:

(1) For a license to practice veterinary medicine, surgery, and dentistry issued upon an examination given by the examining board;

(2) For a license to practice veterinary medicine, surgery, and dentistry issued upon the basis of a license issued in another state;

(3) For a certificate of registration as an animal technician;

(4) For a certificate of registration as a veterinary medication clerk;

(5) For a temporary permit to practice veterinary medicine, surgery, and dentistry. The temporary permit fee shall be accompanied by the full amount of the examination fee; and

(6) For a license to practice specialized veterinary medicine. [1996 c 191 § 80; 1993 c 78 § 7; 1991 c 332 § 42; 1991 c 3 § 248; 1985 c 7 § 73; 1983 c 102 § 7; 1975 1st ex.s. c 30 § 84; 1971 ex.s. c 266 § 20; 1967 ex.s. c 50 § 9; 1959 c 92 § 12; 1941 c 71 § 19; Rem. Supp. 1941 § 10040-19. Prior: 1907 c 124 §§ 9, 10. Formerly RCW 18.92.090 and 18.92.140.]

Captions not law—1991 c 332: See note following RCW 18.130.010.

18.92.150 License—Display. Every person holding a license under the provisions of this chapter shall conspicuously display it in his principal place of business, together with the annual renewal license certificate. [1941 c 71 § 18; Rem. Supp. 1941 § 10040-18.]

18.92.230 Use of another's license or diploma a felony—Penalty. Any person filing or attempting to file, as his own, the diploma or license of another shall be deemed guilty of a felony, and upon conviction thereof, shall be subject to such fine and imprisonment as is made and provided by the statutes of this state for the crime of forgery. [1941 c 71 § 23; Rem. Supp. 1941 § 10040-23.]

Forgery: RCW 9A.60.020.

18.92.240 Violations generally—Penalty. Violation of any of the provisions of this chapter, or of any rule or regulation made pursuant thereto, shall constitute a misdemeanor and punishable by fine of not less than fifty dollars. [1941 c 71 § 24; Rem. Supp. 1941 § 10040-24.]

18.92.900 Severability—1941 c 71. Should any section of this chapter, or any portion of any section be for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. [1941 c 71 § 25.]

Chapter 18.96

LANDSCAPE ARCHITECTS

Sections

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- 18.96.020 Registration required.
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- 18.96.040 Board of registration for landscape architects—Created—Members—Qualifications.
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Public contracts for architectural services: Chapter 39.80 RCW.

18.96.010 Evidence of qualifications required. In order to safeguard human health and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture for hire, shall be required to submit evidence that he is qualified so to practice and shall be registered under the provisions of this chapter. [1969 ex.s. c 158 § 1.]

18.96.020 Registration required. It shall be unlawful for any person to use, or advertise the title landscape architect, landscape architecture, or landscape architectural, unless such person has duly registered under the provisions of this chapter. [1969 ex.s. c 158 § 2.]

18.96.030 Definitions. The following words and phrases as hereinafter used in this chapter shall have the following meanings:

"Director" means the director of licensing of the state of Washington.

"Board" means the state board of registration for landscape architects.

"Landscape architect" means a person who engages in the practice of landscape architecture as hereinafter defined. A person practices landscape architecture within the meaning and intent of this chapter who performs for hire professional services such as consultations, investigations, reconnaissance, research, planning, design or teaching supervision in connection with the development of land areas where, and to the extent that, the dominant purpose of such services is the preservation, enhancement, or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings and approaches to structures or other improvements, or natural drainage and erosion control. This practice shall include the location, design, and arrangement of such tangible objects as pools, walls, steps, trellises, canopies, and other nonhabitable structures, and such features as are incidental and necessary to the purposes outlined herein. It involves the design and arrangement of land forms and the development of outdoor space including, but not limited to, the design of public parks, playgrounds, cemeteries, home and school grounds, and the development of industrial and recreational sites. [1979 c 158 § 73; 1969 ex.s. c 158 § 3.]

18.96.040 Board of registration for landscape architects—Created—Members—Qualifications. There is

created a state board of registration for landscape architects. The board shall consist of four landscape architects and one member of the general public. Members of the board shall be appointed by the governor and must be residents of this state having the qualifications required by this chapter.

No public member of the board may be a past or present member of any other licensing board under this title. No public member may make his or her own livelihood from, nor have a parent, spouse, or child make their respective livelihood from providing landscape architect services, or from enterprises dealing in landscape architecture.

The landscape architect members of the board must, while serving on the board, be actively engaged in their profession or trade and, immediately preceding appointment, have had at least five years experience in responsible charge of work or teaching within their profession or trade. [1993 c 35 § 1; 1985 c 18 § 1; 1969 ex.s. c 158 § 4.]

Effective date—1985 c 18: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on June 30, 1985." [1985 c 18 § 6.]

18.96.050 Board—Terms of office—Removal—Compensation and travel expenses. The members of the first board shall serve for the following terms:

One member for one year, one member for two years, one member for three years, one member for four years, and one member for five years from the date of appointment or until successors are duly appointed and qualified. Every member of the board shall receive a certificate of his appointment from the governor, and before beginning his term of office shall file with the secretary of state his written oath or affirmation for the faithful discharge of his official duties. On the expiration of the term of each member, the governor shall appoint a successor to serve for a term of five years, or until his successor has been appointed and qualified: PROVIDED, That no member shall serve more than ten consecutive years.

The governor may remove any member of the board for cause. Vacancies in the board for any reason shall be filled by appointment for the unexpired term. In carrying out the provisions of this chapter, the members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses according to the provisions of RCW 43.03.050 and 43.03.060, such funds to be provided from the landscape architects' account in the state general fund. [1984 c 287 § 52; 1975-'76 2nd ex.s. c 34 § 54; 1969 ex.s. c 158 § 5.]

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

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

18.96.060 Board—Rules—Quorum—Hearings—Subpoena power. The board shall adopt rules for its own organization and procedure and such other rules as it may deem necessary to the proper performance of its duties. Three members of the board shall constitute a quorum for the conduct of any business of the board.

The board may conduct hearings concerning alleged violations of the provisions of this chapter. In conducting such hearings the chairman of the board, or any member of

the board acting in his place, may administer oaths or affirmations to witnesses appearing before the board, subpoena witnesses and compel their attendance, and require the production of books, records, papers and documents. If any person shall refuse to obey any subpoena so issued, or shall refuse to testify or to produce any books, records, papers or documents so required to be produced, the board may present its petition to the superior court of the county in which such person resides, setting forth the facts, and thereupon the court shall, in any proper case, enter a suitable order compelling compliance with the provisions of this chapter and imposing such other terms and conditions as the court may deem equitable. [1969 ex.s. c 158 § 6.]

18.96.070 Qualifications of applicants. The following will be considered as minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional landscape architect.

The applicant must have completed a course of study in landscape architecture and have been graduated from a college or school approved by the board as offering a curriculum in landscape architecture, or the equivalent thereof, in any form of training, as determined by the board. Each complete year of study in any registered college or school of landscape architecture may be accepted in lieu of one year of equivalent training.

He must have a minimum of seven years in any combination of training and experience, and shall present proof to the director of passing such written examinations as may be prescribed by the board.

Registration under this chapter shall be on an individual, personal basis, and the director shall not register any firm, company, partnership, corporation, nor any public agency. Corporate practice is not permitted under the provisions of this chapter. [1969 ex.s. c 158 § 7.]

18.96.080 Applications—Contents—Fees. Application for registration shall be filed with the director prior to the date set for examination and shall contain statements made under oath showing the applicant's education and a detailed summary of practical experience, and shall contain not less than three references who are landscape architects having personal knowledge of the applicant's landscape architectural experience.

The application fee for initial examination shall be determined by the director as provided in RCW 43.24.086. The application and fee must be submitted to the agency prior to the application deadline established by the director.

Fees for initial examination and reexamination shall be determined by the director as provided in RCW 43.24.086, and must be filed with the agency prior to the application deadline established by the director. [1993 c 35 § 2; 1985 c 7 § 74; 1975 1st ex.s. c 30 § 85; 1969 ex.s. c 158 § 8.]

18.96.090 Examinations. Examinations of applicants for certificates of registration shall be held at least annually or at such times and places as the board may determine. The board shall determine from the examination and the material submitted with the applications whether or not the applicants possess sufficient knowledge, ability and moral fitness to safely and properly practice landscape architecture

and to hold themselves out to the public as persons qualified for that practice.

The scope of the examination and methods of examination procedure shall be prescribed by the board with special reference to landscape construction materials and methods, grading and drainage, plant materials suited for use in the northwest, specifications and supervisory practice, history and theory of landscape architecture relative to landscape architectural design, site planning and land design, subdivision, urban design, and a practical knowledge of botany, horticulture and similar subjects related to the practice of landscape architecture. The board may adopt an appropriate national examination and grading procedure.

Applicants who fail to pass sections of the examination shall be permitted to retake the examination in the sections failed. A passing grade in a section shall exempt the applicant from examination in that subject for five years. The board may determine the standard for passing grades computed on a scale of one hundred percent. A certificate of registration shall be granted by the director to all qualified applicants who shall be certified by the board as having passed the required examination and as having given satisfactory proof of completion of the required experience. [1993 c 35 § 3; 1985 c 18 § 2; 1969 ex.s. c 158 § 9.]

Effective date—1985 c 18: See note following RCW 18.96.040.

18.96.100 Reciprocity. The director may, upon payment of a reciprocity application fee and the current registration fee in an amount as determined by the director as provided in RCW 43.24.086, grant a certificate of registration, upon recommendation by the board, to any applicant who is a registered landscape architect in any other state or country whose requirements for registration are at least substantially equivalent to the requirements of this state for registration by examination, and which extends the same privileges of reciprocity to landscape architects registered in this state. [1993 c 35 § 4; 1985 c 7 § 75; 1975 1st ex.s. c 30 § 86; 1969 ex.s. c 158 § 10.]

18.96.110 Renewals. The renewal dates for certificates of registration shall be set by the director. The director shall set the fee for renewal which shall be determined as provided in RCW 43.24.086.

If a registrant fails to pay the renewal fee within thirty days after the renewal date, the renewal shall be delinquent. The renewal fee for a delinquent renewal and the penalty fee for a delinquent renewal shall be established by the director. Any registrant in good standing, upon fully retiring from landscape architectural practice, may withdraw from practice by giving written notice to the director, and may thereafter resume practice at any time upon payment of the then current renewal fee. Any registrant, other than a properly withdrawn licensee, who fails to renew his or her registration for a period of more than five years may be reinstated under the circumstances as the board determines. [1993 c 35 § 5. Prior: 1985 c 18 § 3; 1985 c 7 § 76; 1975 1st ex.s. c 30 § 87; 1969 ex.s. c 158 § 11.]

Effective date—1985 c 18: See note following RCW 18.96.040.

18.96.120 Actions against certificates—Grounds. The director may refuse to renew, or may suspend or revoke,

a certificate of registration to use the titles landscape architect, landscape architecture, or landscape architectural in this state upon the following grounds:

(1) The holder of the certificate of registration is impersonating a practitioner or former practitioner.

(2) The holder of the certificate of registration is guilty of fraud, deceit, gross negligence, gross incompetency or gross misconduct in the practice of landscape architecture.

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

(4) The holder of the certificate has committed fraud in applying for or obtaining a certificate. [1969 ex.s. c 158 § 12.]

18.96.130 Charges against registrants—Hearings—Findings—Penalties. Any person may prefer charges of fraud, deceit, gross negligence, incompetency, or misconduct against any registrant. Such charges shall be in writing and shall be sworn to by the person making them and shall be filed with the director.

All charges unless dismissed by the director as unfounded or trivial, shall be heard by the board within three months after the date on which they have been preferred.

An action of suspension, revocation, refusal to renew, or a fine not exceeding one thousand dollars per violation by the director, shall be based upon the findings of the board after charges and evidence in support thereof have been heard and determined. [1985 c 18 § 4; 1969 ex.s. c 158 § 13.]

Effective date—1985 c 18: See note following RCW 18.96.040.

18.96.140 Restoration of suspended or revoked licenses—Reissuance of lost or destroyed certificates. Upon the recommendations of the board, the director may restore a license to any person whose license has been suspended or revoked. Application for the reissuance of a license shall be made in such a manner as indicated by the board.

A new certificate of registration to replace any certificate lost or destroyed, or mutilated may be issued by the director, and a charge determined by the director as provided in RCW 43.24.086 shall be made for such issuance. [1985 c 7 § 77; 1975 1st ex.s. c 30 § 88; 1969 ex.s. c 158 § 14.]

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

Each registrant shall obtain a seal of a design authorized by the board, bearing the registrant's name and the legend, "registered landscape architect". All sheets of drawings and title pages of specifications prepared by the registrant shall be stamped with said seal. [1993 c 35 § 6; 1969 ex.s. c 158 § 15.]

18.96.160 Misuse of seal. It shall be unlawful for anyone to stamp or seal any document with the seal after the certificate of registrant named thereon has expired or been revoked, or while the certificate is suspended. [1969 ex.s. c 158 § 16.]

18.96.170 Penalty. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor. [1969 ex.s. c 158 § 17.]

18.96.180 Injunctions—Board members not personally liable—Prosecutions. The board is authorized to apply for relief by injunction without bond to restrain a person from the commission of any act which is prohibited by this chapter. The members of the board shall not be personally liable for their action in any such proceeding or in any other proceeding instituted by the board under the provisions of this chapter. The board, in any proper case, shall cause prosecution to be instituted in any county or counties where any violation of this chapter occurs, and shall aid in the prosecution of the violator. [1969 ex.s. c 158 § 18.]

18.96.190 Certificate of registration suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the certificate of registration of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's certificate of registration shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for certification during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 15.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.96.900 Severability—1969 ex.s. c 158. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 158 § 19.]

Chapter 18.100

PROFESSIONAL SERVICE CORPORATIONS

Sections

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Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

18.100.010 Legislative intent. It is the legislative intent to provide for the incorporation of an individual or group of individuals to render the same professional service to the public for which such individuals are required by law to be licensed or to obtain other legal authorization. [1969 c 122 § 1.]

18.100.020 Short title. This chapter may be cited as "the professional service corporation act". [1969 c 122 § 2.]

18.100.030 Definitions. As used in this chapter the following words shall have the meaning indicated:

(1) The term "professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which prior to the passage of this chapter and by reason of law could not be performed by a corporation, including, but not by way of limitation, certified public accountants, chiropractors, dentists, osteopaths, physicians, *podiatrists, chiropodists, architects, veterinarians and attorneys at law.

(2) The term "professional corporation" means a corporation which is organized under this chapter for the purpose of rendering professional service.

(3) The term "ineligible person" means any individual, corporation, partnership, fiduciary, trust, association, government agency, or other entity which for any reason is or becomes ineligible under this chapter to own shares issued by a professional corporation. [1983 c 51 § 2; 1969 c 122 § 3.]

***Reviser's note:** The term "podiatrists" was changed to "podiatric physicians and surgeons" by 1990 c 147.

18.100.035 Fees for services by secretary of state.
See RCW 43.07.120.

18.100.040 Application of chapter to previously organized corporations. This chapter shall not apply to any individuals or groups of individuals within this state who prior to the passage of this chapter were permitted to organize a corporation and perform personal services to the public by means of a corporation, and this chapter shall not apply to any corporation organized by such individual or group of individuals prior to the passage of this chapter: **PROVIDED,** That any such individual or group of individuals or any such corporation may bring themselves and such corporation within the provisions of this chapter by amending the articles of incorporation in such a manner so as to be consistent with all the provisions of this chapter and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this chapter. [1969 c 122 § 4.]

18.100.050 Organization of professional service corporations authorized generally—Architects, engineers, and health care professionals—Nonprofit corporations.

(1) An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of Title 23B RCW for the purpose of rendering professional service. One or more of the legally authorized individuals shall be the incorporators of the professional corporation.

(2) Notwithstanding any other provision of this chapter, registered architects and registered engineers may own stock in and render their individual professional services through one professional service corporation.

(3) Licensed health care professionals, providing services to enrolled participants either directly or through arrangements with a health maintenance organization registered under chapter 48.46 RCW or federally qualified health maintenance organization, may own stock in and render their individual professional services through one professional service corporation.

(4) Professionals may organize a nonprofit nonstock corporation under this chapter and chapter 24.03 RCW to provide professional services, and the provisions of this chapter relating to stock and referring to Title 23B RCW shall not apply to any such corporation.

(5)(a) Notwithstanding any other provision of this chapter, health care professionals who are licensed or certified pursuant to chapters 18.06, 18.19, 18.22, 18.25, 18.29, 18.34, 18.35, 18.36A, 18.50, 18.53, 18.55, 18.64, 18.79, 18.83, 18.89, 18.108, and 18.138 RCW may own stock in and render their individual professional services through one professional service corporation and are to be considered, for the purpose of forming a professional service corporation, as rendering the "same specific professional services" or "same professional services" or similar terms.

(b) Notwithstanding any other provision of this chapter, health care professionals who are licensed pursuant to chapters 18.57 and 18.71 RCW may own stock in and render their individual professional services through one profession-

al service corporation and are to be considered, for the purpose of forming a professional service corporation, as rendering the "same specific professional services" or "same professional services" or similar terms.

(c) Formation of a professional service corporation under this subsection does not restrict the application of the uniform disciplinary act under chapter 18.130 RCW, or applicable health care professional statutes under Title 18 RCW, including but not limited to restrictions on persons practicing a health profession without being appropriately credentialed and persons practicing beyond the scope of their credential. [1996 c 22 § 1; 1991 c 72 § 3; 1986 c 261 § 1; 1983 c 100 § 1; 1969 c 122 § 5.]

18.100.060 Rendering of services by authorized individuals. No corporation organized under this chapter may render professional services except through individuals who are duly licensed or otherwise legally authorized to render such professional services within this state: PROVIDED, That nothing in this chapter shall be interpreted to require the licensing of clerks, secretaries, bookkeepers, technicians, and other assistants employed by a professional corporation who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required. [1983 c 51 § 3; 1969 c 122 § 6.]

18.100.065 Authority of directors, officers to render same services as corporation. Except as otherwise provided in RCW 18.100.118, all directors of a corporation organized under this chapter and all officers other than the secretary and the treasurer shall be duly licensed or otherwise legally authorized to render the same specific professional services within this state as those for which the corporation was incorporated. [1983 c 51 § 7.]

18.100.070 Professional relationships and liabilities preserved. Nothing contained in this chapter shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and the standards for professional conduct. Any director, officer, shareholder, agent or employee of a corporation organized under this chapter shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him or by any person under his direct supervision and control, while rendering professional services on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall be liable for any negligent or wrongful acts of misconduct committed by any of its directors, officers, shareholders, agents or employees while they are engaged on behalf of the corporation, in the rendering of professional services. [1969 c 122 § 7.]

18.100.080 Engaging in other business prohibited—Investments. No professional service corporation organized under this chapter shall engage in any business other than the rendering of the professional services for which it was incorporated or service as a trustee as authorized by RCW

11.36.021 or as a personal representative as authorized by RCW 11.36.010: PROVIDED, That nothing in this chapter or in any other provisions of existing law applicable to corporations shall be interpreted to prohibit such corporation from investing its funds in real estate, personal property, mortgages, stocks, bonds, insurance, or any other type of investments. [1984 c 149 § 170; 1969 c 122 § 8.]

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

18.100.090 Stock issuance. Except as otherwise provided in RCW 18.100.118, no professional corporation organized under the provisions of this chapter may issue any of its capital stock to anyone other than an individual who is duly licensed or otherwise legally authorized to render the same specific professional services within this state as those for which the corporation was incorporated. [1983 c 51 § 4; 1969 c 122 § 9.]

18.100.095 Validity of share voting agreements. A proxy, voting trust, or other voting agreement with respect to shares of a professional corporation shall not be valid unless all holders thereof, all trustees and beneficiaries thereof, or all parties thereto, as the case may be, are eligible to be shareholders of the corporation. [1983 c 51 § 12.]

18.100.100 Legal disqualification of officer, shareholder or employee to render professional service, effect. If any director, officer, shareholder, agent or employee of a corporation organized under this chapter who has been rendering professional service to the public becomes legally disqualified to render such professional services within this state, he shall sever all employment with, and financial interests in, such corporation forthwith. A corporation's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a corporation's failure to comply with this provision is brought to the attention of the office of the secretary of state, the secretary of state forthwith shall certify that fact to the attorney general for appropriate action to dissolve the corporation. [1969 c 122 § 10.]

18.100.110 Sale or transfer of shares. No shareholder of a corporation organized as a professional corporation may sell or transfer his shares in such corporation except to another individual who is eligible to be a shareholder of such corporation. Any transfer of shares in violation of this section shall be void. However, nothing in this section prohibits the transfer of shares of a professional corporation by operation of law or court decree. [1983 c 51 § 5; 1969 c 122 § 11.]

18.100.114 Merger or consolidation. (1) A corporation organized under this chapter may merge or consolidate with another corporation, domestic or foreign, organized to render the same specific professional services, only if every shareholder of each corporation is eligible to be a shareholder of the surviving or new corporation.

(2) Upon the merger or consolidation of a corporation organized under this chapter, the surviving or new corpora-

tion, as the case may be, may render professional services in this state only if it is organized under, and complies with, the provisions of this chapter. [1983 c 51 § 8.]

18.100.116 Death of shareholder, transfer to ineligible person—Treatment of shares. If a shareholder of a professional corporation dies, or if shares of a professional corporation are transferred by operation of law or court decree to an ineligible person, and if the shares held by the deceased shareholder or by such ineligible person are less than all of the outstanding shares of the corporation:

(1) The shares held by the deceased shareholder or by the ineligible person may be transferred to remaining shareholders of the corporation or may be redeemed by the corporation pursuant to terms stated in the articles of incorporation or by laws of the corporation, or in a private agreement. In the absence of any such terms, such shares may be transferred to any individual eligible to be a shareholder of the corporation.

(2) If such a redemption or transfer of the shares held by a deceased shareholder or an ineligible person is not completed within twelve months after the death of the deceased shareholder or the transfer, as the case may be, such shares shall be deemed to be shares with respect to which the holder has elected to exercise the right of dissent described in chapter 23B.13 RCW and has made written demand on the corporation for payment of the fair value of such shares. The corporation shall forthwith cancel the shares on its books and the deceased shareholder or ineligible person shall have no further interest in the corporation other than the right to payment for the shares as is provided in RCW 23B.13.250. For purposes of the application of RCW 23B.13.250, the date of the corporate action and the date of the shareholder's written demand shall be deemed to be one day after the date on which the twelve-month period from the death of the deceased shareholder, or from the transfer, expires. [1991 c 72 § 4; 1983 c 51 § 10.]

18.100.118 Eligibility of certain representatives and transferees to serve as directors, officers, or shareholders. If all of the outstanding shares of a professional corporation are held by an administrator, executor, guardian, conservator, or receiver of the estate of a former shareholder, or by a transferee who received such shares by operation of law or court decree, such administrator, executor, guardian, conservator, receiver, or transferee for a period of twelve months following receipt or transfer of such shares may be a director, officer, or shareholder of the professional corporation. [1983 c 51 § 11.]

18.100.120 Name—Listing of shareholders. Corporations organized pursuant to this chapter shall render professional service and exercise its authorized powers under a name permitted by law and the professional ethics of the profession in which the corporation is so engaged. The corporate name of a professional service corporation must contain either the words "professional service" or "professional corporation" or the abbreviation "P.S." or "P.C." The corporate name may also contain either the words "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd." With the filing

of its first annual report and any filings thereafter, professional service corporation shall list its then shareholders: PROVIDED, That notwithstanding the foregoing provisions of this section, the corporate name of a corporation organized to render dental services shall contain the full names or surnames of all shareholders and no other word than "chartered" or the words "professional services" or the abbreviation "P.S." or "P.C." [1993 c 290 § 1; 1982 c 35 § 169; 1969 c 122 § 12.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

18.100.130 Application of Business Corporation Act and Nonprofit Corporation Act. (1) For a professional service corporation organized for pecuniary profit under this chapter, the provisions of Title 23B RCW shall be applicable except to the extent that any of the provisions of this chapter are interpreted to be in conflict with the provisions thereof, and in such event the provisions and sections of this chapter shall take precedence with respect to a corporation organized pursuant to the provisions of this chapter.

(2) For a professional service corporation organized under this chapter and chapter 24.03 RCW as a nonprofit nonstock corporation, the provisions of chapter 24.03 RCW shall be applicable except to the extent that any of the provisions of this chapter are interpreted to be in conflict with the provisions thereof, and in such event the provisions and sections of this chapter shall take precedence with respect to a corporation organized under the provisions of this chapter. [1991 c 72 § 5; 1986 c 261 § 2; 1983 c 51 § 6; 1969 c 122 § 13.]

18.100.132 Nonprofit professional service corporations formed under prior law. A nonprofit professional service corporation formed pursuant to *chapter 431, Laws of 1985, may amend its articles of incorporation at any time before July 31, 1987, to comply with the provisions of this chapter. Compliance under this chapter shall relate back and take effect as of the date of formation of the corporation under *chapter 431, Laws of 1985, and the corporate existence shall be deemed to have continued without interruption from that date. [1986 c 261 § 4.]

***Reviser's note:** Chapter 431, Laws of 1985 enacted RCW 24.03.038, which was repealed by 1986 c 261 § 7.

18.100.133 Business corporations, election of this chapter. A business corporation formed under the provisions of Title 23B RCW may amend its articles of incorporation to change its stated purpose to the rendering of professional services and to conform to the requirements of this chapter. Upon the effective date of such amendment, the corporation shall be subject to the provisions of this chapter and shall continue in existence as a professional corporation under this chapter. [1991 c 72 § 6; 1986 c 261 § 5.]

18.100.134 Professional services—Deletion from stated purposes of corporation. A professional corporation may amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform to the requirements of Title 23B RCW, or to the requirements of chapter 24.03 RCW if organized pursuant to

RCW 18.100.050 as a nonprofit nonstock corporation. Upon the effective date of such amendment, the corporation shall no longer be subject to the provisions of this chapter and shall continue in existence as a corporation under Title 23B RCW or chapter 24.03 RCW. [1991 c 72 § 7; 1986 c 261 § 3; 1983 c 51 § 9.]

18.100.140 Improper conduct not authorized.

Nothing in this chapter shall authorize a director, officer, shareholder, agent or employee of a corporation organized under this chapter, or a corporation itself organized under this chapter, to do or perform any act which would be illegal, unethical or unauthorized conduct under the provisions of the following acts: (1) Physicians and surgeons, chapter 18.71 RCW; (2) anti-rebating act, chapter 19.68 RCW; (3) state bar act, chapter 2.48 RCW; (4) professional accounting act, chapter 18.04 RCW; (5) professional architects act, chapter 18.08 RCW; (6) professional auctioneers act, chapter 18.11 RCW; (7) cosmetologists, barbers, and manicurists, chapter 18.16 RCW; (8) boarding homes act, chapter 18.20 RCW; (9) podiatric medicine and surgery, chapter 18.22 RCW; (10) chiropractic act, chapter 18.25 RCW; (11) registration of contractors, chapter 18.27 RCW; (12) debt adjusting act, chapter 18.28 RCW; (13) dental hygienist act, chapter 18.29 RCW; (14) dentistry, chapter 18.32 RCW; (15) dispensing opticians, chapter 18.34 RCW; (16) naturopathic physicians, chapter 18.36A RCW; (17) embalmers and funeral directors, chapter 18.39 RCW; (18) engineers and land surveyors, chapter 18.43 RCW; (19) escrow agents registration act, chapter 18.44 RCW; (20) maternity homes, chapter 18.46 RCW; (21) midwifery, chapter 18.50 RCW; (22) nursing homes, chapter 18.51 RCW; (23) optometry, chapter 18.53 RCW; (24) osteopathic physicians and surgeons, chapter 18.57 RCW; (25) pharmacists, chapter 18.64 RCW; (26) physical therapy, chapter 18.74 RCW; (27) registered nurses, advanced registered nurse practitioners, and practical nurses, chapter 18.79 RCW; (28) psychologists, chapter 18.83 RCW; (29) real estate brokers and salesmen, chapter 18.85 RCW; (30) veterinarians, chapter 18.92 RCW. [1994 sp.s. c 9 § 717; 1987 c 447 § 16; 1982 c 35 § 170; 1969 c 122 § 14.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1987 c 447: See RCW 18.36A.901.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

18.100.145 Doctor of osteopathic medicine and surgery—Discrimination prohibited. A professional service corporation that provides health care services to the general public may not discriminate against a qualified doctor of osteopathic medicine and surgery licensed under chapter 18.57 RCW, who has applied to practice with the professional service corporation, solely because that practitioner was board certified or eligible under an approved osteopathic certifying board instead of board certified or eligible respectively under an approved medical certifying board. [1995 c 64 § 2.]

18.100.150 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

Chapter 18.104

WATER WELL CONSTRUCTION

Sections

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18.104.930	Effective date—1993 c 387.

18.104.005 Transfer of duties to the department of health. The powers and duties of the department of social and health services under this chapter shall be performed by the department of health. [1989 1st ex.s. c 9 § 237.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.104.010 Purpose. The legislature declares that the drilling, making or constructing of wells within the state is a business and activity of vital interest to the public. In order to protect the public health, welfare, and safety of the people it is necessary that provision be made for the regulation and licensing of well contractors and operators and for the regulation of well design and construction. [1993 c 387 § 1; 1971 ex.s. c 212 § 1.]

18.104.020 Definitions. The definitions set forth in this section apply throughout this chapter, unless a different meaning is plainly required by the context.

(1) "Abandoned well" means a well that is unused, unmaintained, and is in such disrepair as to be unusable.

(2) "Constructing a well" or "construct a well" means:

(a) Boring, digging, drilling, or excavating a well;

(b) Installing casing, sheeting, lining, or well screens, in a well; or

(c) Drilling a geotechnical soil boring.

"Constructing a well" or "construct a well" includes the alteration of an existing well.

(3) "Decommission" means to fill or plug a well so that it will not produce water, serve as a channel for movement of water or pollution, or allow the entry of pollutants into the well or aquifers.

(4) "Department" means the department of ecology.

(5) "Dewatering well" means a cased or lined excavation or boring that is intended to withdraw or divert ground water for the purpose of facilitating construction, stabilizing a landslide, or protecting an aquifer.

(6) "Director" means the director of the department of ecology.

(7) "Geotechnical soil boring" or "boring" means an uncased well drilled for purpose of obtaining soil samples to ascertain structural properties of the subsurface. Geotechnical soil boring includes auger borings, rotary borings, cone penetrometer probes and vane shear probes, or any other uncased ground penetration for geotechnical information.

(8) "Ground water" means and includes ground waters as defined in RCW 90.44.035.

(9) "Instrumentation well" means a well in which pneumatic or electric geotechnical or hydrological instrumentation is permanently or periodically installed to measure or monitor subsurface strength and movement. Instrumentation well includes borehole extensometers, slope indicators, pneumatic or electric pore pressure transducers, and load cells.

(10) "Monitoring well" means a well designed to obtain a representative ground water sample or designed to measure the water level elevation in either clean or contaminated water or soil.

(11) "Observation well" means a well designed to measure the depth to the water level elevation in either clean or contaminated water or soil.

(12) "Operator" means a person who (a) is employed by a well contractor; (b) is licensed under this chapter; or (c) who controls, supervises, or oversees the construction of a well or who operates well construction equipment.

(13) "Owner" or "well owner" means the person, firm, partnership, copartnership, corporation[,] association, or other entity who owns the property on which the well is or will be constructed.

(14) "Pollution" and "contamination" have the meanings provided in RCW 90.48.020.

(15) "Resource protection well" means a cased boring used to determine the existence or migration of pollutants within an underground formation. Resource protection wells include monitoring wells, observation wells, piezometers, spill response wells, vapor extraction wells, and instrumentation wells.

(16) "Resource protection well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing resource protection wells or geotechnical soil borings.

(17) "Water well" means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering, or withdrawal of ground water.

(18) "Water well contractor" means any person, firm, partnership, copartnership, corporation, association, or other entity, licensed and bonded under chapter 18.27 RCW, engaged in the business of constructing water wells.

(19) "Well" means water wells, resource protection wells, instrumentation wells, dewatering wells, and geotechnical soil borings. Well does not mean an excavation made for the purpose of obtaining or prospecting for oil, natural gas, geothermal resources, minerals, or products of mining, or quarrying, or for inserting media to repressure oil or natural gas bearing formations, or for storing petroleum, natural gas, or other products.

(20) "Well contractor" means a resource protection well contractor and a water well contractor. [1993 c 387 § 2; 1983 1st ex.s. c 27 § 14; 1971 ex.s. c 212 § 2.]

18.104.030 Compliance enjoined. It is unlawful:

(1) For any person to supervise, construct, alter, or decommission a well without complying with the provisions of this chapter and the rules for well construction adopted pursuant to this chapter;

(2) For any person to cause a well to be constructed in violation of the standards for well construction established by this chapter and rules adopted by the department pursuant to this chapter;

(3) For a prospective water well owner to have a water well constructed without first obtaining a water right permit, if a permit is required;

(4) For any person to construct, alter, or decommission a well unless the fees required by RCW 18.104.055 have been paid;

(5) For a person to tamper with or remove a well identification tag except during well alteration; and

(6) Except as provided in RCW 18.104.180, for any person to contract to engage in the construction of a well or to act as a well operator without first obtaining a license pursuant to this chapter. [1993 c 387 § 3; 1971 ex.s. c 212 § 3.]

18.104.040 Powers of department. The department shall have the power:

(1) To issue, deny, suspend or revoke licenses pursuant to the provisions of this chapter;

(2) At all reasonable times, to enter upon lands for the purpose of inspecting, taking measurements from, or tagging any well, constructed or being constructed;

(3) To call upon or receive professional or technical advice from the department of health, the technical advisory group created in RCW 18.104.190, or any other public agency or person;

(4) To adopt rules, in consultation with the department of health and the technical advisory group created in RCW 18.104.190, governing licensing and well construction as may be appropriate to carry out the purposes of this chapter. The rules adopted by the department may include, but are not limited to:

(a) Standards for the construction and maintenance of wells and their casings;

(b) Methods of capping, sealing, and decommissioning wells to prevent contamination of ground water resources and to protect public health and safety;

(c) Methods of artificial recharge of ground water bodies and of construction of wells which insure separation of individual water bearing formations;

(d) The manner of conducting and the content of examinations required to be taken by applicants for license hereunder;

(e) Requirements for the filing of notices of intent, well reports, and the payment of fees;

(f) Reporting requirements of well contractors;

(g) Limitations on well construction in areas identified by the department as requiring intensive control of withdrawals in the interests of sound management of the ground water resource;

(5) To require the operator in the construction of a well and the property owner in the maintenance of a well to guard against waste and contamination of the ground water resources;

(6) To require the operator to place a well identification tag on a new well and on an existing well on which work is performed after the effective date of rules requiring well identification tags and to place or require the owner to place a well identification tag on an existing well;

(7) To require the well owner to repair or decommission any well:

(a) That is abandoned, unusable, or not intended for future use; or

(b) That is an environmental, safety, or public health hazard. [1993 c 387 § 4; 1991 c 3 § 249; 1971 ex.s. c 212 § 4.]

18.104.043 Well sealing and decommissioning—Delegation of authority—Expiration of section. (1) If requested in writing by the governing body of a local health district or county, the department by memorandum of agreement may delegate to the governing body the authority to administer and enforce the well tagging, sealing, and decommissioning portions of the water well construction program.

(2) The department shall determine whether a local health district or county that seeks delegation under this section has the resources, capability, and expertise, including qualified field inspectors, to administer the delegated program. If the department determines the local government has these resources, it shall notify well contractors, consultants, and operators of the proposal. The department shall accept written comments on the proposal for sixty days after the notice is mailed.

(3) If the department determines that a delegation of authority to a local health district or county to administer and enforce the well sealing and decommissioning portions of the water well construction program will enhance the public health and safety and the environment, the department and the local governing body may enter into a memorandum of agreement setting forth the specific authorities delegated by the department to the local governing body. The memorandum of agreement shall provide for an initial review of the delegation within one year and for periodic review thereafter.

(4) With regard to the portions of the water well construction program delegated under this section, the local governing agency shall exercise only the authority delegated

to it under this section. If, after a public hearing, the department determines that a local governing body is not administering the program in accordance with this chapter, it shall notify the local governing body of the deficiencies. If corrective action is not taken within a reasonable time, not to exceed sixty days, the department by order shall withdraw the delegation of authority.

(5) The department shall promptly furnish the local governing body with a copy of each water well report and notification of start cards received in the area covered by a delegated program.

(6) The department and the local governing body shall coordinate to reduce duplication of effort and shall share all appropriate information including technical reports, violations, and well reports.

(7) Any person aggrieved by a decision of a local health district or county under a delegated program may appeal the decision to the department. The department's decision is subject to review by the pollution control hearings board as provided in RCW 43.21B.110.

(8) The department shall not delegate the authority to license well contractors, renew licenses, receive notices of intent to commence constructing a well, receive well reports, or collect state fees provided for in this chapter.

(9) This section expires June 30, 2000. [1996 c 12 § 2; 1993 c 387 § 5; 1992 c 67 § 2.]

Findings—Intent—1996 c 12: "The legislature finds that experimental delegation of portions of the well drilling administration and enforcement authority of the department of ecology to willing and able local governments has been successful to date. Delegation has provided a more effective and efficient means of assuring proper well construction and decommissioning and protection of public health and safety than could be accomplished by the department of ecology acting alone. The legislature further finds that without legislative action, the authority for such delegation will expire June 30, 1996. Therefore, it is the intent of the legislature to extend the authority for delegation an additional four years." [1996 c 12 § 1.]

Legislative findings—1992 c 67: "The legislature finds that the public health and safety and the environment would be enhanced by permitting qualified local governmental agencies to administer and enforce portions of the water well construction program." [1992 c 67 § 1.]

18.104.048 Prior notice of well construction, reconstruction, or decommissioning. A property owner or the owner's agent shall notify the department of his or her intent to begin well construction, reconstruction, or decommissioning procedures at least seventy-two hours in advance of commencing work. The notice shall be submitted on forms provided by the department and shall be accompanied by the fees required by RCW 18.104.055. The notice shall contain the name of the owner of the well, location of the well, proposed use, approximate start date, well contractor's or operator's name and license number, company's name, and other pertinent information as prescribed by rule of the department. Rules of the department shall also provide for prior telephonic notification by well contractors or operators in exceptional situations. The department shall issue a receipt indicating that the notice required by this section has been filed and the fees required by RCW 18.104.055 have been paid not later than three business days after the department has received the notice and fees. [1993 c 387 § 6; 1987 c 394 § 3.]

18.104.049 Modification of construction standards.

The department by rule shall adopt procedures to permit a well operator to modify construction standards to meet unforeseen circumstances encountered during the construction of a well. The procedures shall be developed in consultation with the technical advisory group established in RCW 18.104.190. [1993 c 387 § 7.]

18.104.050 Reports of well construction or alteration. (1) A well contractor shall furnish a well report to the director within thirty days after the completion of the construction or alteration of a well by the contractor. The director, by rule, shall prescribe the form of the report and the information to be contained therein.

(2) In the case of a dewatering well project:

(a) A single well construction report may be submitted for all similar dewatering wells constructed with no significant change in geologic formation; and

(b) A single well decommissioning report may be submitted for all similar dewatering wells decommissioned that have no significant change in geologic formation. [1993 c 387 § 8; 1971 ex.s. c 212 § 5.]

18.104.055 Fees. (1) A fee is hereby imposed on each well constructed in this state on or after July 1, 1993.

(2)(a) The fee for one new water well, other than a dewatering well, with a minimum top casing diameter of less than twelve inches is one hundred dollars.

(b) The fee for one new water well, other than a dewatering well, with a minimum top casing diameter of twelve inches or greater is two hundred dollars.

(c) The fee for a new resource protection, observation, and monitoring well is forty dollars for each well.

(d) The combined fee for construction and decommissioning of a dewatering well system shall be forty dollars for each two hundred horizontal lineal feet, or portion thereof, of the dewatering well system.

(3) The fees imposed by this section shall be paid at the time the notice of well construction is submitted to the department as provided by RCW 18.104.048. The department by rule may adopt procedures to permit the fees required for resource protection wells to be paid after the number of wells actually constructed has been determined. The department shall refund the amount of any fees collected for any wells on which construction is not started. [1993 c 387 § 9.]

18.104.060 Violations—Cease and desist orders.

Notwithstanding and in addition to any other powers granted to the department, whenever it appears to the director, or to an assistant authorized by the director to issue regulatory orders under this section, that a person is violating or is about to violate any of the provisions of this chapter, the director, or the director's authorized assistant, may cause a written regulatory order to be served upon said person either personally, or by registered or certified mail delivered to the addressee only with return receipt requested and acknowledged by him or her. The order shall specify the provision of this chapter, and if applicable, the rule adopted pursuant to this chapter alleged to be or about to be violated, and the facts upon which the conclusion of violating or potential

violation is based, and shall order the act constituting the violation or the potential violation to cease and desist or, in appropriate cases, shall order necessary corrective action to be taken with regard to such acts within a specific and reasonable time. An order issued under this chapter shall become effective immediately upon receipt by the person to whom the order is directed, and shall become final unless review thereof is requested as provided in this chapter. [1993 c 387 § 10; 1971 ex.s. c 212 § 6.]

18.104.065 Remedies for noncomplying wells. (1)

The department may order a well contractor or well operator to repair, alter, or decommission a well if the department demonstrates that the construction of the well did not meet the standards for well construction in effect at the time construction of the well was completed.

(2) The department may not issue an order pursuant to this section:

(a) For wells for which construction has been substantially completed before July 1, 1993, more than six years after construction has been substantially completed; or

(b) For wells for which construction has been substantially completed on or after July 1, 1993, more than three years after construction has been substantially completed.

For purposes of this subsection, "construction has been substantially completed" has the same meaning as "substantial completion of construction" in RCW 4.16.310.

(3) Subsection (2) of this section shall only apply to a well for which the notice of construction required by RCW 18.104.048 and the report required by RCW 18.104.050 have been filed with the department. [1993 c 387 § 11.]

18.104.070 Water well operator's license. A person shall be qualified to receive a water well operator's license if the person:

(1) Has submitted a completed application to the department on forms provided by the department and has paid to the department the application fee determined by rule adopted pursuant to this chapter; and

(2) Has the field experience and educational training required by rule adopted by the department pursuant to this chapter; and

(3) Has passed a written examination as provided for in RCW 18.104.080; and

(4) Has passed an on-site examination by the department if the person's qualifying field experience under subsection (2) of this section is from another state. The department may waive the on-site examination. [1993 c 387 § 12; 1987 c 394 § 2; 1971 ex.s. c 212 § 7.]

18.104.080 Examinations—Subjects—Times and places. The examination for a license issued pursuant to this chapter shall be prepared to test knowledge and understanding of at least the following subjects:

(1) Washington ground water laws as they relate to well construction;

(2) Sanitary standards for well drilling and construction of wells;

(3) Types of well construction;

(4) Drilling tools and equipment;

(5) Underground geology as it relates to well construction; and

(6) Rules of the department and the department of health relating to well construction.

Examinations shall be held at such times and places as may be determined by the department but not later than thirty days after an applicant has filed a completed application with the department. The department shall make a determination of the applicant's qualifications for a license within ten days after the examination. [1993 c 387 § 16; 1991 c 3 § 250; 1971 ex.s. c 212 § 8.]

18.104.093 Water well construction operator's training license. The department may issue a water well construction operator's training license if the person:

(1) Has submitted a completed application to the department on forms provided by the department and has paid to the department the application fee required by rules adopted pursuant to this chapter;

(2) Has acquired field experience and educational training required by rules adopted pursuant to this chapter;

(3) Has passed a written examination as provided for in RCW 18.104.080;

(4) Has passed an on-site examination by the department; and

(5) Presents a statement by a person licensed under this chapter, other than a trainee, signed under penalty of perjury as provided in RCW 9A.72.085, verifying that the applicant has the field experience required by rules adopted pursuant to this chapter and assuming liability for any and all well construction activities of the person seeking the training license.

A person with a water well construction operator's training license may operate a drilling rig without the direct supervision of a licensed operator if a licensed operator is available by radio, telephone, or other means of communication. [1993 c 387 § 13.]

18.104.095 Resource protection well operator's license. A person shall be qualified to receive a resource protection well operator's license if the person:

(1) Has submitted a completed application to the department on forms provided by the department and has paid to the department the application fee required by rules adopted pursuant to this chapter;

(2) Has acquired field experience and educational training required by rules adopted pursuant to this chapter;

(3) Has passed a written examination as provided for in RCW 18.104.080. This requirement shall not apply to a person who passed the written examination to obtain a resource protection well construction operator's training license; and

(4) Has passed an on-site examination by the department if the person's qualifying field experience is from another state. The department may waive the on-site examination.

A person with a license issued pursuant to this chapter before July 1, 1993, may obtain a resource protection well construction operator's license by paying the application fee determined by rule adopted by the department pursuant to this chapter and submitting evidence required by the department to demonstrate that the person has the required experi-

ence to construct resource protection wells. [1993 c 387 § 14.]

18.104.097 Resource protection well operator's training license. The department may issue a resource protection well operator's training license if the person:

(1) Has submitted a completed application to the department on forms provided by the department and has paid to the department the application fee required by rules adopted pursuant to this chapter;

(2) Has acquired field experience and educational training required by rules adopted pursuant to this chapter;

(3) Has passed a written examination as provided for in RCW 18.104.080;

(4) Has passed an on-site examination by the department; and

(5) Presents a statement by a person licensed under this chapter, other than a trainee, signed under penalty of perjury as provided in RCW 9A.72.085, verifying that the applicant has the field experience required by rules adopted pursuant to this chapter and assuming liability for any and all well construction activities of the person seeking the training license.

A person with a resource protection well construction operator's training license may operate a drilling rig without direct supervision of a licensed operator if a licensed operator is accessible by radio, telephone, or other means of communication. [1993 c 387 § 15.]

18.104.100 Licenses—Duration—Renewal—Failure to renew, procedure—Conditional licenses. (1) Licenses issued pursuant to this chapter shall be renewed every two years. A license shall be renewed upon payment of a renewal fee and completion of continuing education required by rule adopted by the department. If a licensee fails to submit an application for renewal, the renewal fee, and proof of completion of the required continuing education, the license shall expire at the end of its effective term.

(2) A person whose license has expired must apply for a new license as provided in this chapter. The department may waive the requirement for a written examination and on-site testing for a person whose license has expired.

(3) The department may refuse to renew a license if the licensee has not complied with an order issued by the department or has not paid a penalty imposed in accordance with this chapter, unless the order or penalty is under appeal.

(4) The department may issue a conditional license to enable a former licensee to comply with an order to correct problems with a well. [1993 c 387 § 17; 1971 ex.s. c 212 § 10.]

18.104.110 Actions against licenses—Grounds—Duration. In cases other than those relating to the failure of a licensee to renew a license, the director may suspend or revoke a license issued pursuant to this chapter for any of the following reasons:

(1) For fraud or deception in obtaining the license;

(2) For fraud or deception in reporting under RCW 18.104.050;

(3) For violating the provisions of this chapter, or of any lawful rule or regulation of the department or the department of health.

No license shall be suspended for more than six months. No person whose license is revoked shall be eligible to apply for a license for one year from the effective date of the final order of revocation. [1993 c 387 § 18; 1991 c 3 § 251; 1971 ex.s. c 212 § 11.]

18.104.115 License suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the license of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 16.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.104.120 Complaints against contractors or operators—Department's response—Review. Any person with an economic or noneconomic interest may make a complaint against any well contractor or operator for violating this chapter or any regulations under it to the department of ecology. The complaint shall be in writing, signed by the complainant, and specify the grievances against the licensee. The department shall respond to the complaint by issuance of an order it deems appropriate. Review of the order shall be subject to the hearings procedures set forth in RCW 18.104.130. [1993 c 387 § 19; 1983 c 93 § 1; 1971 ex.s. c 212 § 12.]

18.104.130 Appeals. Any person who feels aggrieved by an order of the department including the granting, denial, revocation, or suspension of a license issued by the department pursuant to this chapter shall be entitled to an appeal pursuant to RCW 43.21B.310. [1987 c 109 § 24; 1971 ex.s. c 212 § 13.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

18.104.150 Disposition of fees—Grants to local governments. (1) All fees paid under this chapter shall be credited by the state treasurer to the reclamation account established by chapter 89.16 RCW. Subject to legislative appropriation, the fees collected under this chapter shall be allocated and expended by the director for the administration of the well construction, well operators' licensing, and education programs.

(2) The department shall provide grants to local governing entities that have been delegated portions of the well construction program pursuant to RCW 18.104.043 to assist in supporting well inspectors hired by the local governing body. Grants provided to a local governing body shall not exceed the revenues generated from fees for the portion of the program delegated and from the area in which authority is delegated to the local governing body. [1993 c 387 § 20; 1971 ex.s. c 212 § 15.]

18.104.155 Civil penalties—Amount and disposition.

(1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.03.150, the department of ecology may assess a civil penalty for a violation of this chapter or rules or orders of the department adopted or issued pursuant to it.

(2) There shall be three categories of violations: Minor, serious, and major.

(a) A minor violation is a violation that does not seriously threaten public health, safety, and the environment. Minor violations include, but are not limited to:

(i) Failure to submit completed start cards and well reports within the required time;

(ii) Failure to submit variance requests before construction;

(iii) Failure to submit well construction fees;

(iv) Failure to place a well identification tag on a new well; and

(v) Minor or reparable construction problems.

(b) A serious violation is a violation that poses a critical or serious threat to public health, safety, and the environment. Serious violations include, but are not limited to:

(i) Improper well construction;

(ii) Intentional and improper location or siting of a well;

(iii) Construction of a well without a required permit;

(iv) Violation of decommissioning requirements;

(v) Repeated minor violations; or

(vi) Construction of a well by a person whose license has expired or has been suspended for not more than ninety days.

(c) A major violation is the construction of a well by a person:

(i) Without a license; or

(ii) After the person's license has been suspended for more than ninety days or revoked.

(3)(a) The penalty for a minor violation shall be not less than one hundred dollars and not more than five hundred dollars. Before the imposition of a penalty for a minor violation, the department may issue an order of noncompliance to provide an opportunity for mitigation or compliance.

(b) The penalty for a serious violation shall be not less than five hundred dollars and not more than five thousand dollars.

(c) The penalty for a major violation shall be not less than five thousand dollars and not more than ten thousand dollars.

(4) In determining the appropriate penalty under subsection (3) of this section the department shall consider whether the person:

(a) Has demonstrated a general disregard for public health and safety through the number and magnitude of the violations;

(b) Has demonstrated a disregard for the well construction laws or rules in repeated or continuous violations; or

(c) Knew or reasonably should have known of circumstances that resulted in the violation.

(5) Penalties provided for in this section shall be imposed pursuant to RCW 43.21B.300. The department shall provide thirty days written notice of a violation as provided in RCW 43.21B.300(3).

(6) For informational purposes, a copy of the notice of violation, resulting from the improper construction of a well, that is sent to a water well contractor or water well construction operator, shall also be sent by the department to the well owner.

(7) Penalties collected by the department pursuant to this section shall be deposited in the reclamation account established by chapter 89.16 RCW. Subject to legislative appropriation, the penalties may be spent only for purposes related to the restoration and enhancement of ground water resources in the state. [1995 c 403 § 628; 1993 c 387 § 21; 1987 c 394 § 1.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

18.104.160 Criminal penalties—Prosecutions. Any person who shall violate any provision of this chapter, shall be guilty of a misdemeanor and shall, upon conviction, be subject to a fine of not more than two hundred fifty dollars, or imprisonment in a county jail for a term not to exceed thirty days, or both. Criminal prosecutions for violations of this chapter shall be prosecuted by the prosecuting attorney in the county in which the violation occurred. [1971 ex.s. c 212 § 16.]

18.104.170 Remedies cumulative. The remedies provided for in this chapter shall be cumulative and nothing herein shall alter, abridge or foreclose alternative actions at common law or in equity or under statutory law, civil or criminal. [1971 ex.s. c 212 § 17.]

18.104.180 Exemptions. No license under this chapter shall be required of:

(1) Any individual who personally constructs a well on land which is owned or leased by the individual or in which the individual has a beneficial interest as a contract purchaser and is used by the individual for farm or single-family residential use only. An individual who constructs a well without a license pursuant to this subsection shall comply with all other requirements of this chapter and rules adopted by the department, including but not limited to, well construction standards, payment of well construction fees, and notification of well construction required by RCW 18.104.048. An individual without a license may construct not more than one well every two years pursuant to the provisions of this subsection.

(2) An individual who performs labor or services for a well contractor in connection with the construction of a well at the direction and under the supervision and control of a licensed operator who is present at the construction site.

(3) A person licensed under the provisions of chapter 18.08 or 18.43 RCW if in the performance of duties covered by those licenses. [1993 c 387 § 24; 1971 ex.s. c 212 § 18.]

18.104.190 Technical advisory group. (1) For the purpose of carrying out the provisions of this chapter, the director shall appoint a technical advisory group, chaired by the department. The technical advisory group shall have twelve members: Two members shall represent the department of ecology, six members shall represent resource protection well contractors or water well contractors, one member shall represent the department of health, one member shall represent local health departments, one member shall represent licensed professional engineers, and one member shall be a scientist knowledgeable in the design and construction of wells.

(2) The technical advisory group shall assist the department in the development and revision of rules; the preparation and revision of licensing examinations; the development of training criteria for inspectors, well contractors, and well operators; and the review of proposed changes to the minimum standards for construction and maintenance of wells by local governments for the purpose of achieving continuity with technology and state rules.

(3) The group shall meet at least twice each year to review rules and suggest any necessary changes.

(4) Each member of the group shall be compensated in accordance with RCW 43.03.240 and reimbursed for travel expenses while engaged in the business of the group as prescribed in RCW 43.03.050 and 43.03.060. [1993 c 387 § 25.]

18.104.900 Short title. This chapter shall be known and may be cited as the "Washington well construction act." [1993 c 387 § 26; 1971 ex.s. c 212 § 19.]

18.104.910 Effective date—1971 ex.s. c 212. This act shall take effect on July 1, 1971. [1971 ex.s. c 212 § 20.]

18.104.920 Severability—1971 ex.s. c 212. If any provision of the act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 212 § 21.]

18.104.930 Effective date—1993 c 387. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 387 § 29.]

Chapter 18.106 PLUMBERS

Sections

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

- (1) "Advisory board" means the state advisory board of plumbers;
- (2) "Department" means the department of labor and industries;
- (3) "Director" means the director of department of labor and industries;
- (4) "Journeyman plumber" means any person who has been issued a certificate of competency by the department of labor and industries as provided in this chapter;
- (5) "Medical gas piping" means oxygen, nitrous oxide, high pressure nitrogen, medical compressed air, and medical vacuum systems;
- (6) "Specialty plumber" means anyone who has been issued a specialty certificate of competency limited to installation, maintenance, and repair of the plumbing of single family dwellings, duplexes, and apartment buildings which do not exceed three stories;
- (7) "Plumbing" means that craft involved in installing, altering, repairing and renovating potable water systems, liquid waste systems, and medical gas piping systems within a building: PROVIDED, That installation in a water system of water softening or water treatment equipment shall not be within the meaning of plumbing as used in this chapter. [1995 c 282 § 2; 1983 c 124 § 1; 1977 ex.s. c 149 § 1; 1975 1st ex.s. c 71 § 1; 1973 1st ex.s. c 175 § 1.]

18.106.020 Certificate, permit, or supervision required—Penalty—Notice of infraction. (1) No person may engage in or offer to engage in the trade of plumbing without having a journeyman certificate, specialty certificate, or temporary permit, or without being supervised by a

person who has a journeyman certificate, specialty certificate, or temporary permit. No contractor may employ a person to engage in or offer to engage in the trade of plumbing unless the person employed has a journeyman certificate, specialty certificate, or temporary permit or is supervised by a person who has a journeyman certificate, specialty certificate, or temporary permit. For the purposes of this section, "contractor" means any person or body of persons, corporate or otherwise, engaged in any work covered by the provisions of this chapter, chapter 18.27 RCW, or chapter 19.28 RCW, by way of trade or business. However, in no case shall this section apply to a contractor who is contracting for work on his or her own residence.

(2) Violation of subsection (1) of this section is an infraction. Each day in which a person engages in the trade of plumbing in violation of subsection (1) of this section or employs a person in violation of subsection (1) of this section is a separate infraction. Each worksite at which a person engages in the trade of plumbing in violation of subsection (1) of this section or at which a person is employed in violation of subsection (1) of this section is a separate infraction.

(3) Notices of infractions for violations of subsection (1) of this section may be issued to:

(a) The person engaging in or offering to engage in the trade of plumbing in violation of subsection (1) of this section;

(b) The contractor in violation of subsection (1) of this section; and

(c) The contractor's employee who authorized the work assignment of the person employed in violation of subsection (1) of this section. [1994 c 174 § 2; 1983 c 124 § 4; 1977 ex.s. c 149 § 2; 1975 1st ex.s. c 71 § 2; 1973 1st ex.s. c 175 § 2.]

Effective date—1994 c 174: "This act shall take effect July 1, 1994." [1994 c 174 § 10.]

Effective date—1983 c 124: "Sections 4 through 16 of this act shall take effect on January 1, 1984." [1983 c 124 § 21.] "Sections 4 through 16 of this act" consist of the amendment to RCW 18.106.020 and the enactment of RCW 18.106.025, 18.106.170, 18.106.180, 18.106.190, 18.106.200, 18.106.210, 18.106.220, 18.106.230, 18.106.240, 18.106.250, 18.106.260, and 18.106.270.

18.106.030 Application for certificate of competency—Evidence required. Any person desiring to be issued a certificate of competency as provided in this chapter shall deliver evidence in a form prescribed by the department affirming that said person has had sufficient experience in as well as demonstrated general competency in the trade of plumbing or specialty plumbing so as to qualify him to make an application for a certificate of competency as a journeyman plumber or specialty plumber: PROVIDED, That completion of a course of study in the plumbing trade in the armed services of the United States or at a school accredited by the coordinating council on occupational education shall constitute sufficient evidence of experience and competency to enable such person to make application for a certificate of competency.

In addition to supplying the evidence as prescribed in this section, each applicant for a certificate of competency shall submit an application for such certificate on such form and in such manner as shall be prescribed by the director of

the department. [1977 ex.s. c 149 § 3; 1973 1st ex.s. c 175 § 3.]

18.106.040 Examinations—Eligibility requirements—Determination. Upon receipt of the application and evidence set forth in RCW 18.106.030, the director shall review the same and make a determination as to whether the applicant is eligible to take an examination for the certificate of competency. To be eligible to take the examination each applicant for a journeyman plumber's certificate of competency shall furnish written evidence that he has either completed a course of study in the plumbing trade in the armed services of the United States or at a school accredited by the coordinating council on occupational education; or that he has four or more years of experience under the direct supervision of a licensed journeyman plumber. Each applicant for a specialty plumber's certificate of competency shall furnish written evidence that he has either completed a course of study in the plumbing trade in the armed services of the United States or at a school accredited by the *commission for vocational education or its designee, or that he has had at least three years practical experience in his specialty. No other requirement for eligibility may be imposed. The director shall establish reasonable rules and regulations for the examinations to be given applicants for certificates of competency. In establishing said rules, regulations, and criteria, the director shall consult with the state advisory board of plumbers as established in RCW 18.106.110. Upon determination that the applicant is eligible to take the examination, the director shall so notify him, indicating the time and place for taking the same. [1977 ex.s. c 149 § 4; 1975 1st ex.s. c 71 § 3; 1973 1st ex.s. c 175 § 4.]

***Reviser's note:** Under the Sunset Act, chapter 43.131 RCW, the commission on vocational education and its powers and duties, were terminated June 30, 1986, and repealed June 30, 1987. See 1983 c 197 §§ 17 and 43.

18.106.050 Examinations—Scope—Results—Retaking. The department, with the advice of the advisory board, shall prepare a written examination to be administered to applicants for certificates of competency for journeyman plumber and specialty plumber. The examination shall be constructed to determine:

(1) Whether the applicant possesses varied general knowledge of the technical information and practical procedures that are identified with the trade of journeyman plumber or specialty plumber; and

(2) Whether the applicant is familiar with the applicable plumbing codes and the administrative rules of the department pertaining to plumbing and plumbers.

The department shall administer the examination to eligible persons. All applicants shall, before taking the examination, pay to the department a fee.

The department shall certify the results of the examination, and shall notify the applicant in writing whether he or she has passed or failed. Any applicant who has failed the examination may retake the examination, upon the terms and after a period of time that the director shall set by rule. The director may not limit the number of times that a person may take the examination. [1983 c 124 § 2; 1977 ex.s. c 149 § 5; 1973 1st ex.s. c 175 § 5.]

18.106.070 Certificates of competency—Issuance—Renewal—Rights of holder—Training certificates—Supervision. (1) The department shall issue a certificate of competency to all applicants who have passed the examination and have paid the fee for the certificate. The certificate shall bear the date of issuance, and shall expire on the birthdate of the holder immediately following the date of issuance. The certificate shall be renewable every other year, upon application, on or before the birthdate of the holder. A renewal fee shall be assessed for each certificate. If a person fails to renew the certificate by the renewal date, he or she must pay a doubled fee. If the person does not renew the certificate within ninety days of the renewal date, he or she must retake the examination and pay the examination fee.

The certificate of competency and the temporary permit provided for in this chapter grant the holder the right to engage in the work of plumbing as a journeyman plumber or specialty plumber in accordance with their provisions throughout the state and within any of its political subdivisions on any job or any employment without additional proof of competency or any other license or permit or fee to engage in the work. This section does not preclude employees from adhering to a union security clause in any employment where such a requirement exists.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the plumbing construction trade or who is learning the plumbing construction trade may work in the plumbing construction trade if supervised by a certified journeyman plumber or a certified specialty plumber in that plumber's specialty. All apprentices and individuals learning the plumbing construction trade shall obtain a plumbing training certificate from the department. The certificate shall authorize the holder to learn the plumbing construction trade while under the direct supervision of a journeyman plumber or a specialty plumber working in his or her specialty. The holder of the plumbing training certificate shall renew the certificate annually. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the plumbing construction industry for the previous year and the number of hours worked for each employer. An annual fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter. Apprentices and individuals learning the plumbing construction trade shall have their plumbing training certificates in their possession at all times that they are performing plumbing work. They shall show their certificates to an authorized representative of the department at the representative's request.

(3) Any person who has been issued a plumbing training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a journeyman plumber or an appropriate specialty plumber who has an applicable certificate of competency issued under this chapter. Either a journeyman plumber or an appropriate specialty plumber shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in

this chapter. The ratio of noncertified individuals to certified journeymen or specialty plumbers working on a job site shall be: (a) From July 28, 1985, through June 30, 1988, not more than three noncertified plumbers working on any one job site for every certified journeyman or specialty plumber; (b) effective July 1, 1988, not more than two noncertified plumbers working on any one job site for every certified specialty plumber or journeyman plumber working as a specialty plumber; and (c) effective July 1, 1988, not more than one noncertified plumber working on any one job site for every certified journeyman plumber working as a journeyman plumber.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in a technical school program in the plumbing construction trade in a school approved by the *commission for vocational education, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter. [1985 c 465 § 1; 1983 c 124 § 3; 1977 ex.s. c 149 § 7; 1973 1st ex.s. c 175 § 7.]

***Reviser's note:** The commission on vocational education and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1986, and repealed June 30, 1987. See 1983 c 197 §§ 17 and 43.

18.106.080 Persons engaged in plumbing business or trade on effective date. No examination shall be required of any applicant for a certificate of competency who, on July 16, 1973, was engaged in a bona fide business or trade of plumbing, or on said date held a valid journeyman plumber's license issued by a political subdivision of the state of Washington and whose license is valid at the time of making his application for said certificate. Applicants qualifying under this section shall be issued a certificate by the department upon making an application as provided in RCW 18.106.030 and paying the fee required under RCW 18.106.050: PROVIDED, That no applicant under this section shall be required to furnish such evidence as required by RCW 18.106.030. [1973 1st ex.s. c 175 § 8.]

18.106.090 Temporary permits. The department is authorized to grant and issue temporary permits in lieu of certificates of competency whenever a plumber coming into the state of Washington from another state requests the department for a temporary permit to engage in the trade of plumbing as a journeyman plumber or as a specialty plumber during the period of time between filing of an application for a certificate as provided in RCW 18.106.030 as now or hereafter amended and taking the examination provided for in RCW 18.106.050: PROVIDED, That no temporary permit shall be issued to:

(1) Any person who has failed to pass the examination for a certificate of competency;

(2) Any applicant under this section who has not furnished the department with such evidence required under RCW 18.106.030;

(3) To any apprentice plumber. [1985 c 7 § 78; 1977 ex.s. c 149 § 8; 1973 1st ex.s. c 175 § 9.]

18.106.100 Revocation of certificate of competency—Grounds—Procedure. (1) The department may revoke or suspend a certificate of competency for any of the following reasons:

(a) The certificate was obtained through error or fraud;

(b) The certificate holder is judged to be incompetent to carry on the trade of plumbing as a journeyman plumber or specialty plumber;

(c) The certificate holder has violated any provision of this chapter or any rule adopted under this chapter.

(2) Before a certificate of competency is revoked or suspended, the department shall send written notice by registered mail with return receipt requested to the certificate holder's last known address. The notice must list the allegations against the certificate holder and give him or her the opportunity to request a hearing before the advisory board. At the hearing, the department and the certificate holder have opportunity to produce witnesses and give testimony. The hearing must be conducted in accordance with chapter 34.05 RCW. The board shall render its decision based upon the testimony and evidence presented and shall notify the parties immediately upon reaching its decision. A majority of the board is necessary to render a decision.

(3) The department may deny renewal of a certificate of competency issued under this chapter if the applicant owes outstanding penalties for a final judgment under this chapter. The department shall notify the applicant of the denial by registered mail, return receipt requested, to the address on the application. The applicant may appeal the denial within twenty days by filing a notice of appeal with the department accompanied by a certified check for two hundred dollars which shall be returned to the applicant if the decision of the department is not upheld by the hearings officer. The office of administrative hearings shall conduct the hearing under chapter 34.05 RCW. If the hearings officer sustains the decision of the department, the two hundred dollars must be applied to the cost of the hearing. [1996 c 147 § 3; 1977 ex.s. c 149 § 9; 1973 1st ex.s. c 175 § 10.]

18.106.110 Advisory board of plumbers. (1) There is created a state advisory board of plumbers, to be composed of three members appointed by the governor. One member shall be a journeyman plumber, one member shall be a person conducting a plumbing business, and one member from the general public who is familiar with the business and trade of plumbing.

(2) The term of the journeyman plumber shall expire July 1, 1995; the term of the person conducting a plumbing business shall expire July 1, 1996; and the term of the public member shall expire July 1, 1997. Thereafter, upon the expiration of said terms, the governor shall appoint a new member to serve for a period of three years. However, to ensure that the board can continue to act, a member whose term expires shall continue to serve until his or her replacement is appointed. In the case of any vacancy on the board for any reason, the governor shall appoint a new member to serve out the term of the person whose position has become vacant.

(3) The advisory board shall carry out all the functions and duties enumerated in this chapter, as well as generally advise the department on all matters relative to this chapter.

(4) Each member of the advisory board shall receive travel expenses in accordance with the provisions of RCW 43.03.050 and 43.03.060 as now existing or hereafter amended for each day in which such member is actually engaged in attendance upon the meetings of the advisory board. [1995 c 95 § 1; 1975-'76 2nd ex.s. c 34 § 56; 1973 1st ex.s. c 175 § 11.]

Effective date—1995 c 95: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 18, 1995]." [1995 c 95 § 2.]

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

18.106.125 Fees. The department shall charge fees for issuance, renewal, and reinstatement of all certificates and permits and for examinations required by this chapter. The department shall set the fees by rule.

The fees shall cover the full cost of issuing the certificates and permits, devising and administering the examinations, and administering and enforcing this chapter. The costs shall include travel, per diem, and administrative support costs. [1983 c 124 § 17.]

18.106.130 Plumbing certificate fund. All moneys received from certificates, permits, or other sources, shall be paid to the state treasurer as ex officio custodian thereof and by him placed in a special fund designated as the "plumbing certificate fund". He shall pay out upon vouchers duly and regularly issued therefor and approved by the director. The treasurer shall keep an accurate record of payments into said fund, and of all disbursement therefrom. Said fund shall be charged with its pro rata share of the cost of administering said fund. [1973 1st ex.s. c 175 § 13.]

18.106.140 Powers and duties of director. The director may promulgate rules, make specific decisions, orders, and rulings, including therein demands and findings, and take other necessary action for the implementation and enforcement of his duties under this chapter: **PROVIDED**, That in the administration of this chapter the director shall not enter any controversy arising over work assignments with respect to the trades involved in the construction industry. [1973 1st ex.s. c 175 § 14.]

18.106.150 Exemptions. Nothing in this chapter shall be construed to require that a person obtain a license or a certified plumber in order to do plumbing work at his residence or farm or place of business or on other property owned by him. Any person performing plumbing work on a farm may do so without having a current certificate of competency or apprentice permit: **PROVIDED, HOWEVER**, That nothing in this chapter shall be intended to derogate from or dispense with the requirements of any valid plumbing code enacted by a political subdivision of the state, except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in

order to engage in the trade of plumbing: **AND PROVIDED FURTHER**, That this chapter shall not apply to common carriers subject to Part I of the Interstate Commerce Act, nor to their officers and employees: **AND PROVIDED FURTHER**, That nothing in this chapter shall be construed to apply to any farm, business, industrial plant, or corporation doing plumbing work on premises it owns or operates: **AND PROVIDED FURTHER**, That nothing in this chapter shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative or other person when none of the individuals doing such plumbing hold themselves out as engaged in the trade or business of plumbing. [1973 1st ex.s. c 175 § 15.]

18.106.155 Reciprocity. The director may, upon payment of the appropriate fees, grant a certificate of competency without examination to any applicant who is a registered journeyman plumber or specialty plumber in any other state whose requirements for registration are at least substantially equivalent to the requirements of this state, and which extends the same privileges of reciprocity to journeymen plumbers or specialty plumbers registered in this state. [1977 ex.s. c 149 § 11.]

18.106.170 Violations—Investigations—Evidence of compliance. An authorized representative of the department may investigate alleged or apparent violations of this chapter. An authorized representative of the department upon presentation of credentials may inspect sites at which a person is doing plumbing work for the purpose of determining whether that person has a certificate or permit issued by the department in accordance with this chapter or is supervised by a person who has such a certificate or permit. Upon request of the authorized representative of the department, a person doing plumbing work shall produce evidence that the person has a certificate or permit issued by the department in accordance with this chapter or is supervised by a person who has such a certificate or permit. [1983 c 124 § 6.]

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.180 Notice of infraction—Issuance, service. An authorized representative of the department may issue a notice of infraction as specified in RCW 18.106.020(3) if a person who is doing plumbing work or who is offering to do plumbing work fails to produce evidence of having a certificate or permit issued by the department in accordance with this chapter or of being supervised by a person who has such a certificate or permit. A notice of infraction issued under this section shall be personally served on the person named in the notice by an authorized representative of the department or sent by certified mail to the last known address provided to the department of the person named in the notice. [1996 c 147 § 4; 1994 c 174 § 3; 1983 c 124 § 7.]

Effective date—1994 c 174: See note following RCW 18.106.020.

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.190 Notice—Contents. The form of the notice of infraction issued under this chapter shall include the following:

(1) A statement that the notice represents a determination that the infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(2) A statement that the infraction is a noncriminal offense for which imprisonment shall not be imposed as a sanction;

(3) A statement of the specific infraction for which the notice was issued;

(4) A statement of the monetary penalty that has been established for the infraction;

(5) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(6) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses, including the authorized representative of the department who issued and served the notice of infraction;

(7) A statement, which the person shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter;

(8) A statement that refusal to sign the infraction as directed in subsection (7) of this section is a misdemeanor; and

(9) A statement that failure to respond to a notice of infraction as promised is a misdemeanor and may be punished by a fine or imprisonment in jail. [1994 c 174 § 4; 1983 c 124 § 9.]

Effective date—1994 c 174: See note following RCW 18.106.020.

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.200 Notice—Hearing—Contest—Notice of appeal. A violation designated as an infraction under this chapter shall be heard and determined by an administrative law judge of the office of administrative hearings. If a party desires to contest the notice of infraction, the party shall file a notice of appeal with the department within twenty days of issuance of the infraction. The administrative law judge shall conduct hearings in these cases at locations in the county where the infraction is alleged to have occurred. [1996 c 147 § 5; 1994 c 174 § 5; 1983 c 124 § 8.]

Effective date—1994 c 174: See note following RCW 18.106.020.

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.210 Notice—Determination infraction committed. Unless contested in accordance with this chapter, the notice of infraction represents a determination that the person to whom the notice was issued committed the infraction. [1983 c 124 § 10.]

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.220 Notice—Penalty payment—Filing answer of protest—Failure to respond or appear. (1) A person who receives a notice of infraction shall respond to the notice as provided in this section within fourteen days of the date the notice was served.

(2) If the person named in the notice of infraction does not wish to contest the notice of infraction, the person shall pay to the department, by check or money order, the amount

of the penalty prescribed for the infraction. When a response which does not contest the determination is received by the department with the appropriate payment, the department shall make the appropriate entry in its records.

(3) If the person named in the notice of infraction wishes to contest the notice of infraction, the person shall respond by filing an answer of protest with the department specifying the grounds of protest.

(4) If any person issued a notice of infraction:

(a) Fails to respond to the notice of infraction as provided in subsection (2) of this section; or

(b) Fails to appear at a hearing requested pursuant to subsection (3) of this section;

the administrative law judge shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and shall notify the department of the failure to respond to the notice of infraction or to appear at a requested hearing. [1994 c 174 § 6; 1983 c 124 § 11.]

Effective date—1994 c 174: See note following RCW 18.106.020.

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.230 Notice—Failure to respond—Misdemeanor. It is a misdemeanor for any person who has been personally served with a notice of infraction:

(1) To refuse to sign a written promise to respond to the notice; or

(2) To wilfully violate the written promise to respond to a notice of infraction as provided in this chapter, regardless of the ultimate disposition of the infraction. [1983 c 124 § 14.]

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.240 Representation by attorney—Department represented by attorney general. A person subject to proceedings under this chapter may appear or be represented by counsel. The department shall be represented by the attorney general in any proceeding under this chapter. [1983 c 124 § 12.]

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.250 Infraction—Cases—Administrative Procedure Act—Burden of proof—Order—Appeal. (1) The administrative law judge shall conduct notice of infraction cases under this chapter pursuant to chapter 34.05 RCW.

(2) The burden of proof is on the department to establish the commission of the infraction by a preponderance of the evidence. The notice of infraction shall be dismissed if the defendant establishes that, at the time the notice was issued:

(a) The defendant who was issued a notice of infraction authorized by RCW 18.106.020(3)(a) had a certificate or permit issued by the department in accordance with this chapter, was supervised by a person who has such a certificate or permit, or was exempt from this chapter under RCW 18.106.150; or

(b) For the defendant who was issued a notice of infraction authorized by RCW 18.106.020(3) (b) or (c), the person employed or supervised by the defendant has a certificate or permit issued by the department in accordance with this chapter, was supervised by a person who had such

a certificate or permit, or was exempt from this chapter under RCW 18.106.150.

(3) After consideration of the evidence and argument, the administrative law judge shall determine whether the infraction was committed. If it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the record of the proceedings. If it has been established that the infraction was committed, the administrative law judge shall issue findings of fact and conclusions of law in its decision and order determining whether the infraction was committed.

(4) An appeal from the administrative law judge's determination or order shall be to the superior court. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the Rules of Appellate Procedure. [1994 c 174 § 7; 1983 c 124 § 13.]

Effective date—1994 c 174: See note following RCW 18.106.020.

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.270 Infraction—Monetary penalties—Rules.

(1) A person found to have committed an infraction under RCW 18.106.020 shall be assessed a monetary penalty of two hundred fifty dollars for the first infraction, and not more than one thousand dollars for a second or subsequent infraction. The department shall set by rule a schedule of penalties for infractions imposed under this chapter.

(2) The administrative law judge may waive, reduce, or suspend the monetary penalty imposed for the infraction for good cause shown.

(3) Monetary penalties collected under this chapter shall be deposited in the plumbing certificate fund. [1994 c 174 § 8; 1983 c 124 § 16.]

Effective date—1994 c 174: See note following RCW 18.106.020.

Effective date—1983 c 124: See note following RCW 18.106.020.

18.106.280 Pilot project—Enforcement of chapter—Reimbursement fee. The department of labor and industries may establish one pilot project in which the department will enter into an agreement with a city and the county within which the city is located regarding compliance inspections by the city or county to enforce this chapter. Under the terms of the agreement, the city and county shall be permitted to submit declarations of noncompliance to the department for the department's enforcement under RCW 18.106.180, with reimbursement to the city or county at an established fee. The pilot project shall be located in eastern Washington. [1995 c 294 § 1; 1994 c 174 § 1.]

Effective date—1994 c 174: See note following RCW 18.106.020.

18.106.290 Certificate or permit suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the certificate or permit of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's certificate or permit shall not be

reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for certification or permits during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 17.]

Severability—1996 c 293: See note following RCW 18.04.420.

Chapter 18.108

MASSAGE PRACTITIONERS

Sections

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- 18.108.900 Severability—1975 1st ex.s. c 280.
- 18.108.901 Severability—1987 c 443.
- 18.108.902 Savings—1987 c 443.

Authority to regulate massage practitioners—Limitations: RCW 35.21.692, 35A.82.025, and 36.32.122.

18.108.005 Intent—Health care insurance not affected. The legislature finds it necessary to license the practice of massage and massage therapy in order to protect the public health and safety. It is the legislature's intent that only individuals who meet and maintain minimum standards of competence and conduct may provide services to the public. This chapter shall not be construed to require or prohibit individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization from providing benefits or coverage for services and supplies provided by a person registered or certified under this chapter. [1987 c 443 § 1.]

18.108.010 Definitions. In this chapter, unless the context otherwise requires, the following meanings shall apply:

(1) "Board" means the Washington state board of massage.

(2) "Massage" and "massage therapy" mean a health care service involving the external manipulation or pressure of soft tissue for therapeutic purposes. Massage therapy includes massage techniques such as methods of effleurage,

petrissage, tapotement, tapping, compressions, vibration, friction, nerve stokes, and Swedish gymnastics or movements either by manual means, as they relate to massage, with or without the aids of superficial heat, cold, water, lubricants, or salts. Massage therapy does not include diagnosis or attempts to adjust or manipulate any articulations of the body or spine or mobilization of these articulations by the use of a thrusting force.

(3) "Massage practitioner" means an individual licensed under this chapter.

(4) "Secretary" means the secretary of health or the secretary's designee.

(5) Massage business means the operation of a business where massages are given. [1991 c 3 § 252; 1987 c 443 § 2; 1979 c 158 § 74; 1975 1st ex.s. c 280 § 1.]

18.108.020 Board of massage—Generally. The Washington state board of massage is hereby created. The board shall consist of four members who shall be appointed by the governor for a term of four years each. Members shall be residents of this state and shall have not less than three years experience in the practice of massage immediately preceding their appointment and shall be licensed under this chapter and actively engaged in the practice of massage during their incumbency.

In addition to the members specified in this section, the governor shall appoint a consumer member of the board, who shall serve for a term of four years. The consumer member of the board shall be an individual who does not derive his or her livelihood by providing health care services or massage therapy and is not a licensed health professional. The consumer member shall not be an employee of the state nor a present or former member of another licensing board.

In the event that a member cannot complete his or her term of office, another appointment shall be made by the governor in accordance with the procedures stated in this section to fill the remainder of the term. No member may serve more than two successive terms whether full or partial. The governor may remove any member of the board for neglect of duty, incompetence, or unprofessional or disorderly conduct as determined under chapter 18.130 RCW.

Each member of the board shall be compensated in accordance with RCW 43.03.240. Members shall be reimbursed for travel expenses incurred in the actual performance of their duties, as provided in RCW 43.03.050 and 43.03.060.

The board may annually elect a chairperson to direct the meetings of the board. The board shall meet as called by the chairperson or the secretary. Three members of the board shall constitute a quorum of the board. [1991 c 3 § 253; 1987 c 443 § 9. Prior: 1984 c 287 § 53; 1984 c 279 § 56; 1975-'76 2nd ex.s. c 34 § 57; 1975 1st ex.s. c 280 § 2.]

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

Severability—1984 c 279: See RCW 18.130.901.

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

18.108.025 Board powers and duties. In addition to any other authority provided by law, the board may:

(1) Adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter, subject to the approval of the secretary;

(2) Define, evaluate, approve, and designate those schools, programs, and apprenticeship programs including all current and proposed curriculum, faculty, and health, sanitation, and facility standards from which graduation will be accepted as proof of an applicant's eligibility to take the licensing examination;

(3) Review approved schools and programs periodically;

(4) Prepare, grade, administer, and supervise the grading and administration of, examinations for applicants for licensure; and

(5) Determine which states have educational and licensing requirements equivalent to those of this state.

The board shall establish by rule the standards and procedures for approving courses of study and may contract with individuals or organizations having expertise in the profession or in education to assist in evaluating courses of study. The standards and procedures set shall apply equally to schools and training within the United States of America and those in foreign jurisdictions. [1991 c 3 § 254; 1987 c 443 § 10.]

18.108.030 License required. (1) No person may practice or represent himself or herself as a massage practitioner without first applying for and receiving from the department a license to practice.

(2) A person represents himself or herself as a massage practitioner when the person adopts or uses any title or any description of services that incorporates one or more of the following terms or designations: Massage, massage practitioner, massage therapist, massage therapy, therapeutic massage, massage technician, massage technology, massagist, masseur, masseuse, myotherapist or myotherapy, touch therapist, reflexologist, acupressurist, body therapy or body therapist, or any derivation of those terms that implies a massage technique or method. [1995 c 198 § 15; 1987 c 443 § 3; 1975 1st ex.s. c 280 § 3.]

18.108.040 Advertising massage by unlicensed person unlawful. It shall be unlawful to advertise the practice of massage using the term massage or any other term that implies a massage technique or method in any public or private publication or communication by a person not licensed by the secretary as a massage practitioner or without printing in display advertisement the license number of the massage practitioner. Any person who holds a license to practice as a massage practitioner in this state may use the title "licensed massage practitioner" and the abbreviation "L.M.P.". No other persons may assume such title or use such abbreviation or any other word, letters, signs, or figures to indicate that the person using the title is a licensed massage practitioner. [1995 c 353 § 1; 1991 c 3 § 255; 1987 c 443 § 4; 1975 1st ex.s. c 280 § 4.]

18.108.050 Exemptions. This chapter does not apply to:

(1) An individual giving massage to members of his or her immediate family;

(2) The practice of a profession by individuals who are licensed, certified, or registered under other laws of this state and who are performing services within their authorized scope of practice;

(3) Massage practiced at the athletic department of any institution maintained by the public funds of the state, or any of its political subdivisions;

(4) Massage practiced at the athletic department of any school or college approved by the department by rule using recognized national professional standards;

(5) Students enrolled in an approved massage school, approved program, or approved apprenticeship program, practicing massage techniques, incidental to the massage school or program and supervised by the approved school or program. Students must identify themselves as a student when performing massage services on members of the public. Students may not be compensated for the massage services they provide. [1995 c 198 § 16; 1987 c 443 § 5; 1975 1st ex.s. c 280 § 5.]

Exemptions: RCW 18.108.130.

18.108.060 Applicant—License holder—Compliance with procedures, requirements, fees. Each applicant and license holder shall comply with administrative procedures, administrative requirements, and fees set by the secretary under RCW 43.70.250 and 43.70.280. [1996 c 191 § 81; 1991 c 3 § 256; 1987 c 443 § 6; 1985 c 7 § 79; 1975 1st ex.s. c 280 § 6.]

18.108.070 Qualifications for license. The secretary shall issue a massage practitioner's license to an applicant who demonstrates to the secretary's satisfaction that the following requirements have been met:

(1) Effective June 1, 1988, successful completion of a course of study in an approved massage program or approved apprenticeship program;

(2) Successful completion of an examination administered or approved by the board; and

(3) Be eighteen years of age or older.

In addition, applicants shall be subject to the grounds for denial or issuance of a conditional license under chapter 18.130 RCW.

The secretary may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria for licensure provided for in this chapter and chapter 18.130 RCW. The secretary shall establish by rule what constitutes adequate proof of meeting the criteria. The board shall give an appropriate alternate form of examination for persons who cannot read or speak English to determine equivalent competency. [1991 c 3 § 257; 1987 c 443 § 7; 1975 1st ex.s. c 280 § 7.]

18.108.073 Examination. (1) The date and location of the examination shall be established by the secretary. Applicants who demonstrate to the secretary's satisfaction that the following requirements have been met shall be scheduled for the next examination following the filing of the application:

(a) Effective June 1, 1988, successful completion of a course of study in an approved massage program; or

(b) Effective June 1, 1988, successful completion of an apprenticeship program established by the board; and

(c) Be eighteen years of age or older.

In addition, the secretary shall establish a deadline for receipt of completed and approved applications.

(2) The board or its designee shall examine each applicant in a written examination determined most effective on subjects appropriate to the massage scope of practice. The subjects may include anatomy, kinesiology, physiology, pathology, principles of human behavior, massage theory and practice, hydrotherapy, hygiene, first aid, Washington law pertaining to the practice of massage, and such other subjects as the board may deem useful to test applicant's fitness to practice massage therapy. Such examinations shall be limited in purpose to determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(3) All records of a candidate's performance shall be preserved for a period of not less than one year after the board has made and published decisions thereupon. All examinations shall be conducted by the board under fair and impartial methods as determined by the secretary.

(4) An applicant who fails to make the required grade in the first examination is entitled to take up to two additional examinations upon the payment of a fee for each subsequent examination determined by the secretary as provided in RCW 43.70.250. Upon failure of three examinations, the secretary may invalidate the original application and require such remedial education as is required by the board before admission to future examinations.

(5) The board may approve an examination prepared or administered, or both, by a private testing agency or association of licensing boards for use by an applicant in meeting the licensing requirement. [1995 c 198 § 17; 1991 c 3 § 258; 1987 c 443 § 8.]

18.108.076 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [1987 c 150 § 60; 1986 c 259 § 146.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.108.085 Powers and duties of secretary—Uniform Disciplinary Act—License revocation—Reinstatement. (1) In addition to any other authority provided by law, the secretary may:

(a) Adopt rules, in accordance with chapter 34.05 RCW necessary to implement this chapter;

(b) Set all license, examination, and renewal fees in accordance with RCW 43.70.250;

(c) Establish forms and procedures necessary to administer this chapter;

(d) Issue a license to any applicant who has met the education, training, and examination requirements for licensure; and

(e) Hire clerical, administrative, and investigative staff as necessary to implement this chapter, and hire individuals licensed under this chapter to serve as examiners for any practical examinations.

(2) The Uniform Disciplinary Act, chapter 18.130 RCW, governs the issuance and denial of licenses and the disciplining of persons under this chapter. The secretary shall be the disciplining authority under this chapter.

(3) Any license issued under this chapter to a person who is or has been convicted of violating RCW 9A.88.030, 9A.88.070, 9A.88.080, or 9A.88.090 or equivalent local ordinances shall automatically be revoked by the secretary upon receipt of a certified copy of the court documents reflecting such conviction. No further hearing or procedure is required, and the secretary has no discretion with regard to the revocation of the license. The revocation shall be effective even though such conviction may be under appeal, or the time period for such appeal has not elapsed. However, upon presentation of a final appellate decision overturning such conviction, the license shall be reinstated, unless grounds for disciplinary action have been found under chapter 18.130 RCW. No license may be granted under this chapter to any person who has been convicted of violating RCW 9A.88.030, 9A.88.070, 9A.88.080, or 9A.88.090 or equivalent local ordinances within the eight years immediately preceding the date of application. For purposes of this subsection, "convicted" does not include a conviction that has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence, but does include convictions for offenses for which the defendant received a deferred or suspended sentence, unless the record has been expunged according to law.

(4) The secretary shall keep an official record of all proceedings under this chapter, a part of which record shall consist of a register of all applicants for licensure under this chapter, with the result of each application. [1996 c 154 § 1; 1995 c 353 § 2; 1991 c 3 § 259; 1987 c 443 § 11.]

18.108.095 Out-of-state applicants. An applicant holding a license in another state or foreign jurisdiction may be granted a Washington license without examination, if, in the opinion of the board, the other state's or foreign jurisdiction's examination and educational requirements are substantially equivalent to Washington's: PROVIDED, That the applicant demonstrates to the satisfaction of the board a working knowledge of Washington law pertaining to the practice of massage. The applicant shall provide proof in a manner approved by the department that the examination and requirements are equivalent to Washington's. [1987 c 443 § 12.]

Effective date—1987 c 443 § 12: "Section 12 of this act shall take effect June 1, 1988." [1987 c 443 § 19.]

18.108.100 Provisions relating to licensing of persons nonexclusive. The provisions of this chapter relating to the licensing of any person shall not be exclusive, and any political subdivision of the state of Washington within whose jurisdiction the practice of massage is performed may require additional registrations or licenses, regulating the practice of massage or massage operators, and charge any fee for the same or similar purpose. [1975 1st ex.s. c 280 § 11.]

18.108.115 Persons licensed under prior law. Any person holding a valid license to practice massage issued by

authority of the state on July 26, 1987, shall continue to be licensed as a massage practitioner under the provisions of this chapter. [1987 c 443 § 13.]

18.108.130 Exemptions. This chapter does not apply to:

(1) Massage practiced at the athletic department of any institution maintained by the public funds of the state, or any of its political subdivisions;

(2) Massage practiced at the athletic department of any primary or secondary school, or institution of higher education; and

(3) Massage practiced at the athletic department of any nonprofit organization licensed under RCW 66.24.400 and 66.24.450. [1975 1st ex.s. c 280 § 14.]

Exemptions: RCW 18.108.050.

18.108.190 Inspection of premises by law enforcement personnel. State and local law enforcement personnel shall have the authority to inspect the premises at any time including business hours. [1975 1st ex.s. c 280 § 20.]

18.108.210 Provisions relating to licensing of massage businesses nonexclusive—Authority of local political subdivisions. The provisions of this chapter relating to the registration and licensing of any massage business shall not be exclusive and any political subdivision of the state of Washington within whose jurisdiction the massage business is located may require any registrations or licenses, or charge any fee for the same or similar purpose; and nothing herein shall limit or abridge the authority of any political subdivision to levy and collect a general and nondiscriminatory license fee levied upon all businesses, or to levy a tax based upon gross business conducted by any firm within said political subdivision. [1975 1st ex.s. c 280 § 22.]

18.108.220 Federal classification. For the purposes of this chapter, licensed massage practitioners shall be classified as "offices and clinics of health practitioners, not elsewhere classified" under section 8049 of the standard industrial classification manual published by the executive office of the president, office of management and budget. [1994 c 228 § 1.]

Effective date—1994 c 228: "This act shall take effect July 1, 1994." [1994 c 228 § 3.]

18.108.900 Severability—1975 1st ex.s. c 280. If any provision of this 1975 act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this 1975 act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1975 1st ex.s. c 280 § 23.]

18.108.901 Severability—1987 c 443. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 443 § 18.]

18.108.902 Savings—1987 c 443. This chapter shall not be construed as affecting any existing right acquired or liability or obligations incurred under the sections amended or repealed in this chapter or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections. [1987 c 443 § 14.]

Chapter 18.110

ART DEALERS—ARTISTS

Sections

- 18.110.010 Definitions.
- 18.110.020 Rights—Duties—Liabilities.
- 18.110.030 Contract required—Provisions.
- 18.110.040 Violations—Penalties—Attorney fees.
- 18.110.900 Application of chapter.
- 18.110.905 Construction—Chapter supersedes Title 62A RCW.

18.110.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Art dealer" means a person, partnership, firm, association, or corporation, other than a public auctioneer, which undertakes to sell a work of fine art created by another.

(2) "Artist" means the creator of a work of fine art.

(3) "On consignment" means delivered to an art dealer for the purpose of sale or exhibition, or both, to the public by the art dealer other than at a public auction.

(4) "Work of fine art" means an original art work which is:

- (a) A visual rendition including a painting, drawing, sculpture, mosaic, or photograph;
- (b) A work of calligraphy;
- (c) A work of graphic art including an etching, lithograph, offset print, or silk screen;
- (d) A craft work in materials including clay, textile, fiber, wood, metal, plastic, or glass; or
- (e) A work in mixed media including a collage or a work consisting of any combination of works included in this subsection. [1981 c 33 § 1.]

18.110.020 Rights—Duties—Liabilities. If an art dealer accepts a work of fine art on a fee, commission, or other compensation basis, on consignment from the artist:

(1) The art dealer is, with respect to that work of fine art, the agent of the artist.

(2) The work of fine art is trust property and the art dealer is trustee for the benefit of the artist until the work of fine art is sold to a bona fide third party.

(3) The proceeds of the sale of the work of fine art are trust property and the art dealer is trustee for the benefit of the artist until the amount due the artist from the sale is paid. These trust funds shall be paid to the artist within thirty days of receipt by the art dealer unless the parties expressly agree otherwise in writing. If the sale of the work of fine art is on installment, the funds from the installment shall first be applied to pay any balance due the artist on the sale, unless the artist expressly agrees in writing that the

proceeds on each installment shall be paid according to a percentage established by the consignment agreement.

(4) The art dealer is strictly liable for the loss of or damage to the work of fine art while it is in the art dealer's possession. For the purpose of this subsection the value of the work of fine art is the value established in a written agreement between the artist and art dealer prior to the loss or damage or, if no written agreement regarding the value of the work of fine art exists, the fair market value of the work of fine art.

A work of fine art which is trust property when initially accepted by the art dealer remains trust property notwithstanding the subsequent purchase of the work of fine art by the art dealer directly or indirectly for the art dealer's own account until the purchase price is paid in full to the artist. No property which is trust property under this section is subject to the claims, liens, or security interests of the creditors of the art dealer. [1981 c 33 § 2.]

18.110.030 Contract required—Provisions. (1) An art dealer may accept a work of fine art on a fee, commission, or other compensation basis, on consignment from the artist only if prior to or at the time of acceptance the art dealer enters into a written contract with the artist which states:

- (a) The value of the work of fine art;
- (b) The minimum price for the sale of the work of fine art; and
- (c) The fee, commission, or other compensation basis of the art dealer.

(2) An art dealer who accepts a work of fine art on a fee, commission, or other compensation basis, on consignment from the artist may use or display the work of fine art or a photograph of the work of fine art or permit the use or display of the work or photograph only if:

- (a) Notice is given to users or viewers that the work of fine art is the work of the artist; and
- (b) The artist gives prior written consent to the particular use or display.

(3) Any portion of a contract which waives any provision of this chapter is void. [1981 c 33 § 3.]

18.110.040 Violations—Penalties—Attorney fees. An art dealer violating RCW 18.110.030 is liable to the artist for fifty dollars plus actual damages, including incidental and consequential damages, sustained as a result of the violation. If an art dealer violates RCW 18.110.030, the artist's obligation for compensation to the art dealer is voidable. In an action under this section the court may, in its discretion, award the artist reasonable attorney's fees. [1981 c 33 § 4.]

18.110.900 Application of chapter. This chapter applies to any work of fine art accepted on consignment on or after July 26, 1981. If a work of fine art is accepted on consignment on or after July 26, 1981 under a contract made before that date, this section applies only to the extent that it does not conflict with the contract. [1981 c 33 § 5.]

18.110.905 Construction—Chapter supersedes Title 62A RCW. See RCW 62A.1-110.

Chapter 18.118

REGULATION OF BUSINESS PROFESSIONS

Sections

- 18.118.005 Legislative findings—Intent.
 18.118.010 Purpose—Intent.
 18.118.020 Definitions.
 18.118.030 Applicants for regulation—Information.
 18.118.040 Applicants for regulation—Written report—Recommendation of department of licensing.
 18.118.900 Severability—1987 c 514.

18.118.005 Legislative findings—Intent. The legislature recognizes the value of an analytical review, removed from the political process, of proposals for increased regulation of real estate and other business professions which the legislature already regulates, as well as of proposals for regulation of professions not currently regulated. The legislature further finds that policies and standards set out for regulation of the health professions in chapter 18.120 RCW have equal applicability to other professions. To further the goal of governmental regulation only as necessary to protect the public interest and to promote economic development through employment, the legislature expands the scope of chapter 18.120 RCW to apply to business professions. The legislature intends that the reviews of proposed business profession regulation be conducted by the department of licensing's policy and research rather than regulatory staff and that the reviews be conducted and recommendations made in an impartial manner. Further, the legislature intends that the department of licensing provide sufficient staffing to conduct the reviews. [1987 c 514 § 3.]

18.118.010 Purpose—Intent. (1) The purpose of this chapter is to establish guidelines for the regulation of the real estate profession and other business professions which may seek legislation to substantially increase their scope of practice or the level of regulation of the profession, and for the regulation of business professions not licensed or regulated on July 26, 1987: PROVIDED, That the provisions of this chapter are not intended and shall not be construed to: (a) Apply to any regulatory entity created prior to July 26, 1987, except as provided in this chapter; (b) affect the powers and responsibilities of the superintendent of public instruction or state board of education under RCW 28A.305.130 and 28A.410.010; (c) apply to or interfere in any way with the practice of religion or to any kind of treatment by prayer; (d) apply to any remedial or technical amendments to any statutes which licensed or regulated activity before July 26, 1987; and (e) apply to proposals relating solely to continuing education. The legislature believes that all individuals should be permitted to enter into a business profession unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession. Where such a need is identified, the regulation adopted by the state should be set at the least restrictive level consistent with the public interest to be protected.

(2) It is the intent of this chapter that no regulation shall be imposed upon any business profession except for the exclusive purpose of protecting the public interest. All bills

introduced in the legislature to regulate a business profession for the first time should be reviewed according to the following criteria. A business profession should be regulated by the state only when:

(a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(c) The public cannot be effectively protected by other means in a more cost-beneficial manner.

(3) After evaluating the criteria in subsection (2) of this section and considering governmental and societal costs and benefits, if the legislature finds that it is necessary to regulate a business profession not previously regulated by law, the least restrictive alternative method of regulation should be implemented, consistent with the public interest and this section:

(a) Where existing common law and statutory civil actions and criminal prohibitions are not sufficient to eradicate existing harm, the regulation should provide for stricter civil actions and criminal prosecutions;

(b) Where a service is being performed for individuals involving a hazard to the public health, safety, or welfare, the regulation should impose inspection requirements and enable an appropriate state agency to enforce violations by injunctive relief in court, including, but not limited to, regulation of the business activity providing the service rather than the employees of the business;

(c) Where the threat to the public health, safety, or economic well-being is relatively small as a result of the operation of the business profession, the regulation should implement a system of registration;

(d) Where the consumer may have a substantial basis for relying on the services of a practitioner, the regulation should implement a system of certification; or

(e) Where apparent that adequate regulation cannot be achieved by means other than licensing, the regulation should implement a system of licensing. [1990 c 33 § 553; 1987 c 514 § 4.]

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

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

(1) "Applicant group" includes any business professional group or organization, any individual, or any other interested party which proposes that any business professional group not presently regulated be regulated or which proposes legislation to substantially increase the scope of practice or the level of regulation of the profession.

(2) "Business professions" means those business occupations or professions which are not health professions under chapter 18.120 RCW and includes, in addition to real estate brokers and salespersons under chapter 18.85 RCW, the following professions and occupations: Accountancy under chapter 18.04 RCW; architects under chapter 18.08 RCW; auctioneering under chapter 18.11 RCW; cosmetologists, barbers, and manicurists under chapter 18.16 RCW;

contractors under chapter 18.27 RCW; debt adjusting under chapter 18.28 RCW; engineers and surveyors under chapter 18.43 RCW; escrow agents under chapter 18.44 RCW; landscape architects under chapter 18.96 RCW; well construction under chapter 18.104 RCW; plumbers under chapter 18.106 RCW; and art dealers under chapter 18.110 RCW.

(3) "Certificate" and "certification" mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who (a) has met certain prerequisite qualifications specified by that regulatory entity, and (b) may assume or use "certified" in the title or designation to perform prescribed professional tasks.

(4) "Grandfather clause" means a provision in a regulatory statute applicable to practitioners actively engaged in the regulated profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

(5) "Inspection" means the periodic examination of practitioners by a state agency in order to ascertain whether the practitioners' occupation is being carried out in a fashion consistent with the public health, safety, and welfare.

(6) "Legislative committees of reference" means the standing legislative committees designated by the respective rules committees of the senate and house of representatives to consider proposed legislation to regulate business professions not previously regulated.

(7) "License", "licensing", and "licensure" mean permission to engage in a business profession which would otherwise be unlawful in the state in the absence of the permission. A license is granted to those individuals who meet prerequisite qualifications to perform prescribed professional tasks and for the use of a particular title.

(8) "Professional license" means an individual, nontransferable authorization to carry on an activity based on qualifications which include: (a) Graduation from an accredited or approved program, and (b) acceptable performance on a qualifying examination or series of examinations.

(9) "Practitioner" means an individual who (a) has achieved knowledge and skill by practice, and (b) is actively engaged in a specified business profession.

(10) "Public member" means an individual who is not, and never was, a member of the business profession being regulated or the spouse of a member, or an individual who does not have and never has had a material financial interest in either the rendering of the business professional service being regulated or an activity directly related to the profession being regulated.

(11) "Registration" means the formal notification which, prior to rendering services, a practitioner shall submit to a state agency setting forth the name and address of the practitioner; the location, nature and operation of the business activity to be practiced; and, if required by the regulatory entity, a description of the service to be provided.

(12) "Regulatory entity" means any board, commission, agency, division, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

(13) "State agency" includes every state office, department, board, commission, regulatory entity, and agency of

the state, and, where provided by law, programs and activities involving less than the full responsibility of a state agency. [1987 c 514 § 5.]

18.118.030 Applicants for regulation—Information.

After July 26, 1987, if appropriate, applicant groups shall explain each of the following factors to the extent requested by the legislative committees of reference:

(1) A definition of the problem and why regulation is necessary:

(a) The nature of the potential harm to the public if the business profession is not regulated, and the extent to which there is a threat to public health and safety;

(b) The extent to which consumers need and will benefit from a method of regulation identifying competent practitioners, indicating typical employers, if any, of practitioners in the profession; and

(c) The extent of autonomy a practitioner has, as indicated by:

(i) The extent to which the profession calls for independent judgment and the extent of skill or experience required in making the independent judgment; and

(ii) The extent to which practitioners are supervised;

(2) The efforts made to address the problem:

(a) Voluntary efforts, if any, by members of the profession to:

(i) Establish a code of ethics; or

(ii) Help resolve disputes between practitioners and consumers; and

(b) Recourse to and the extent of use of applicable law and whether it could be strengthened to control the problem;

(3) The alternatives considered:

(a) Regulation of business employers or practitioners rather than employee practitioners;

(b) Regulation of the program or service rather than the individual practitioners;

(c) Registration of all practitioners;

(d) Certification of all practitioners;

(e) Other alternatives;

(f) Why the use of the alternatives specified in this subsection would not be adequate to protect the public interest; and

(g) Why licensing would serve to protect the public interest;

(4) The benefit to the public if regulation is granted:

(a) The extent to which the incidence of specific problems present in the unregulated profession can reasonably be expected to be reduced by regulation;

(b) Whether the public can identify qualified practitioners;

(c) The extent to which the public can be confident that qualified practitioners are competent:

(i) Whether the proposed regulatory entity would be a board composed of members of the profession and public members, or a state agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification, or licensure, including the composition of the board and the number of public members, if any; the powers and duties of the board or state agency regarding examinations and for cause revocation, suspension, and nonrenewal of registrations, certificates, or licenses; the

promulgation of rules and canons of ethics; the conduct of inspections; the receipt of complaints and disciplinary action taken against practitioners; and how fees would be levied and collected to cover the expenses of administering and operating the regulatory system;

(ii) If there is a grandfather clause, whether such practitioners will be required to meet the prerequisite qualifications established by the regulatory entity at a later date;

(iii) The nature of the standards proposed for registration, certification, or licensure as compared with the standards of other jurisdictions;

(iv) Whether the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions; and

(v) The nature and duration of any training including, but not limited to, whether the training includes a substantial amount of supervised field experience; whether training programs exist in this state; if there will be an experience requirement; whether the experience must be acquired under a registered, certificated, or licensed practitioner; whether there are alternative routes of entry or methods of meeting the prerequisite qualifications; whether all applicants will be required to pass an examination; and, if an examination is required, by whom it will be developed and how the costs of development will be met;

(d) Assurance of the public that practitioners have maintained their competence:

(i) Whether the registration, certification, or licensure will carry an expiration date; and

(ii) Whether renewal will be based only upon payment of a fee, or whether renewal will involve reexamination, peer review, or other enforcement;

(5) The extent to which regulation might harm the public:

(a) The extent to which regulation will restrict entry into the profession:

(i) Whether the proposed standards are more restrictive than necessary to insure safe and effective performance; and

(ii) Whether the proposed legislation requires registered, certificated, or licensed practitioners in other jurisdictions who migrate to this state to qualify in the same manner as state applicants for registration, certification, and licensure when the other jurisdiction has substantially equivalent requirements for registration, certification, or licensure as those in this state; and

(b) Whether there are similar professions to that of the applicant group which should be included in, or portions of the applicant group which should be excluded from, the proposed legislation;

(6) The maintenance of standards:

(a) Whether effective quality assurance standards exist in the profession, such as legal requirements associated with specific programs that define or enforce standards, or a code of ethics; and

(b) How the proposed legislation will assure quality:

(i) The extent to which a code of ethics, if any, will be adopted; and

(ii) The grounds for suspension or revocation of registration, certification, or licensure;

(7) A description of the group proposed for regulation, including a list of associations, organizations, and other

groups representing the practitioners in this state, an estimate of the number of practitioners in each group, and whether the groups represent different levels of practice; and

(8) The expected costs of regulation:

(a) The impact registration, certification, or licensure will have on the costs of the services to the public; and

(b) The cost to the state and to the general public of implementing the proposed legislation. [1987 c 514 § 6.]

18.118.040 Applicants for regulation—Written report—Recommendation of department of licensing.

Applicant groups shall submit a written report explaining the factors enumerated in RCW 18.118.030 to the legislative committees of reference. Applicant groups, other than state agencies created prior to July 26, 1987, shall submit copies of their written report to the department of licensing for review and comment. The department of licensing shall make recommendations based on the report to the extent requested by the legislative committees. [1987 c 514 § 7.]

18.118.900 Severability—1987 c 514. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 514 § 10.]

Chapter 18.120

REGULATION OF HEALTH PROFESSIONS— CRITERIA

Sections

18.120.010 Purpose—Criteria.

18.120.020 Definitions.

18.120.030 Applicants for regulation—Information.

18.120.040 Applicants for regulation—Written reports—
Recommendations by state board of health and department of health.

18.120.050 Continuing education requirements—Legislative proposals—
Evidence of effectiveness.

18.120.900 Short title.

18.120.910 Severability—1983 c 168.

Health professions account—Fees credited—Requirements for biennial budget request: RCW 43.70.320.

Secretary of health or secretary's designee ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.

18.120.010 Purpose—Criteria. (1) The purpose of this chapter is to establish guidelines for the regulation of health professions not licensed or regulated prior to July 24, 1983, and those licensed or regulated health professions which seek to substantially increase their scope of practice: PROVIDED, That the provisions of this chapter are not intended and shall not be construed to: (a) Apply to any regulatory entity created prior to July 24, 1983, except as provided in this chapter; (b) affect the powers and responsibilities of the superintendent of public instruction or state board of education under RCW 28A.305.130 and 28A.410.010; (c) apply to or interfere in any way with the practice of religion or to any kind of treatment by prayer; and (d) apply to any remedial or technical amendments to any statutes which licensed or regulated activity before July 24, 1983. The legislature believes that all individuals should

be permitted to enter into a health profession unless there is an overwhelming need for the state to protect the interests of the public by restricting entry into the profession. Where such a need is identified, the regulation adopted by the state should be set at the least restrictive level consistent with the public interest to be protected.

(2) It is the intent of this chapter that no regulation shall, after July 24, 1983, be imposed upon any health profession except for the exclusive purpose of protecting the public interest. All bills introduced in the legislature to regulate a health profession for the first time should be reviewed according to the following criteria. A health profession should be regulated by the state only when:

(a) Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument;

(b) The public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(c) The public cannot be effectively protected by other means in a more cost-beneficial manner.

(3) After evaluating the criteria in subsection (2) of this section and considering governmental and societal costs and benefits, if the legislature finds that it is necessary to regulate a health profession not previously regulated by law, the least restrictive alternative method of regulation should be implemented, consistent with the public interest and this section:

(a) Where existing common law and statutory civil actions and criminal prohibitions are not sufficient to eradicate existing harm, the regulation should provide for stricter civil actions and criminal prosecutions;

(b) Where a service is being performed for individuals involving a hazard to the public health, safety, or welfare, the regulation should impose inspection requirements and enable an appropriate state agency to enforce violations by injunctive relief in court, including, but not limited to, regulation of the business activity providing the service rather than the employees of the business;

(c) Where the threat to the public health, safety, or economic well-being is relatively small as a result of the operation of the health profession, the regulation should implement a system of registration;

(d) Where the consumer may have a substantial basis for relying on the services of a practitioner, the regulation should implement a system of certification; or

(e) Where apparent that adequate regulation cannot be achieved by means other than licensing, the regulation should implement a system of licensing. [1990 c 33 § 554; 1983 c 168 § 1.]

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

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

(1) "Applicant group" includes any health professional group or organization, any individual, or any other interested party which proposes that any health professional group not presently regulated be regulated or which proposes to substantially increase the scope of practice of the profession.

(2) "Certificate" and "certification" mean a voluntary process by which a statutory regulatory entity grants recognition to an individual who (a) has met certain prerequisite qualifications specified by that regulatory entity, and (b) may assume or use "certified" in the title or designation to perform prescribed health professional tasks.

(3) "Grandfather clause" means a provision in a regulatory statute applicable to practitioners actively engaged in the regulated health profession prior to the effective date of the regulatory statute which exempts the practitioners from meeting the prerequisite qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

(4) "Health professions" means and includes the following health and health-related licensed or regulated professions and occupations: Podiatric medicine and surgery under chapter 18.22 RCW; chiropractic under chapter 18.25 RCW; dental hygiene under chapter 18.29 RCW; dentistry under chapter 18.32 RCW; denturism under chapter 18.30 RCW; dispensing opticians under chapter 18.34 RCW; *hearing aids under chapter 18.35 RCW; naturopaths under chapter 18.36A RCW; embalming and funeral directing under chapter 18.39 RCW; midwifery under chapter 18.50 RCW; nursing home administration under chapter 18.52 RCW; optometry under chapters 18.53 and 18.54 RCW; ophthalmologists under chapter 18.55 RCW; osteopathic medicine and surgery under chapters 18.57 and 18.57A RCW; pharmacy under chapters 18.64 and 18.64A RCW; medicine under chapters 18.71 and 18.71A RCW; emergency medicine under chapter 18.73 RCW; physical therapy under chapter 18.74 RCW; practical nurses under chapter 18.79 RCW; psychologists under chapter 18.83 RCW; registered nurses under chapter 18.79 RCW; occupational therapists licensed under chapter 18.59 RCW; respiratory care practitioners certified under chapter 18.89 RCW; veterinarians and animal technicians under chapter 18.92 RCW; health care assistants under chapter 18.135 RCW; massage practitioners under chapter 18.108 RCW; acupuncturists licensed under chapter 18.06 RCW; persons registered or certified under chapter 18.19 RCW; dietitians and nutritionists certified by chapter 18.138 RCW; radiologic technicians under chapter 18.84 RCW; and nursing assistants registered or certified under chapter 18.88A RCW.

(5) "Inspection" means the periodic examination of practitioners by a state agency in order to ascertain whether the practitioners' occupation is being carried out in a fashion consistent with the public health, safety, and welfare.

(6) "Legislative committees of reference" means the standing legislative committees designated by the respective rules committees of the senate and house of representatives to consider proposed legislation to regulate health professions not previously regulated.

(7) "License," "licensing," and "licensure" mean permission to engage in a health profession which would otherwise be unlawful in the state in the absence of the permission. A license is granted to those individuals who meet prerequisite qualifications to perform prescribed health professional tasks and for the use of a particular title.

(8) "Professional license" means an individual, nontransferable authorization to carry on a health activity based on qualifications which include: (a) Graduation from an accredited or approved program, and (b) acceptable perfor-

mance on a qualifying examination or series of examinations.

(9) "Practitioner" means an individual who (a) has achieved knowledge and skill by practice, and (b) is actively engaged in a specified health profession.

(10) "Public member" means an individual who is not, and never was, a member of the health profession being regulated or the spouse of a member, or an individual who does not have and never has had a material financial interest in either the rendering of the health professional service being regulated or an activity directly related to the profession being regulated.

(11) "Registration" means the formal notification which, prior to rendering services, a practitioner shall submit to a state agency setting forth the name and address of the practitioner; the location, nature and operation of the health activity to be practiced; and, if required by the regulatory entity, a description of the service to be provided.

(12) "Regulatory entity" means any board, commission, agency, division, or other unit or subunit of state government which regulates one or more professions, occupations, industries, businesses, or other endeavors in this state.

(13) "State agency" includes every state office, department, board, commission, regulatory entity, and agency of the state, and, where provided by law, programs and activities involving less than the full responsibility of a state agency. [1996 c 178 § 9. Prior: 1995 c 323 § 15; 1995 c 1 § 18 (Initiative Measure No. 607, approved November 8, 1994); 1994 sp.s. c 9 § 718; 1989 c 300 § 14; prior: 1988 c 277 § 12; 1988 c 267 § 21; prior: 1987 c 512 § 21; 1987 c 447 § 17; 1987 c 415 § 16; 1987 c 412 § 14; prior: 1985 c 326 § 28; 1985 c 117 § 3; prior: 1984 c 279 § 57; 1984 c 9 § 18; 1983 c 168 § 2.]

***Reviser's note:** The term "hearing aids" was changed to "hearing instruments" by 1996 c 200.

Effective date—1996 c 178: See note following RCW 18.35.110.

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1987 c 512: See RCW 18.19.901.

Severability—1987 c 447: See RCW 18.36A.901.

Severability—1987 c 415: See RCW 18.89.901.

Effective date—Severability—1987 c 412: See RCW 18.84.901 and 18.84.902.

Severability—1984 c 279: See RCW 18.130.901.

Severability—1984 c 9: See RCW 18.59.905.

18.120.030 Applicants for regulation—Information.

After July 24, 1983, if appropriate, applicant groups shall explain each of the following factors to the extent requested by the legislative committees of reference:

(1) A definition of the problem and why regulation is necessary:

(a) The nature of the potential harm to the public if the health profession is not regulated, and the extent to which there is a threat to public health and safety;

(b) The extent to which consumers need and will benefit from a method of regulation identifying competent practitioners, indicating typical employers, if any, of practitioners in the health profession; and

(c) The extent of autonomy a practitioner has, as indicated by:

(i) The extent to which the health profession calls for independent judgment and the extent of skill or experience required in making the independent judgment; and

(ii) The extent to which practitioners are supervised;

(2) The efforts made to address the problem:

(a) Voluntary efforts, if any, by members of the health profession to:

(i) Establish a code of ethics; or

(ii) Help resolve disputes between health practitioners and consumers; and

(b) Recourse to and the extent of use of applicable law and whether it could be strengthened to control the problem;

(3) The alternatives considered:

(a) Regulation of business employers or practitioners rather than employee practitioners;

(b) Regulation of the program or service rather than the individual practitioners;

(c) Registration of all practitioners;

(d) Certification of all practitioners;

(e) Other alternatives;

(f) Why the use of the alternatives specified in this subsection would not be adequate to protect the public interest; and

(g) Why licensing would serve to protect the public interest;

(4) The benefit to the public if regulation is granted:

(a) The extent to which the incidence of specific problems present in the unregulated health profession can reasonably be expected to be reduced by regulation;

(b) Whether the public can identify qualified practitioners;

(c) The extent to which the public can be confident that qualified practitioners are competent:

(i) Whether the proposed regulatory entity would be a board composed of members of the profession and public members, or a state agency, or both, and, if appropriate, their respective responsibilities in administering the system of registration, certification, or licensure, including the composition of the board and the number of public members, if any; the powers and duties of the board or state agency regarding examinations and for cause revocation, suspension, and nonrenewal of registrations, certificates, or licenses; the promulgation of rules and canons of ethics; the conduct of inspections; the receipt of complaints and disciplinary action taken against practitioners; and how fees would be levied and collected to cover the expenses of administering and operating the regulatory system;

(ii) If there is a grandfather clause, whether such practitioners will be required to meet the prerequisite qualifications established by the regulatory entity at a later date;

(iii) The nature of the standards proposed for registration, certification, or licensure as compared with the standards of other jurisdictions;

(iv) Whether the regulatory entity would be authorized to enter into reciprocity agreements with other jurisdictions;

(v) The nature and duration of any training including, but not limited to, whether the training includes a substantial amount of supervised field experience; whether training programs exist in this state; if there will be an experience

requirement; whether the experience must be acquired under a registered, certificated, or licensed practitioner; whether there are alternative routes of entry or methods of meeting the prerequisite qualifications; whether all applicants will be required to pass an examination; and, if an examination is required, by whom it will be developed and how the costs of development will be met; and

(vi) What additional training programs are anticipated to be necessary to assure training accessible state-wide; the anticipated time required to establish the additional training programs; the types of institutions capable of providing the training; a description of how training programs will meet the needs of the expected work force, including reentry workers, minorities, placebound students, and others;

(d) Assurance of the public that practitioners have maintained their competence:

(i) Whether the registration, certification, or licensure will carry an expiration date; and

(ii) Whether renewal will be based only upon payment of a fee, or whether renewal will involve reexamination, peer review, or other enforcement;

(5) The extent to which regulation might harm the public:

(a) The extent to which regulation will restrict entry into the health profession:

(i) Whether the proposed standards are more restrictive than necessary to insure safe and effective performance; and

(ii) Whether the proposed legislation requires registered, certificated, or licensed practitioners in other jurisdictions who migrate to this state to qualify in the same manner as state applicants for registration, certification, and licensure when the other jurisdiction has substantially equivalent requirements for registration, certification, or licensure as those in this state; and

(b) Whether there are similar professions to that of the applicant group which should be included in, or portions of the applicant group which should be excluded from, the proposed legislation;

(6) The maintenance of standards:

(a) Whether effective quality assurance standards exist in the health profession, such as legal requirements associated with specific programs that define or enforce standards, or a code of ethics; and

(b) How the proposed legislation will assure quality:

(i) The extent to which a code of ethics, if any, will be adopted; and

(ii) The grounds for suspension or revocation of registration, certification, or licensure;

(7) A description of the group proposed for regulation, including a list of associations, organizations, and other groups representing the practitioners in this state, an estimate of the number of practitioners in each group, and whether the groups represent different levels of practice; and

(8) The expected costs of regulation:

(a) The impact registration, certification, or licensure will have on the costs of the services to the public;

(b) The cost to the state and to the general public of implementing the proposed legislation; and

(c) The cost to the state and the members of the group proposed for regulation for the required education, including projected tuition and expenses and expected increases in

training programs, staffing, and enrollments at state training institutions. [1991 c 332 § 6; 1983 c 168 § 3.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

18.120.040 Applicants for regulation—Written reports—Recommendations by state board of health and department of health. Applicant groups shall submit a written report explaining the factors enumerated in RCW 18.120.030 to the legislative committees of reference, copies of which shall be sent to the state board of health and the department of health for review and comment. The state board of health and the department of health shall make recommendations based on the report submitted by applicant groups to the extent requested by the legislative committees. [1989 1st ex.s. c 9 § 305; 1984 c 279 § 59.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1984 c 279: See RCW 18.130.901.

18.120.050 Continuing education requirements—Legislative proposals—Evidence of effectiveness. Requirements for licensees to engage in continuing education as a condition of continued licensure has not been proven to be an effective method of guaranteeing or improving the competence of licensees or the quality of care received by the consumer. The legislature has serious reservations concerning the appropriateness of mandated continuing education. Any legislative proposal which contains a continuing education requirement should be accompanied by evidence that such a requirement has been proven effective for the profession addressed in the legislation. [1984 c 279 § 58.]

Severability—1984 c 279: See RCW 18.130.901.

18.120.900 Short title. This chapter may be known and cited as the Washington regulation of health professions act. [1983 c 168 § 4.]

18.120.910 Severability—1983 c 168. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 168 § 17.]

Chapter 18.122

REGULATION OF HEALTH PROFESSIONS— UNIFORM ADMINISTRATIVE PROVISIONS

Sections

18.122.010	Legislative intent.
18.122.020	Definitions.
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18.122.040	Exemptions,
18.122.050	Powers of secretary.
18.122.060	Record of proceedings.
18.122.070	Advisory committees.
18.122.080	Credentialing requirements.
18.122.090	Approval of educational programs.
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- 18.122.130 Endorsement.
- 18.122.140 Renewals.
- 18.122.150 Application of uniform disciplinary act.
- 18.122.160 Application of chapter.
- 18.122.900 Section captions.
- 18.122.901 Severability—1987 c 150.

18.122.010 Legislative intent. The legislature takes note of the burgeoning number of bills proposed to regulate new health and health-related professions and occupations. The legislature further recognizes the number of allied health professions seeking independent practice. Potentially at least one hundred forty-five discrete health professions and occupations are recognized nationally, with at least two hundred fifty secondary job classifications. A uniform and streamlined credentialing process needs to be established to permit the department of health to administer the health professional regulatory programs in the most cost-effective, accountable, and uniform manner. The public interest will be served by establishing uniform administrative provisions for the regulated professions under the jurisdiction of the department of health regulated after July 26, 1987. [1989 1st ex.s. c 9 § 306; 1987 c 150 § 61.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

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

(1) To "credential" means to license, certify, or register an applicant.

(2) "Department" means the department of health.

(3) "Secretary" means the secretary of health or the secretary's designee.

(4) "Health profession" means a profession providing health services regulated under the laws of this state and under which laws this statute is specifically referenced.

(5) "Credential" means the license, certificate, or registration issued to a person. [1989 1st ex.s. c 9 § 307; 1987 c 150 § 62.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.122.030 Registration, certification, and licensure.

(1) The three levels of professional credentialing as defined in chapter 18.120 RCW are:

(a) Registration, which is the least restrictive, and requires formal notification of the department of health identifying the practitioner, and does not require qualifying examinations;

(b) Certification, which is a voluntary process recognizing an individual who qualifies by examination and meets established educational prerequisites, and which protects the title of practice; and

(c) Licensure, which is the most restrictive and requires qualification by examination and educational prerequisites of a practitioner whose title is protected and whose scope of practice is restricted to only those licensed.

(2) No person may practice or represent oneself as a practitioner of a health profession by use of any title or description of services without being registered to practice

by the department of health, unless otherwise exempted by this chapter.

(3) No person may represent oneself as certified or use any title or description of services without applying for certification, meeting the required qualifications, and being certified by the department of health, unless otherwise exempted by this chapter.

(4) No person may represent oneself as licensed, use any title or description of services, or engage in any practice without applying for licensure, meeting the required qualifications, and being licensed by the department of health, unless otherwise exempted by this chapter. [1989 1st ex.s. c 9 § 308; 1987 c 150 § 63.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.122.040 Exemptions. Nothing in this chapter shall be construed to prohibit or restrict:

(1) The practice by an individual licensed, certified, or registered under the laws of this state and performing services within the authorized scope of practice;

(2) The practice by an individual employed by the government of the United States while engaged in the performance of duties prescribed by the laws of the United States;

(3) The practice by a person who is a regular student in an educational program approved by the secretary, and whose performance of services is pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor. [1991 c 3 § 260; 1987 c 150 § 64.]

18.122.050 Powers of secretary. In addition to any other authority provided by law, the secretary has the authority to:

(1) Adopt rules under chapter 34.05 RCW necessary to implement this chapter;

(2) Establish all credentialing, examination, and renewal fees in accordance with RCW 43.70.250;

(3) Establish forms and procedures necessary to administer this chapter;

(4) Register any applicants, and to issue certificates or licenses to applicants who have met the education, training, and examination requirements for licensure or certification and to deny a credential to applicants who do not meet the minimum qualifications, except that proceedings concerning the denial of credentials based upon unprofessional conduct or impairment shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(5) Hire clerical, administrative, investigative, and other staff as needed to implement this chapter, and hire individuals credentialed under this chapter to serve as examiners for any practical examinations;

(6) Determine minimum education requirements and evaluate and designate those educational programs from which graduation will be accepted as proof of eligibility to take a qualifying examination for applicants for certification or licensure;

(7) Prepare, grade, and administer, or determine the nature of, and supervise the grading and administration of, examinations for applicants for certification or licensure;

(8) Determine whether alternative methods of training are equivalent to formal education, and establish forms, procedures, and criteria for evaluation of an applicant's alternative training to determine the applicant's eligibility to take any qualifying examination;

(9) Determine which states have credentialing requirements equivalent to those of this state, and issue credentials to individuals credentialed in those states without examinations;

(10) Define and approve any experience requirement for credentialing;

(11) Implement and administer a program for consumer education;

(12) Adopt rules implementing a continuing competency program;

(13) Maintain the official department record of all applicants and licensees; and

(14) Establish by rule the procedures for an appeal of an examination failure. [1989 1st ex.s. c 9 § 309; 1987 c 150 § 65.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.122.060 Record of proceedings. The secretary shall keep an official record of all proceedings. A part of the record shall consist of a register of all applicants for credentialing under this chapter and the results of each application. [1991 c 3 § 261; 1987 c 150 § 66.]

18.122.070 Advisory committees. (1) The secretary has the authority to appoint advisory committees to further the purposes of this chapter. Each such committee shall be composed of five members, one member initially appointed for a term of one year, two for a term of two years, and two for a term of three years. Subsequent appointments shall be for terms of three years. No person may serve as a member of the committee for more than two consecutive terms. Members of an advisory committee shall be residents of this state. Each committee shall be composed of three individuals registered, certified, or licensed in the category designated, and two members who represent the public at large and are unaffiliated directly or indirectly with the profession being credentialed.

(2) The secretary may remove any member of the advisory committees for cause as specified by rule. In the case of a vacancy, the secretary shall appoint a person to serve for the remainder of the unexpired term.

(3) The advisory committees shall each meet at the times and places designated by the secretary and shall hold meetings during the year as necessary to provide advice to the director. The committee may elect a chair and a vice chair. A majority of the members currently serving shall constitute a quorum.

(4) Each member of an advisory committee shall be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060. In addition, members of the committees shall be compensated in accordance with RCW 43.03.240 when engaged in the authorized business of their committees.

(5) The secretary, members of advisory committees, or individuals acting on their behalf are immune from suit in

any action, civil or criminal, based on any credentialing or disciplinary proceedings or other official acts performed in the course of their duties. [1991 c 3 § 262; 1987 c 150 § 67.]

18.122.080 Credentialing requirements. (1) The secretary shall issue a license or certificate, as appropriate, to any applicant who demonstrates to the secretary's satisfaction that the following requirements have been met:

(a) Graduation from an educational program approved by the secretary or successful completion of alternate training meeting established criteria;

(b) Successful completion of an approved examination; and

(c) Successful completion of any experience requirement established by the secretary.

(2) The secretary shall establish by rule what constitutes adequate proof of meeting the criteria.

(3) In addition, applicants shall be subject to the grounds for denial of a license or certificate or issuance of a conditional license or certificate under chapter 18.130 RCW.

(4) The secretary shall issue a registration to any applicant who completes an application which identifies the name and address of the applicant, the registration being requested, and information required by the secretary necessary to establish whether there are grounds for denial of a registration or issuance of a conditional registration under chapter 18.130 RCW. [1991 c 3 § 263; 1987 c 150 § 68.]

18.122.090 Approval of educational programs. The secretary shall establish by rule the standards and procedures for approval of educational programs and alternative training. The secretary may utilize or contract with individuals or organizations having expertise in the profession or in education to assist in the evaluations. The secretary shall establish by rule the standards and procedures for revocation of approval of education programs. The standards and procedures set shall apply equally to educational programs and training in the United States and in foreign jurisdictions. The secretary may establish a fee for educational program evaluations. [1991 c 3 § 264; 1987 c 150 § 69.]

18.122.100 Examinations. (1) The date and location of examinations shall be established by the secretary. Applicants who have been found by the secretary to meet the other requirements for licensure or certification shall be scheduled for the next examination following the filing of the application. The secretary shall establish by rule the examination application deadline.

(2) The secretary or the secretary's designees shall examine each applicant, by means determined most effective, on subjects appropriate to the scope of practice, as applicable. Such examinations shall be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(3) The examination papers, all grading of the papers, and the grading of any practical work shall be preserved for a period of not less than one year after the secretary has

made and published the decisions. All examinations shall be conducted under fair and wholly impartial methods.

(4) Any applicant failing to make the required grade in the first examination may take up to three subsequent examinations as the applicant desires upon prepaying a fee determined by the secretary under RCW 43.70.250 for each subsequent examination. Upon failing four examinations, the secretary may invalidate the original application and require such remedial education before the person may take future examinations.

(5) The secretary may approve an examination prepared or administered by a private testing agency or association of licensing agencies for use by an applicant in meeting the credentialing requirements. [1989 1st ex.s. c 9 § 310; 1987 c 150 § 70.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.122.110 Applications. Applications for credentialing shall be submitted on forms provided by the secretary. The secretary may require any information and documentation which reasonably relates to the need to determine whether the applicant meets the criteria for credentialing provided for in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the secretary under RCW 43.70.250. The fee shall accompany the application. [1989 1st ex.s. c 9 § 311; 1987 c 150 § 71.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.122.120 Waiver of examination for initial applications. The secretary shall waive the examination and credential a person authorized to practice within the state of Washington if the secretary determines that the person meets commonly accepted standards of education and experience for the profession. This section applies only to those individuals who file an application for waiver within one year of the establishment of the authorized practice. [1991 c 3 § 265; 1987 c 150 § 72.]

18.122.130 Endorsement. An applicant holding a credential in another state may be credentialed to practice in this state without examination if the secretary determines that the other state's credentialing standards are substantially equivalent to the standards in this state. [1991 c 3 § 266; 1987 c 150 § 73.]

18.122.140 Renewals. The secretary shall establish by rule the procedural requirements and fees for renewal of a credential. Failure to renew shall invalidate the credential and all privileges granted by the credential. If a license or certificate has lapsed for a period longer than three years, the person shall demonstrate competence to the satisfaction of the secretary by taking continuing education courses, or meeting other standards determined by the secretary. [1991 c 3 § 267; 1987 c 150 § 74.]

18.122.150 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, shall govern the issuance and denial of credentials, unauthorized practice, and the discipline of persons credentialed under this

chapter. The secretary shall be the disciplining authority under this chapter. [1991 c 3 § 268; 1987 c 150 § 75.]

18.122.160 Application of chapter. This chapter only applies to a business or profession regulated under the laws of this state if this chapter is specifically referenced in the laws regulating that business or profession. [1987 c 150 § 76.]

18.122.900 Section captions. Section captions as used in this chapter do not constitute any part of the law. [1987 c 150 § 77.]

18.122.901 Severability—1987 c 150. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 150 § 80.]

Chapter 18.130

REGULATION OF HEALTH PROFESSIONS— UNIFORM DISCIPLINARY ACT

Sections

- 18.130.010 Intent.
- 18.130.020 Definitions.
- 18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules.
- 18.130.045 Massage practitioners—Procedures governing convicted prostitutes.
- 18.130.050 Authority of disciplining authority.
- 18.130.060 Additional authority of secretary.
- 18.130.065 Rules, policies, and orders—Secretary's role.
- 18.130.070 Rules requiring reports—Court orders—Immunity from liability—Licensees required to report.
- 18.130.075 Temporary practice permits—Penalties.
- 18.130.080 Unprofessional conduct—Complaint—Investigation—Immunity of complainant.
- 18.130.085 Communication with complainant.
- 18.130.090 Statement of charge—Request for hearing.
- 18.130.095 Uniform procedural rules.
- 18.130.098 Settlement—Disclosure—Conference.
- 18.130.100 Hearings—Adjudicative proceedings under chapter 34.05 RCW.
- 18.130.110 Findings of fact—Order—Report.
- 18.130.120 Actions against license—Exception.
- 18.130.125 License suspension—Nonpayment or default on educational loan or scholarship.
- 18.130.130 Orders—When effective—Stay.
- 18.130.140 Appeal.
- 18.130.150 Reinstatement.
- 18.130.160 Finding of unprofessional conduct—Orders—Sanctions—Stay—Costs—Stipulations.
- 18.130.165 Enforcement of fine.
- 18.130.170 Capacity of license holder to practice—Hearing—Mental or physical examination—Implied consent.
- 18.130.172 Evidence summary and stipulations.
- 18.130.175 Voluntary substance abuse monitoring programs.
- 18.130.180 Unprofessional conduct.
- 18.130.185 Injunctive relief for violations of RCW 18.130.170 or 18.130.180.
- 18.130.186 Voluntary substance abuse monitoring program—Content—License surcharge.
- 18.130.190 Practice without license—Investigation of complaints—Cease and desist orders—Injunctions—Penalties.
- 18.130.195 Violation of injunction—Penalty.
- 18.130.200 Fraud or misrepresentation in obtaining a license—Penalty.

- 18.130.210 Crime by license holder—Notice to attorney general or county prosecuting attorney.
 18.130.250 Retired active license status.
 18.130.270 Continuing competency pilot projects.
 18.130.300 Immunity from liability.
 18.130.310 Biennial reports—Format.
 18.130.340 Opiate therapy guidelines.
 18.130.900 Short title—Applicability.
 18.130.901 Severability—1984 c 279.

AIDS education and training: Chapter 70.24 RCW.

18.130.010 Intent. It is the intent of the legislature to strengthen and consolidate disciplinary and licensure procedures for the licensed health and health-related professions and businesses by providing a uniform disciplinary act with standardized procedures for the licensure of health care professionals and the enforcement of laws the purpose of which is to assure the public of the adequacy of professional competence and conduct in the healing arts.

It is also the intent of the legislature that all health and health-related professions newly credentialed by the state come under the Uniform Disciplinary Act.

Further, the legislature declares that the addition of public members on all health care commissions and boards can give both the state and the public, which it has a statutory responsibility to protect, assurances of accountability and confidence in the various practices of health care. [1994 sp.s. c 9 § 601; 1991 c 332 § 1; 1986 c 259 § 1; 1984 c 279 § 1.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Application to scope of practice—1991 c 332: "Nothing in sections 1 through 39 of this act is intended to change the scope of practice of any health care profession referred to in sections 1 through 39 of this act." [1991 c 332 § 46.]

Captions not law—1991 c 332: "Section captions and part headings as used in this act constitute no part of the law." [1991 c 332 § 43.]

Severability—1986 c 259: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 259 § 152.]

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

(1) "Disciplining authority" means the agency, board, or commission having the authority to take disciplinary action against a holder of, or applicant for, a professional or business license upon a finding of a violation of this chapter or a chapter specified under RCW 18.130.040.

(2) "Department" means the department of health.

(3) "Secretary" means the secretary of health or the secretary's designee.

(4) "Board" means any of those boards specified in RCW 18.130.040.

(5) "Commission" means any of the commissions specified in RCW 18.130.040.

(6) "Unlicensed practice" means:

(a) Practicing a profession or operating a business identified in RCW 18.130.040 without holding a valid, unexpired, unrevoked, and unsuspended license to do so; or

(b) Representing to a consumer, through offerings, advertisements, or use of a professional title or designation, that the individual is qualified to practice a profession or

operate a business identified in RCW 18.130.040, without holding a valid, unexpired, unrevoked, and unsuspended license to do so.

(7) "Disciplinary action" means sanctions identified in RCW 18.130.160.

(8) "Practice review" means an investigative audit of records related to the complaint, without prior identification of specific patient or consumer names, or an assessment of the conditions, circumstances, and methods of the professional's practice related to the complaint, to determine whether unprofessional conduct may have been committed.

(9) "Health agency" means city and county health departments and the department of health.

(10) "License," "licensing," and "licensure" shall be deemed equivalent to the terms "license," "licensing," "licensure," "certification," and "registration" as those terms are defined in RCW 18.120.020. [1995 c 336 § 1; 1994 sp.s. c 9 § 602; 1989 1st ex.s. c 9 § 312; 1986 c 259 § 2; 1984 c 279 § 2.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners certified under chapter 18.89 RCW;

(x) Persons registered or certified under chapter 18.19 RCW;

(xi) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xii) Nursing assistants registered or certified under chapter 18.79 RCW;

(xiii) Health care assistants certified under chapter 18.135 RCW;

(xiv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xv) Sex offender treatment providers certified under chapter 18.155 RCW;

(xvi) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xvii) Persons registered as adult family home providers and resident managers under RCW 18.48.020; and

(xviii) Denturists licensed under chapter 18.30 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section. [1996 c 200 § 32; 1996 c 81 § 5. Prior: 1995 c 336 § 2; 1995 c 323 § 16; 1995 c 260 § 11; 1995 c 1 § 19 (Initiative Measure No. 607, approved November 8, 1994); prior: 1994 sp.s. c 9 § 603; 1994 c 17 § 19; 1993 c 367 § 4; 1992 c 128 § 6; 1990 c 3 § 810; prior: 1988 c 277 § 13; 1988 c 267 § 22; 1988 c 243 § 7; prior: 1987 c 512 § 22; 1987 c 447 § 18; 1987 c 415 § 17; 1987 c 412 § 15; 1987 c 150 § 1; prior: 1986 c 259 § 3; 1985 c 326 § 29; 1984 c 279 § 4.]

Reviser's note: This section was amended by 1996 c 81 § 5 and by 1996 c 200 § 32, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1996 c 200: See RCW 18.35.902.

Effective date—1996 c 81: See note following RCW 70.128.120.

Effective date—1995 c 336 §§ 2 and 3: "Sections 2 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 336 § 11.]

Effective date—1995 c 260 §§ 7-11: See note following RCW 18.48.010.

Short title—Severability—1995 c 1 (Initiative Measure No. 607): See RCW 18.30.900 and 18.30.901.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

Severability—1987 c 512: See RCW 18.19.901.

Severability—1987 c 447: See RCW 18.36A.901.

Severability—1987 c 415: See RCW 18.89.901.

Effective date—Severability—1987 c 412: See RCW 18.84.901 and 18.84.902.

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.045 Massage practitioners—Procedures governing convicted prostitutes. RCW 18.108.085 shall govern the issuance and revocation of licenses issued or applied for under chapter 18.108 RCW to or by persons convicted of violating RCW 9A.88.030, 9A.88.070, 9A.88.080, or 9A.88.090 or equivalent local ordinances. [1995 c 353 § 3.]

18.130.050 Authority of disciplining authority. The disciplining authority has the following authority:

(1) To adopt, amend, and rescind such rules as are deemed necessary to carry out this chapter;

(2) To investigate all complaints or reports of unprofessional conduct as defined in this chapter and to hold hearings as provided in this chapter;

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

(4) To take or cause depositions to be taken and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;

(5) To compel attendance of witnesses at hearings;

(6) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews;

(7) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the disciplining authority;

(8) To use a presiding officer as authorized in RCW 18.130.095(3) or the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. The disciplining authority shall make the final decision regarding disposition of the license unless the disciplining authority elects to delegate in writing the final decision to the presiding officer;

(9) To use individual members of the boards to direct investigations. However, the member of the board shall not subsequently participate in the hearing of the case;

(10) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(11) To contract with licensees or other persons or organizations to provide services necessary for the monitoring and supervision of licensees who are placed on probation, whose professional activities are restricted, or who are for any authorized purpose subject to monitoring by the disciplining authority;

(12) To adopt standards of professional conduct or practice;

(13) To grant or deny license applications, and in the event of a finding of unprofessional conduct by an applicant or license holder, to impose any sanction against a license applicant or license holder provided by this chapter;

(14) To designate individuals authorized to sign subpoenas and statements of charges;

(15) To establish panels consisting of three or more members of the board to perform any duty or authority within the board's jurisdiction under this chapter;

(16) To review and audit the records of licensed health facilities' or services' quality assurance committee decisions in which a licensee's practice privilege or employment is terminated or restricted. Each health facility or service shall produce and make accessible to the disciplining authority the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to discovery or introduction into evidence in any civil action pursuant to RCW 70.41.200(3). [1995 c 336 § 4. Prior: 1993 c 367 § 21; 1993 c 367 § 5; 1987 c 150 § 2; 1984 c 279 § 5.]

Severability—1987 c 150: See RCW 18.122.901.

18.130.060 Additional authority of secretary. In addition to the authority specified in RCW 18.130.050, the secretary has the following additional authority:

(1) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter;

(2) Upon the request of a board, to appoint not more than three pro tem members for the purpose of participating as members of one or more committees of the board in connection with proceedings specifically identified in the request. Individuals so appointed must meet the same minimum qualifications as regular members of the board. While serving as board members pro tem, persons so appointed have all the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular members of the board. The chairperson of a committee shall be a regular member of the board appointed by the board chairperson. Committees have authority to act as directed by the board with respect to all matters concerning the review, investigation, and adjudication of all complaints, allegations, charges, and matters subject to the jurisdiction of the board. The authority to act through committees does not restrict the authority of the board to act as a single body at any phase of proceedings within the board's jurisdiction. Board committees may make interim orders and issue final decisions with

respect to matters and cases delegated to the committee by the board. Final decisions may be appealed as provided in chapter 34.05 RCW, the Administrative Procedure Act;

(3) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation and to establish fees to witnesses in any agency adjudicative proceeding as authorized by RCW 34.05.446;

(4) To conduct investigations and practice reviews at the direction of the disciplining authority and to issue subpoenas, administer oaths, and take depositions in the course of conducting those investigations and practice reviews at the direction of the disciplining authority;

(5) To have the health professions regulatory program establish a system to recruit potential public members, to review the qualifications of such potential members, and to provide orientation to those public members appointed pursuant to law by the governor or the secretary to the boards and commissions specified in RCW 18.130.040(2)(b), and to the advisory committees and councils for professions specified in RCW 18.130.040(2)(a). [1995 c 336 § 5; 1991 c 3 § 269; 1989 c 175 § 68; 1987 c 150 § 3; 1984 c 279 § 6.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1987 c 150: See RCW 18.122.901.

18.130.065 Rules, policies, and orders—Secretary's role. The secretary of health shall review and coordinate all proposed rules, interpretive statements, policy statements, and declaratory orders, as defined in chapter 34.05 RCW, that are proposed for adoption or issuance by any health profession board or commission vested with rule-making authority identified under RCW 18.130.040(2)(b). The secretary shall review the proposed policy statements and declaratory orders against criteria that include the effect of the proposed rule, statement, or order upon existing health care policies and practice of health professionals. Within thirty days of the receipt of a proposed rule, interpretive statement, policy statement, or declaratory order from the originating board or commission, the secretary shall inform the board or commission of the results of the review, and shall provide any comments or suggestions that the secretary deems appropriate. Emergency rule making is not subject to this review process. The secretary is authorized to adopt rules and procedures for the coordination and review under this section. [1995 c 198 § 26.]

18.130.070 Rules requiring reports—Court orders—Immunity from liability—Licensees required to report.

(1) The disciplining authority may adopt rules requiring any person, including, but not limited to, licensees, corporations, organizations, health care facilities, and state or local governmental agencies, to report to the disciplining authority any conviction, determination, or finding that a license holder has committed an act which constitutes unprofessional conduct, or to report information which indicates that the license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition. To facilitate meeting the intent of this section, the cooperation of agencies of the federal government is requested by reporting any conviction, determination, or finding that a federal employee or contrac-

tor regulated by the disciplinary authorities enumerated in this chapter has committed an act which constituted unprofessional conduct and reporting any information which indicates that a federal employee or contractor regulated by the disciplinary authorities enumerated in this chapter may not be able to practice his or her profession with reasonable skill and safety as a result of a mental or physical condition.

(2) If a person fails to furnish a required report, the disciplining authority may petition the superior court of the county in which the person resides or is found, and the court shall issue to the person an order to furnish the required report. A failure to obey the order is a contempt of court as provided in chapter 7.21 RCW.

(3) A person is immune from civil liability, whether direct or derivative, for providing information to the disciplining authority pursuant to the rules adopted under subsection (1) of this section.

(4) The holder of a license subject to the jurisdiction of this chapter shall report to the disciplining authority any conviction, determination, or finding that the licensee has committed unprofessional conduct or is unable to practice with reasonable skill or safety. Failure to report within thirty days of notice of the conviction, determination, or finding constitutes grounds for disciplinary action. [1989 c 373 § 19; 1986 c 259 § 4; 1984 c 279 § 7.]

Severability—1989 c 373: See RCW 7.21.900.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.075 Temporary practice permits—Penalties.

If an individual licensed in another state, that has licensing standards substantially equivalent to Washington, applies for a license, the disciplining authority shall issue a temporary practice permit authorizing the applicant to practice the profession pending completion of documentation that the applicant meets the requirements for a license and is also not subject to denial of a license or issuance of a conditional license under this chapter. The temporary permit may reflect statutory limitations on the scope of practice. The permit shall be issued only upon the disciplining authority receiving verification from the states in which the applicant is licensed that the applicant is currently licensed and is not subject to charges or disciplinary action for unprofessional conduct or impairment. Notwithstanding RCW 34.05.422(3), the disciplining authority shall establish, by rule, the duration of the temporary practice permits. Failure to surrender the permit is a misdemeanor under RCW 9A.20.010 and shall be unprofessional conduct under this chapter. The issuance of temporary permits is subject to the provisions of this chapter, including summary suspensions. [1991 c 332 § 2.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

18.130.080 Unprofessional conduct—Complaint—Investigation—Immunity of complainant. A person, including but not limited to consumers, licensees, corporations, organizations, health care facilities, and state and local governmental agencies, may submit a written complaint to the disciplining authority charging a license holder or applicant with unprofessional conduct and specifying the grounds therefor. If the disciplining authority determines that the complaint merits investigation, or if the disciplining

authority has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the disciplining authority shall investigate to determine whether there has been unprofessional conduct. A person who files a complaint under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint. [1986 c 259 § 5; 1984 c 279 § 8.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.085 Communication with complainant. If the department communicates in writing to a complainant, or his or her representative, regarding his or her complaint, such communication shall not include the address or telephone number of the health care provider against whom he or she has complained. The department shall inform all applicants for a health care provider license of the provisions of this section and RCW 42.17.310 regarding the release of address and telephone information. [1993 c 360 § 1.]

Effective date—1993 c 360: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 360 § 3.]

18.130.090 Statement of charge—Request for hearing.

(1) If the disciplining authority determines, upon investigation, that there is reason to believe a violation of RCW 18.130.180 has occurred, a statement of charge or charges shall be prepared and served upon the license holder or applicant at the earliest practical time. The statement of charge or charges shall be accompanied by a notice that the license holder or applicant may request a hearing to contest the charge or charges. The license holder or applicant must file a request for hearing with the disciplining authority within twenty days after being served the statement of charges. If the twenty-day limit results in a hardship upon the license holder or applicant, he or she may request for good cause an extension not to exceed sixty additional days. If the disciplining authority finds that there is good cause, it shall grant the extension. The failure to request a hearing constitutes a default, whereupon the disciplining authority may enter a decision on the basis of the facts available to it.

(2) If a hearing is requested, the time of the hearing shall be fixed by the disciplining authority as soon as convenient, but the hearing shall not be held earlier than thirty days after service of the charges upon the license holder or applicant. [1993 c 367 § 1; 1986 c 259 § 6; 1984 c 279 § 9.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.095 Uniform procedural rules. (1) The secretary, in consultation with the disciplining authorities, shall develop uniform procedural rules to respond to public inquiries concerning complaints and their disposition, active investigations, statement of charges, findings of fact, and final orders involving a licensee, applicant, or unlicensed person. The uniform procedural rules adopted under this subsection apply to all adjudicative proceedings conducted under this chapter and shall include provisions for the establishing time periods for assessment, investigation, charging, discovery, settlement, and adjudication of com-

plaints, and shall include enforcement provisions for violations of the specific time periods by the department, the disciplining authority, and the respondent.

(2) The uniform procedures for conducting investigations shall provide that prior to taking a written statement:

(a) For violation of this chapter, the investigator shall inform such person, in writing of: (i) The nature of the complaint; (ii) that the person may consult with legal counsel at his or her expense prior to making a statement; and (iii) that any statement that the person makes may be used in an adjudicative proceeding conducted under this chapter; and

(b) From a witness or potential witness in an investigation under this chapter, the investigator shall inform the person, in writing, that the statement may be released to the licensee, applicant, or unlicensed person under investigation if a statement of charges is issued.

(3) Only upon the authorization of a disciplining authority identified in RCW 18.130.040(2)(b), the secretary, or his or her designee, may serve as the presiding officer for any disciplinary proceedings of the disciplining authority authorized under this chapter. Except as provided in RCW 18.130.050(8), the presiding officer shall not vote on or make any final decision. All functions performed by the presiding officer shall be subject to chapter 34.05 RCW. The secretary, in consultation with the disciplining authorities, shall adopt procedures for implementing this subsection.

(4) The uniform procedural rules shall be adopted by all disciplining authorities listed in RCW 18.130.040(2), and shall be used for all adjudicative proceedings conducted under this chapter, as defined by chapter 34.05 RCW. The uniform procedural rules shall address the use of a presiding officer authorized in subsection (3) of this section to determine and issue decisions on all legal issues and motions arising during adjudicative proceedings. [1995 c 336 § 6; 1993 c 367 § 2.]

18.130.098 Settlement—Disclosure—Conference.

(1) The settlement process must be substantially uniform for licensees governed by disciplining authorities under this chapter. The disciplinary authorities may also use alternative dispute resolution to resolve complaints during adjudicative proceedings.

(2) Disclosure of the identity of reviewing disciplining authority members who participate in the settlement process is available to the respondent or his or her representative upon request.

(3) The settlement conference will occur only if a settlement is not achieved through written documents. The respondent will have the opportunity to conference either by phone or in person with the reviewing disciplining authority member if the respondent chooses. The respondent may also have his or her attorney conference either by phone or in person with the reviewing disciplining authority member without the respondent being present personally.

(4) If the respondent wants to meet in person with the reviewing disciplining authority member, he or she will travel to the reviewing disciplining authority member and have such a conference with a department representative in attendance either by phone or in person. [1995 c 336 § 7; 1994 sp.s. c 9 § 604.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.130.100 Hearings—Adjudicative proceedings under chapter 34.05 RCW. The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the Administrative Procedure Act, govern all hearings before the disciplining authority. The disciplining authority has, in addition to the powers and duties set forth in this chapter, all of the powers and duties under chapter 34.05 RCW, which include, without limitation, all powers relating to the administration of oaths, the receipt of evidence, the issuance and enforcing of subpoenas, and the taking of depositions. [1989 c 175 § 69; 1984 c 279 § 10.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.130.110 Findings of fact—Order—Report. (1) In the event of a finding of unprofessional conduct, the disciplining authority shall prepare and serve findings of fact and an order as provided in chapter 34.05 RCW, the Administrative Procedure Act. If the license holder or applicant is found to have not committed unprofessional conduct, the disciplining authority shall forthwith prepare and serve findings of fact and an order of dismissal of the charges, including public exoneration of the licensee or applicant. The findings of fact and order shall be retained by the disciplining authority as a permanent record.

(2) The disciplining authority shall report the issuance of statements of charges and final orders in cases processed by the disciplining authority to:

(a) The person or agency who brought to the disciplining authority's attention information which resulted in the initiation of the case;

(b) Appropriate organizations, public or private, which serve the professions;

(c) The public. Notification of the public shall include press releases to appropriate local news media and the major news wire services; and

(d) Counterpart licensing boards in other states, or associations of state licensing boards.

(3) This section shall not be construed to require the reporting of any information which is exempt from public disclosure under chapter 42.17 RCW. [1989 c 175 § 70; 1984 c 279 § 11.]

Effective date—1989 c 175: See note following RCW 34.05.010.

18.130.120 Actions against license—Exception. The department shall not issue any license to any person whose license has been denied, revoked, or suspended by the disciplining authority except in conformity with the terms and conditions of the certificate or order of denial, revocation, or suspension, or in conformity with any order of reinstatement issued by the disciplining authority, or in accordance with the final judgment in any proceeding for review instituted under this chapter. [1984 c 279 § 12.]

18.130.125 License suspension—Nonpayment or default on educational loan or scholarship. The department shall suspend the license of any person who has been certified by a lending agency and reported to the department for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW

34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license shall not be reissued until the person provides the department a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the department may impose. [1996 c 293 § 18.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.130.130 Orders—When effective—Stay. An order pursuant to proceedings authorized by this chapter, after due notice and findings in accordance with this chapter and chapter 34.05 RCW, or an order of summary suspension entered under this chapter, shall take effect immediately upon its being served. The order, if appealed to the court, shall not be stayed pending the appeal unless the disciplining authority or court to which the appeal is taken enters an order staying the order of the disciplining authority, which stay shall provide for terms necessary to protect the public. [1986 c 259 § 7; 1984 c 279 § 13.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.140 Appeal. An individual who has been disciplined or whose license has been denied by a disciplining authority may appeal the decision as provided in chapter 34.05 RCW. [1984 c 279 § 14.]

18.130.150 Reinstatement. A person whose license has been suspended or revoked under this chapter may petition the disciplining authority for reinstatement after an interval as determined by the disciplining authority in the order. The disciplining authority shall hold hearings on the petition and may deny the petition or may order reinstatement and impose terms and conditions as provided in RCW 18.130.160 and issue an order of reinstatement. The disciplining authority may require successful completion of an examination as a condition of reinstatement. [1984 c 279 § 15.]

18.130.160 Finding of unprofessional conduct—Orders—Sanctions—Stay—Costs—Stipulations. Upon a finding, after hearing, that a license holder or applicant has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the disciplining authority may issue an order providing for one or any combination of the following:

- (1) Revocation of the license;
- (2) Suspension of the license for a fixed or indefinite term;
- (3) Restriction or limitation of the practice;
- (4) Requiring the satisfactory completion of a specific program of remedial education or treatment;
- (5) The monitoring of the practice by a supervisor approved by the disciplining authority;
- (6) Censure or reprimand;

(7) Compliance with conditions of probation for a designated period of time;

(8) Payment of a fine for each violation of this chapter, not to exceed five thousand dollars per violation. Funds received shall be placed in the health professions account;

(9) Denial of the license request;

(10) Corrective action;

(11) Refund of fees billed to and collected from the consumer.

Any of the actions under this section may be totally or partly stayed by the disciplining authority. In determining what action is appropriate, the disciplining authority must first consider what sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority consider and include in the order requirements designed to rehabilitate the license holder or applicant. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant.

The licensee or applicant may enter into a stipulated disposition of charges that includes one or more of the sanctions of this section, but only after a statement of charges has been issued and the licensee has been afforded the opportunity for a hearing and has elected on the record to forego such a hearing. The stipulation shall either contain one or more specific findings of unprofessional conduct or inability to practice, or a statement by the licensee acknowledging that evidence is sufficient to justify one or more specified findings of unprofessional conduct or inability to practice. The stipulation entered into pursuant to this subsection shall be considered formal disciplinary action for all purposes. [1993 c 367 § 6; 1986 c 259 § 8; 1984 c 279 § 16.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.165 Enforcement of fine. Where an order for payment of a fine is made as a result of a hearing under RCW 18.130.100 or 18.130.190 and timely payment is not made as directed in the final order, the disciplining authority may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement shall be in addition to any other rights the disciplining authority may have as to any licensee ordered to pay a fine but shall not be construed to limit a licensee's ability to seek judicial review under RCW 18.130.140.

In any action for enforcement of an order of payment of a fine, the disciplining authority's order is conclusive proof of the validity of the order of payment of a fine and the terms of payment. [1993 c 367 § 20; 1987 c 150 § 4.]

Severability—1987 c 150: See RCW 18.122.901.

18.130.170 Capacity of license holder to practice—Hearing—Mental or physical examination—Implied consent. (1) If the disciplining authority believes a license holder or applicant may be unable to practice with reasonable skill and safety to consumers by reason of any mental or physical condition, a statement of charges in the name of the disciplining authority shall be served on the license holder or applicant and notice shall also be issued providing an opportunity for a hearing. The hearing shall be limited to the sole issue of the capacity of the license holder or

applicant to practice with reasonable skill and safety. If the disciplining authority determines that the license holder or applicant is unable to practice with reasonable skill and safety for one of the reasons stated in this subsection, the disciplining authority shall impose such sanctions under RCW 18.130.160 as is deemed necessary to protect the public.

(2)(a) In investigating or adjudicating a complaint or report that a license holder or applicant may be unable to practice with reasonable skill or safety by reason of any mental or physical condition, the disciplining authority may require a license holder or applicant to submit to a mental or physical examination by one or more licensed or certified health professionals designated by the disciplining authority. The license holder or applicant shall be provided written notice of the disciplining authority's intent to order a mental or physical examination, which notice shall include: (i) A statement of the specific conduct, event, or circumstances justifying an examination; (ii) a summary of the evidence supporting the disciplining authority's concern that the license holder or applicant may be unable to practice with reasonable skill and safety by reason of a mental or physical condition, and the grounds for believing such evidence to be credible and reliable; (iii) a statement of the nature, purpose, scope, and content of the intended examination; (iv) a statement that the license holder or applicant has the right to respond in writing within twenty days to challenge the disciplining authority's grounds for ordering an examination or to challenge the manner or form of the examination; and (v) a statement that if the license holder or applicant timely responds to the notice of intent, then the license holder or applicant will not be required to submit to the examination while the response is under consideration.

(b) Upon submission of a timely response to the notice of intent to order a mental or physical examination, the license holder or applicant shall have an opportunity to respond to or refute such an order by submission of evidence or written argument or both. The evidence and written argument supporting and opposing the mental or physical examination shall be reviewed by either a panel of the disciplining authority members who have not been involved with the allegations against the license holder or applicant or a neutral decision maker approved by the disciplining authority. The reviewing panel of the disciplining authority or the approved neutral decision maker may, in its discretion, ask for oral argument from the parties. The reviewing panel of the disciplining authority or the approved neutral decision maker shall prepare a written decision as to whether: There is reasonable cause to believe that the license holder or applicant may be unable to practice with reasonable skill and safety by reason of a mental or physical condition, or the manner or form of the mental or physical examination is appropriate, or both.

(c) Upon receipt by the disciplining authority of the written decision, or upon the failure of the license holder or applicant to timely respond to the notice of intent, the disciplining authority may issue an order requiring the license holder or applicant to undergo a mental or physical examination. All such mental or physical examinations shall be narrowly tailored to address only the alleged mental or physical condition and the ability of the license holder or applicant to practice with reasonable skill and safety. An

order of the disciplining authority requiring the license holder or applicant to undergo a mental or physical examination is not a final order for purposes of appeal. The cost of the examinations ordered by the disciplining authority shall be paid out of the health professions account. In addition to any examinations ordered by the disciplining authority, the licensee may submit physical or mental examination reports from licensed or certified health professionals of the license holder's or applicant's choosing and expense.

(d) If the disciplining authority finds that a license holder or applicant has failed to submit to a properly ordered mental or physical examination, then the disciplining authority may order appropriate action or discipline under RCW 18.130.180(9), unless the failure was due to circumstances beyond the person's control. However, no such action or discipline may be imposed unless the license holder or applicant has had the notice and opportunity to challenge the disciplining authority's grounds for ordering the examination, to challenge the manner and form, to assert any other defenses, and to have such challenges or defenses considered by either a panel of the disciplining authority members who have not been involved with the allegations against the license holder or applicant or a neutral decision maker approved by the disciplining authority, as previously set forth in this section. Further, the action or discipline ordered by the disciplining authority shall not be more severe than a suspension of the license, certification, registration or application until such time as the license holder or applicant complies with the properly ordered mental or physical examination.

(e) Nothing in this section shall restrict the power of a disciplining authority to act in an emergency under RCW 34.05.422(4), 34.05.479, and 18.130.050(7).

(f) A determination by a court of competent jurisdiction that a license holder or applicant is mentally incompetent or mentally ill is presumptive evidence of the license holder's or applicant's inability to practice with reasonable skill and safety. An individual affected under this section shall at reasonable intervals be afforded an opportunity, at his or her expense, to demonstrate that the individual can resume competent practice with reasonable skill and safety to the consumer.

(3) For the purpose of subsection (2) of this section, an applicant or license holder governed by this chapter, by making application, practicing, or filing a license renewal, is deemed to have given consent to submit to a mental, physical, or psychological examination when directed in writing by the disciplining authority and further to have waived all objections to the admissibility or use of the examining health professional's testimony or examination reports by the disciplining authority on the ground that the testimony or reports constitute privileged communications. [1995 c 336 § 8; 1987 c 150 § 6; 1986 c 259 § 9; 1984 c 279 § 17.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.172 Evidence summary and stipulations. (1) Prior to serving a statement of charges under RCW 18.130.090 or 18.130.170, the disciplinary authority may furnish a statement of allegations to the licensee or applicant

along with a detailed summary of the evidence relied upon to establish the allegations and a proposed stipulation for informal resolution of the allegations. These documents shall be exempt from public disclosure until such time as the allegations are resolved either by stipulation or otherwise.

(2) The disciplinary authority and the applicant or licensee may stipulate that the allegations may be disposed of informally in accordance with this subsection. The stipulation shall contain a statement of the facts leading to the filing of the complaint; the act or acts of unprofessional conduct [conduct] alleged to have been committed or the alleged basis for determining that the applicant or licensee is unable to practice with reasonable skill and safety; a statement that the stipulation is not to be construed as a finding of either unprofessional conduct or inability to practice; an acknowledgement that a finding of unprofessional conduct or inability to practice, if proven, constitutes grounds for discipline under this chapter; and an agreement on the part of the licensee or applicant that the sanctions set forth in RCW 18.130.160, except RCW 18.130.160 (1), (2), (6), and (8), may be imposed as part of the stipulation, except that no fine may be imposed but the licensee or applicant may agree to reimburse the disciplinary authority the costs of investigation and processing the complaint up to an amount not exceeding one thousand dollars per allegation; and an agreement on the part of the disciplinary authority to forego further disciplinary proceedings concerning the allegations. A stipulation entered into pursuant to this subsection shall not be considered formal disciplinary action.

(3) If the licensee or applicant declines to agree to disposition of the charges by means of a stipulation pursuant to subsection (2) of this section, the disciplinary authority may proceed to formal disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

(4) Upon execution of a stipulation under subsection (2) of this section by both the licensee or applicant and the disciplinary authority, the complaint is deemed disposed of and shall become subject to public disclosure on the same basis and to the same extent as other records of the disciplinary authority. Should the licensee or applicant fail to pay any agreed reimbursement within thirty days of the date specified in the stipulation for payment, the disciplinary authority may seek collection of the amount agreed to be paid in the same manner as enforcement of a fine under RCW 18.130.165. [1993 c 367 § 7.]

18.130.175 Voluntary substance abuse monitoring programs. (1) In lieu of disciplinary action under RCW 18.130.160 and if the disciplining authority determines that the unprofessional conduct may be the result of substance abuse, the disciplining authority may refer the license holder to a voluntary substance abuse monitoring program approved by the disciplining authority.

The cost of the treatment shall be the responsibility of the license holder, but the responsibility does not preclude payment by an employer, existing insurance coverage, or other sources. Primary alcoholism or drug treatment shall be provided by approved treatment programs under RCW 70.96A.020: PROVIDED, That nothing shall prohibit the disciplining authority from approving additional services and programs as an adjunct to primary alcoholism or drug

treatment. The disciplining authority may also approve the use of out-of-state programs. Referral of the license holder to the program shall be done only with the consent of the license holder. Referral to the program may also include probationary conditions for a designated period of time. If the license holder does not consent to be referred to the program or does not successfully complete the program, the disciplining authority may take appropriate action under RCW 18.130.160. The secretary shall adopt uniform rules for the evaluation by the disciplinary authority of a relapse or program violation on the part of a license holder in the substance abuse monitoring program. The evaluation shall encourage program participation with additional conditions, in lieu of disciplinary action, when the disciplinary authority determines that the license holder is able to continue to practice with reasonable skill and safety.

(2) In addition to approving substance abuse monitoring programs that may receive referrals from the disciplining authority, the disciplining authority may establish by rule requirements for participation of license holders who are not being investigated or monitored by the disciplining authority for substance abuse. License holders voluntarily participating in the approved programs without being referred by the disciplining authority shall not be subject to disciplinary action under RCW 18.130.160 for their substance abuse, and shall not have their participation made known to the disciplining authority, if they meet the requirements of this section and the program in which they are participating.

(3) The license holder shall sign a waiver allowing the program to release information to the disciplining authority if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety. The substance abuse program shall report to the disciplining authority any license holder who fails to comply with the requirements of this section or the program or who, in the opinion of the program, is unable to practice with reasonable skill or safety. License holders shall report to the disciplining authority if they fail to comply with this section or do not complete the program's requirements. License holders may, upon the agreement of the program and disciplining authority, reenter the program if they have previously failed to comply with this section.

(4) The treatment and pretreatment records of license holders referred to or voluntarily participating in approved programs shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplining authority for cause as defined in subsection (3) of this section. Monitoring records relating to license holders referred to the program by the disciplining authority or relating to license holders reported to the disciplining authority by the program for cause, shall be released to the disciplining authority at the request of the disciplining authority. Records held by the disciplining authority under this section shall be exempt from RCW 42.17.250 through 42.17.450 and shall not be subject to discovery by subpoena except by the license holder.

(5) "Substance abuse," as used in this section, means the impairment, as determined by the disciplining authority, of a license holder's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.

(6) This section does not affect an employer's right or ability to make employment-related decisions regarding a license holder. This section does not restrict the authority of the disciplining authority to take disciplinary action for any other unprofessional conduct.

(7) A person who, in good faith, reports information or takes action in connection with this section is immune from civil liability for reporting information or taking the action.

(a) The immunity from civil liability provided by this section shall be liberally construed to accomplish the purposes of this section and the persons entitled to immunity shall include:

- (i) An approved monitoring treatment program;
- (ii) The professional association operating the program;
- (iii) Members, employees, or agents of the program or association;
- (iv) Persons reporting a license holder as being impaired or providing information about the license holder's impairment; and
- (v) Professionals supervising or monitoring the course of the impaired license holder's treatment or rehabilitation.

(b) The immunity provided in this section is in addition to any other immunity provided by law. [1993 c 367 § 3; 1991 c 3 § 270; 1988 c 247 § 2.]

Legislative intent—1988 c 247: "Existing law does not provide for a program for rehabilitation of health professionals whose competency may be impaired due to the abuse of alcohol and other drugs.

It is the intent of the legislature that the disciplining authorities seek ways to identify and support the rehabilitation of health professionals whose practice or competency may be impaired due to the abuse of drugs or alcohol. The legislature intends that such health professionals be treated so that they can return to or continue to practice their profession in a way which safeguards the public. The legislature specifically intends that the disciplining authorities establish an alternative program to the traditional administrative proceedings against such health professionals." [1988 c 247 § 1.]

18.130.180 Unprofessional conduct. The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;

(3) All advertising which is false, fraudulent, or misleading;

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a

nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;

(5) Suspension, revocation, or restriction of the individual's license to practice any health care profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(6) The possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

(8) Failure to cooperate with the disciplining authority by:

- (a) Not furnishing any papers or documents;
- (b) Not furnishing in writing a full and complete explanation covering the matter contained in the complaint filed with the disciplining authority;
- (c) Not responding to subpoenas issued by the disciplining authority, whether or not the recipient of the subpoena is the accused in the proceeding; or
- (d) Not providing reasonable and timely access for authorized representatives of the disciplining authority seeking to perform practice reviews at facilities utilized by the license holder;

(9) Failure to comply with an order issued by the disciplining authority or a stipulation for informal disposition entered into with the disciplining authority;

(10) Aiding or abetting an unlicensed person to practice when a license is required;

(11) Violations of rules established by any health agency;

(12) Practice beyond the scope of practice as defined by law or rule;

(13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(14) Failure to adequately supervise auxiliary staff to the extent that the consumer's health or safety is at risk;

(15) Engaging in a profession involving contact with the public while suffering from a contagious or infectious disease involving serious risk to public health;

(16) Promotion for personal gain of any unnecessary or inefficient drug, device, treatment, procedure, or service;

(17) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(18) The procuring, or aiding or abetting in procuring, a criminal abortion;

(19) The offering, undertaking, or agreeing to cure or treat disease by a secret method, procedure, treatment, or medicine, or the treating, operating, or prescribing for any

health condition by a method, means, or procedure which the licensee refuses to divulge upon demand of the disciplining authority;

(20) The willful betrayal of a practitioner-patient privilege as recognized by law;

(21) Violation of chapter 19.68 RCW;

(22) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the disciplining authority or its authorized representative, or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action, or by the use of financial inducements to any patient or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary proceeding;

(23) Current misuse of:

(a) Alcohol;

(b) Controlled substances; or

(c) Legend drugs;

(24) Abuse of a client or patient or sexual contact with a client or patient;

(25) Acceptance of more than a nominal gratuity, hospitality, or subsidy offered by a representative or vendor of medical or health-related products or services intended for patients, in contemplation of a sale or for use in research publishable in professional journals, where a conflict of interest is presented, as defined by rules of the disciplining authority, in consultation with the department, based on recognized professional ethical standards. [1995 c 336 § 9; 1993 c 367 § 22. Prior: 1991 c 332 § 34; 1991 c 215 § 3; 1989 c 270 § 33; 1986 c 259 § 10; 1984 c 279 § 18.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.185 Injunctive relief for violations of RCW 18.130.170 or 18.130.180. If a person or business regulated by this chapter violates RCW 18.130.170 or 18.130.180, the attorney general, any prosecuting attorney, the secretary, the board, or any other person may maintain an action in the name of the state of Washington to enjoin the person from committing the violations. The injunction shall not relieve the offender from criminal prosecution, but the remedy by injunction shall be in addition to the liability of the offender to criminal prosecution and disciplinary action. [1993 c 367 § 8; 1987 c 150 § 8; 1986 c 259 § 15.]

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.186 Voluntary substance abuse monitoring program—Content—License surcharge. (1) To implement a substance abuse monitoring program for license holders specified under RCW 18.130.040, who are impaired by substance abuse, the disciplinary authority may enter into a contract with a voluntary substance abuse program under RCW 18.130.175. The program may include any or all of the following:

(a) Contracting with providers of treatment programs;

(b) Receiving and evaluating reports of suspected impairment from any source;

(c) Intervening in cases of verified impairment;

(d) Referring impaired license holders to treatment programs;

(e) Monitoring the treatment and rehabilitation of impaired license holders including those ordered by the disciplinary authority;

(f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired license holders; and

(g) Performing other activities as agreed upon by the disciplinary authority.

(2) A contract entered into under subsection (1) of this section may be financed by a surcharge on each license issuance or renewal to be collected by the department of health from the license holders of the same regulated health profession. These moneys shall be placed in the health professions account to be used solely for the implementation of the program. [1993 c 367 § 9; 1989 c 125 § 3.]

18.130.190 Practice without license—Investigation of complaints—Cease and desist orders—Injunctions—Penalties. (1) The secretary shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. In the investigation of the complaints, the secretary shall have the same authority as provided the secretary under RCW 18.130.050.

(2) The secretary may issue a notice of intention to issue a cease and desist order to any person whom the secretary has reason to believe is engaged in the unlicensed practice of a profession or business for which a license is required by the chapters specified in RCW 18.130.040. The person to whom such notice is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intention to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.

(3) If the secretary makes a final determination that a person has engaged or is engaging in unlicensed practice, the secretary may issue a cease and desist order. In addition, the secretary may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed practice of a business or profession for which a license is required by one or more of the chapters specified in RCW 18.130.040. The proceeds of such fines shall be deposited to the health professions account.

(4) If the secretary makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the secretary may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the secretary. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the secretary may enter a permanent cease and desist order, which may include a civil fine.

(5) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW.

(6) The attorney general, a county prosecuting attorney, the secretary, a board, or any person may in accordance with the laws of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by the chapters specified in RCW 18.130.040 without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person so practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(7) Unlicensed practice of a profession or operating a business for which a license is required by the chapters specified in RCW 18.130.040, unless otherwise exempted by law, constitutes a gross misdemeanor for a single violation. Each subsequent violation, whether alleged in the same or in subsequent prosecutions, is a class C felony. All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the health professions account. [1995 c 285 § 35; 1993 c 367 § 19; 1991 c 3 § 271. Prior: 1989 c 373 § 20; 1989 c 175 § 71; 1987 c 150 § 7; 1986 c 259 § 11; 1984 c 279 § 19.]

Effective date—1995 c 285: See RCW 48.30A.900.

Severability—1989 c 373: See RCW 7.21.900.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1987 c 150: See RCW 18.122.901.

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.195 Violation of injunction—Penalty. A person or business that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be placed in the health professions account. For the purpose of this section, the superior court issuing any injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1987 c 150 § 5.]

Severability—1987 c 150: See RCW 18.122.901.

18.130.200 Fraud or misrepresentation in obtaining a license—Penalty. A person who attempts to obtain or obtains a license by wilful misrepresentation or fraudulent representation is guilty of a misdemeanor. [1986 c 259 § 12; 1984 c 279 § 20.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.210 Crime by license holder—Notice to attorney general or county prosecuting attorney. If the

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disciplining authority determines or has cause to believe that a license holder has committed a crime, the disciplining authority, immediately subsequent to issuing findings of fact and a final order, shall notify the attorney general or the county prosecuting attorney in the county in which the act took place of the facts known to the disciplining authority. [1986 c 259 § 13; 1984 c 279 § 22.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.250 Retired active license status. The disciplining authority may adopt rules pursuant to this section authorizing a retired active license status. An individual credentialed by a disciplining authority regulated in the state under RCW 18.130.040, who is practicing only in emergent or intermittent circumstances as defined by rule established by the disciplining authority, may hold a retired active license at a reduced renewal fee established by the secretary under RCW 43.70.250. Such a license shall meet the continuing education or continued competency requirements, if any, established by the disciplining authority for renewals, and is subject to the provisions of this chapter. Individuals who have entered into retired status agreements with the disciplinary authority in any jurisdiction shall not qualify for a retired active license under this section. [1991 c 229 § 1.]

18.130.270 Continuing competency pilot projects. The disciplinary authorities are authorized to develop and require licensees' participation in continuing competency pilot projects for the purpose of developing flexible, cost-efficient, effective, and geographically accessible competency assurance methods. The secretary shall establish criteria for development of pilot projects and shall select the disciplinary authorities that will participate from among the professions requesting participation. The department shall administer the projects in mutual cooperation with the disciplinary authority and shall allot and administer the budget for each pilot project. The department shall report to the legislature in January of each odd-numbered year concerning the progress and findings of the projects and shall make recommendations on the expansion of continued competency requirements to other licensed health professions.

Each disciplinary authority shall establish its pilot project in rule and may support the projects from a surcharge on each of the affected profession's license renewal in an amount established by the secretary. [1991 c 332 § 3.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

18.130.300 Immunity from liability. The secretary, members of the boards or commissions, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any disciplinary proceedings or other official acts performed in the course of their duties. [1994 sp.s. c 9 § 605; 1993 c 367 § 10; 1984 c 279 § 21.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.130.310 Biennial reports—Format. Subject to RCW 40.07.040, the disciplinary authority shall submit a biennial report to the legislature on its proceedings during

the biennium, detailing the number of complaints made, investigated, and adjudicated and manner of disposition. The report may include recommendations for improving the disciplinary process, including proposed legislation. The department shall develop a uniform report format. [1989 1st ex.s. c 9 § 313; 1987 c 505 § 5; 1984 c 279 § 23.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

18.130.340 Opiate therapy guidelines. The secretary of health shall coordinate and assist the regulatory boards and commissions of the health professions with prescriptive authority in the development of uniform guidelines for addressing opiate therapy for acute pain, and chronic pain associated with cancer and other terminal diseases, or other chronic or intractable pain conditions. The purpose of the guidelines is to assure the provision of effective medical treatment in accordance with recognized national standards and consistent with requirements of the public health and safety. [1995 c 336 § 10.]

18.130.900 Short title—Applicability. (1) This chapter shall be known and cited as the uniform disciplinary act.

(2) This chapter applies to any conduct, acts, or conditions occurring on or after June 11, 1986.

(3) This chapter does not apply to or govern the construction of and disciplinary action for any conduct, acts, or conditions occurring prior to June 11, 1986. Such conduct, acts, or conditions must be construed and disciplinary action taken according to the provisions of law existing at the time of the occurrence in the same manner as if this chapter had not been enacted. [1986 c 259 § 14; 1984 c 279 § 24.]

Severability—1986 c 259: See note following RCW 18.130.010.

18.130.901 Severability—1984 c 279. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 279 § 95.]

Chapter 18.135

HEALTH CARE ASSISTANTS

Sections

- 18.135.010 Practices authorized.
- 18.135.020 Definitions.
- 18.135.025 Rules—Legislative intent.
- 18.135.030 Requirements for certification—Rules.
- 18.135.040 Certification of health care assistants.
- 18.135.050 Certification by health care facility or practitioner—Roster—Recertification.
- 18.135.055 Registering an initial or continuing certification—Fees.
- 18.135.060 Conditions for performing authorized functions—Renal dialysis.
- 18.135.065 Delegation—Duties of delegator and delegatee.
- 18.135.070 Complaints—Violations—Investigations—Disciplinary action.
- 18.135.090 Performance of authorized functions.
- 18.135.100 Uniform Disciplinary Act.

Health professions advisory committee: RCW 18.138.120.

18.135.010 Practices authorized. It is in the public interest that limited authority to administer skin tests and subcutaneous, intradermal, intramuscular, and intravenous injections and to perform minor invasive procedures to withdraw blood in this state be granted to health care assistants who are not so authorized under existing licensing statutes, subject to such regulations as will assure the protection of the health and safety of the patient. [1984 c 281 § 1.]

18.135.020 Definitions. As used in this chapter:

(1) "Secretary" means the secretary of health.

(2) "Health care assistant" means an unlicensed person who assists a licensed health care practitioner in providing health care to patients pursuant to this chapter. However persons trained by a federally approved end-stage renal disease facility who perform end-stage renal dialysis are exempt from certification under this chapter.

(3) "Health care practitioner" means:

(a) A physician licensed under chapter 18.71 RCW;

(b) An osteopathic physician or surgeon licensed under chapter 18.57 RCW; or

(c) Acting within the scope of their respective licensure, a podiatric physician and surgeon licensed under chapter 18.22 RCW or a registered nurse or advanced registered nurse practitioner licensed under chapter 18.79 RCW.

(4) "Supervision" means supervision of procedures permitted pursuant to this chapter by a health care practitioner who is physically present and is immediately available in the facility during the administration of injections, as defined in this chapter, but need not be present during procedures to withdraw blood.

(5) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, renal dialysis center or facility federally approved under 42 C.F.R. 405.2100, blood bank federally licensed under 21 C.F.R. 607, or clinical laboratory certified under 20 C.F.R. 405.1301-16.

(6) "Delegation" means direct authorization granted by a licensed health care practitioner to a health care assistant to perform the functions authorized in this chapter which fall within the scope of practice of the delegator and which are not within the scope of practice of the delegatee. [1994 sp.s. c 9 § 719; 1994 c 76 § 1; 1991 c 3 § 272; 1986 c 115 § 2; 1984 c 281 § 2.]

Reviser's note: This section was amended by 1994 c 76 § 1 and by 1994 sp.s. c 9 § 719, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.135.025 Rules—Legislative intent. The legislature declares that the citizenry of the state of Washington has a right to expect that health care assistants are sufficiently educated and trained to provide the services authorized under this chapter. It is the intent of the legislature that the regulations implementing this chapter and governing the

education and occupational qualifications, work experience, instruction and training of health care assistants ensure that the public health and welfare are protected. [1986 c 216 § 1.]

18.135.030 Requirements for certification—Rules.

The secretary or the secretary's designee, with the advice of designees of the medical care quality assurance commission, the board of osteopathic medicine and surgery, the podiatric medical board, and the nursing care quality assurance commission, shall adopt rules necessary to administer, implement, and enforce this chapter and establish the minimum requirements necessary for a health care facility or health care practitioner to certify a health care assistant capable of performing the functions authorized in this chapter. The rules shall establish minimum requirements for each and every category of health care assistant. Said rules shall be adopted after fair consideration of input from representatives of each category. These requirements shall ensure that the public health and welfare are protected and shall include, but not be limited to, the following factors:

- (1) The education and occupational qualifications for the health care assistant category;
- (2) The work experience for the health care assistant category;
- (3) The instruction and training provided for the health care assistant category; and
- (4) The types of drugs or diagnostic agents which may be administered by injection by health care assistants working in a hospital or nursing home. The rules established pursuant to this subsection shall not prohibit health care assistants working in a health care facility other than a nursing home or hospital from performing the functions authorized under this chapter. [1994 sp.s. c 9 § 515; 1991 c 3 § 273; 1986 c 216 § 2; 1984 c 281 § 4.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

18.135.040 Certification of health care assistants.

A certification issued to a health care assistant pursuant to this chapter shall be authority to perform only the functions authorized in RCW 18.135.010 subject to proper delegation and supervision in the health care facility making the certification or under the supervision of the certifying health care practitioner in other health care facilities or in his or her office. No certification made by one health care facility or health care practitioner is transferrable to another health care facility or health care practitioner. [1984 c 281 § 3.]

18.135.050 Certification by health care facility or practitioner—Roster—Recertification.

(1) Any health care facility may certify a health care assistant to perform the functions authorized in this chapter in that health care facility; and any health care practitioner may certify a health care assistant capable of performing such services in any health care facility, or in his or her office, under a health care practitioner's supervision. Before certifying the health care assistant, the health care facility or health care practitioner shall verify that the health care assistant has met the minimum requirements established by the secretary under this chapter. These requirements shall not prevent the

certifying entity from imposing such additional standards as the certifying entity considers appropriate. The health care facility or health care practitioner shall provide the licensing authority with a certified roster of health care assistants who are certified.

(2) Certification and recertification of a health care assistant shall be effective for a period determined by the secretary under RCW 43.70.250 and 43.70.280. Requirements for recertification shall be determined by the secretary under RCW 43.70.250 and 43.70.280. [1996 c 191 § 82; 1991 c 3 § 274; 1984 c 281 § 5.]

18.135.055 Registering an initial or continuing certification—Fees.

The health care facility or health care practitioner registering an initial or continuing certification pursuant to the provisions of this chapter shall comply with administrative procedures, administrative requirements, and fees determined by the secretary as provided in RCW 43.70.250 and 43.70.280.

All fees collected under this section shall be credited to the health professions account as required in RCW 43.70.320. [1996 c 191 § 83; 1991 c 3 § 275; 1985 c 117 § 1.]

18.135.060 Conditions for performing authorized functions—Renal dialysis.

(1) Except as provided in subsection (2) of this section:

(a) Any health care assistant certified pursuant to this chapter shall perform the functions authorized in this chapter only by delegation of authority from the health care practitioner and under the supervision of a health care practitioner acting within the scope of his or her license. In the case of subcutaneous, intradermal and intramuscular and intravenous injections, a health care assistant may perform such functions only under the supervision of a health care practitioner having authority, within the scope of his or her license, to order such procedures.

(b) The health care practitioner who ordered the procedure or a health care practitioner who could order the procedure under his or her license shall be physically present in the immediate area of a hospital or nursing home where the injection is administered. Sensitivity agents being administered intradermally or by the scratch method are excluded from this requirement.

(2) A health care assistant trained by a federally approved end-stage renal disease facility may perform venipuncture for blood withdrawal, administration of oxygen as necessary by cannula or mask, venipuncture for placement of fistula needles, intravenous administration of heparin and sodium chloride solutions as an integral part of dialysis treatment, and intradermal, subcutaneous, or topical administration of local anesthetics in conjunction with placement of fistula needles, and intraperitoneal administration of sterile electrolyte solutions and heparin for peritoneal dialysis: (a) In the center or health care facility if a registered nurse licensed under *chapter 18.88 RCW is physically present and immediately available in such center or health care facility; or (b) in the patient's home if a physician and a registered nurse are available for consultation during the dialysis. [1993 c 13 § 1. Prior: 1986 c 216 § 3; 1986 c 115 § 1; 1984 c 281 § 6.]

*Reviser's note: Chapter 18.88 RCW was repealed by 1994 sp.s. c 9 § 433, effective July 1, 1994.

18.135.065 Delegation—Duties of delegator and delegatee. (1) Each delegator, as defined under RCW 18.135.020(6) shall maintain a list of specific medications, diagnostic agents, and the route of administration of each that he or she has authorized for injection. Both the delegator and delegatee shall sign the above list, indicating the date of each signature. The signed list shall be forwarded to the secretary of the department of health and shall be available for review.

(2) Delegates are prohibited from administering any controlled substance as defined in RCW 69.50.101(d), any experimental drug, and any cancer chemotherapy agent unless a delegator is physically present in the immediate area where the drug is administered. [1991 c 3 § 276; 1986 c 216 § 4.]

18.135.070 Complaints—Violations—Investigations—Disciplinary action. The licensing authority of health care facilities or the disciplining authority of the delegating or supervising health care practitioner shall investigate all complaints or allegations of violations of proper certification of a health care assistant or violations of delegation of authority or supervision. A substantiated violation shall constitute sufficient cause for disciplinary action by the licensing authority of a health care facility or the disciplining authority of the health care practitioner. [1993 c 367 § 11; 1984 c 281 § 7.]

18.135.090 Performance of authorized functions. The performance of the functions authorized in this chapter by a health care assistant pursuant to this chapter does not constitute unlicensed practice as a health care practitioner. [1984 c 281 § 9.]

18.135.100 Uniform Disciplinary Act. The Uniform Disciplinary Act, chapter 18.130 RCW, governs uncertified practice, the issuance and denial of certificates, and the discipline of certificate holders under this chapter. The secretary shall be the disciplining authority under this chapter. [1993 c 367 § 12.]

Chapter 18.138

DIETITIANS AND NUTRITIONISTS

Sections

18.138.010	Definitions.
18.138.020	Certification required.
18.138.030	Qualifications for certification.
18.138.040	Certification—Application procedures, requirements, fees.
18.138.050	Certification without examination.
18.138.060	Renewal of certification—Fee.
18.138.070	Authority of secretary—Ad hoc committee—Immunity.
18.138.090	Application of uniform disciplinary act.
18.138.100	Insurance coverage.
18.138.110	Health food stores exempted.
18.138.120	Health professions advisory committee—Membership—Duties—Expenses.

18.138.010 Definitions. (1) "Dietetics" is the integration and application of scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social sciences in counseling people to achieve and maintain health. Unique functions of dietetics include, but are not limited to:

(a) Assessing individual and community food practices and nutritional status using anthropometric, biochemical, clinical, dietary, and demographic data for clinical, research, and program planning purposes;

(b) Establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints;

(c) Providing nutrition counseling and education as components of preventive, curative, and restorative health care;

(d) Developing, implementing, managing, and evaluating nutrition care systems; and

(e) Evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition care services.

(2) "General nutrition services" means the counseling and/or educating of groups or individuals in the selection of food to meet normal nutritional needs for health maintenance, which includes, but is not restricted to:

(a) Assessing the nutritional needs of individuals and groups by planning, organizing, coordinating, and evaluating the nutrition components of community health care services;

(b) Supervising, administering, or teaching normal nutrition in colleges, universities, clinics, group care homes, nursing homes, hospitals, private industry, and group meetings.

(3) "Certified dietitian" means any person certified to practice dietetics under this chapter.

(4) "Certified nutritionist" means any person certified to provide general nutrition services under this chapter.

(5) "Department" means the department of health.

(6) "Secretary" means the secretary of health or the secretary's designee. [1991 c 3 § 278; 1988 c 277 § 1.]

18.138.020 Certification required. (1) No persons shall represent themselves as certified dietitians or certified nutritionists unless certified as provided for in this chapter.

(2) Persons represent themselves as certified dietitians or certified nutritionists when any title or any description of services is used which incorporates one or more of the following items or designations: "Certified dietitian," "certified dietician," "certified nutritionist," "D.," "C.D.," or "C.N."

(3) The secretary may by rule proscribe or regulate advertising and other forms of patient solicitation which are likely to mislead or deceive the public as to whether someone is certified under this chapter. [1991 c 3 § 279; 1988 c 277 § 2.]

18.138.030 Qualifications for certification. (1) An applicant applying for certification as a certified dietitian or certified nutritionist shall file a written application on a form or forms provided by the secretary setting forth under affidavit such information as the secretary may require, and proof that the candidate has met qualifications set forth below in subsection (2) or (3) of this section.

(2) Any person seeking certification as a "certified dietitian" shall meet the following qualifications:

- (a) Be eighteen years of age or older;
- (b) Has satisfactorily completed a major course of study in human nutrition, foods and nutrition, dietetics, or food systems management, and has received a baccalaureate or higher degree from a college or university accredited by the Western association of schools and colleges or a similar accreditation agency or colleges and universities approved by the secretary in rule;

(c) Demonstrates evidence of having successfully completed a planned continuous preprofessional experience in dietetic practice of not less than nine hundred hours under the supervision of a certified dietitian or a registered dietitian or demonstrates completion of a coordinated undergraduate program in dietetics, both of which meet the training criteria established by the secretary;

(d) Has satisfactorily completed an examination for dietitians administered by a public or private agency or institution recognized by the secretary as qualified to administer the examination; and

(e) Has satisfactorily completed courses of continuing education as currently established by the secretary.

(3) An individual may be certified as a certified dietitian if he or she provides evidence of meeting criteria for registration on June 9, 1988, by the commission on dietetic registration.

(4) Any person seeking certification as a "certified nutritionist" shall meet the following qualifications:

(a) Possess the qualifications required to be a certified dietitian; or

(b) Has received a master's degree or doctorate degree in one of the following subject areas: Human nutrition, nutrition education, foods and nutrition, or public health nutrition from a college or university accredited by the Western association of schools and colleges or a similar accrediting agency or colleges and universities approved by the secretary in rule. [1991 c 3 § 280; 1988 c 277 § 3.]

18.138.040 Certification—Application procedures, requirements, fees. (1) If the applicant meets the qualifications as outlined in RCW 18.138.030(2), the secretary shall confer on such candidates the title certified dietitian.

(2) If the applicant meets the qualifications as outlined in RCW 18.138.030(4), the secretary shall confer on such candidates the title certified nutritionist.

(3) Applicants for certification as a certified dietitian or certified nutritionist shall comply with administrative procedures, administrative requirements, and fees determined by the secretary under RCW 43.70.250 and 43.70.280. [1996 c 191 § 84; 1991 c 3 § 281; 1988 c 277 § 4.]

18.138.050 Certification without examination. The secretary may certify a person applying for the title "certified dietitian" without examination if such person is licensed or certified as a dietitian in another jurisdiction and if, in the secretary's judgment, the requirements of that jurisdiction are equivalent to or greater than those of Washington state. [1991 c 3 § 282; 1988 c 277 § 6.]

18.138.060 Renewal of certification—Fee. (1) Every person certified as a certified dietitian or certified nutritionist shall renew the certification according to administrative procedures, administrative requirements, and fees determined by the secretary as provided in RCW 43.70.250 and 43.70.280.

(2) All fees collected under this section shall be credited to the health professions account as required. [1996 c 191 § 85; 1991 c 3 § 283; 1988 c 277 § 7.]

18.138.070 Authority of secretary—Ad hoc committee—Immunity. In addition to any other authority provided by law, the secretary may:

(1) Adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;

(2) Establish forms necessary to administer this chapter;

(3) Issue a certificate to an applicant who has met the requirements for certification and deny a certificate to an applicant who does not meet the minimum qualifications;

(4) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter and hire individuals, including those certified under this chapter, to serve as consultants as necessary to implement and administer this chapter;

(5) Maintain the official departmental record of all applicants and certificate holders;

(6) Conduct a hearing, pursuant to chapter 34.05 RCW, on an appeal of a denial of certification based on the applicant's failure to meet the minimum qualifications for certification;

(7) Investigate alleged violations of this chapter and consumer complaints involving the practice of persons representing themselves as certified dietitians or certified nutritionists;

(8) Issue subpoenas, statements of charges, statements of intent to deny certifications, and orders and delegate in writing to a designee the authority to issue subpoenas, statements of charges, and statements on intent to deny certifications;

(9) Conduct disciplinary proceedings, impose sanctions, and assess fines for violations of this chapter or any rules adopted under it in accordance with chapter 34.05 RCW;

(10) Set all certification, renewal, and late renewal fees in accordance with RCW 43.70.250;

(11) Set certification expiration dates and renewal periods for all certifications under this chapter; and

(12) Appoint members of the profession to serve in an ad hoc advisory capacity to the secretary in carrying out this chapter. The members will serve for designated time[s] and provide advice on matters specifically identified and requested by the secretary. The members shall be compensated in accordance with RCW 43.03.220 and reimbursed for travel expenses under RCW 43.03.040 and 43.03.060. The secretary, ad hoc committee members, or individuals acting in their behalf are immune from suit in a civil action based on any certification or disciplinary proceedings or other official acts performed in the course of their duties. [1994 sp.s. c 9 § 516; 1991 c 3 § 284; 1988 c 277 § 10.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Health professions advisory committee: RCW 18.138.120.

18.138.090 Application of uniform disciplinary act.

The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of certificates, unauthorized practices, and the disciplining of certificate holders under this chapter. The secretary shall be the disciplining authority under this chapter. [1991 c 3 § 286; 1988 c 277 § 5.]

18.138.100 Insurance coverage. This chapter does not require or prohibit individual or group policies or contracts of an insurance carrier, health care service contractor, or health maintenance organization to provide benefits or coverage for services and supplies provided by a person certified under this chapter. [1988 c 277 § 9.]

18.138.110 Health food stores exempted. Nothing in this chapter shall be construed to apply to owners, operators or employees of health food stores provided the owners, operators or employees do not represent themselves to be certified dietitians or certified nutritionists. [1988 c 277 § 11.]

18.138.120 Health professions advisory committee—Membership—Duties—Expenses. The secretary shall appoint a health professions advisory committee consisting of one member from each profession represented by an ad hoc advisory committee established under RCW 18.06.080, 18.84.040, 18.89.050, and 18.138.070, and one member of the health assistants profession as regulated under chapter 18.135 RCW, one member of the ophthalmologists profession as regulated under chapter 18.55 RCW, and one member of the nursing assistants profession as regulated under chapter 18.88A RCW. The members shall serve three-year terms. Of the initial members, two shall be appointed for a one-year term, two shall be appointed for a two-year term, and the remainder shall be appointed for three-year terms. Thereafter, members shall be appointed for three-year terms. The committee shall advise the secretary in matters concerning changes in the professions, health care technologies, and health policies as requested by the secretary or initiated by the committee. The committee members shall be eligible to receive travel expenses under RCW 43.03.050 and 43.03.060. [1994 sp.s. c 9 § 517.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Chapter 18.140**CERTIFIED REAL ESTATE APPRAISER ACT**

Sections

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18.140.080	Education requirements.
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18.140.210	Violation of chapter—Procedure.
18.140.220	Acting without certificate or license—Penalty.
18.140.900	Short title.
18.140.910	Severability—1989 c 414.

18.140.005 Intent. It is the intent of the legislature that only individuals who meet and maintain minimum standards of competence and conduct established under this chapter for certified or licensed real estate appraisers may provide real estate appraisal services to the public. [1996 c 182 § 1; 1993 c 30 § 1; 1989 c 414 § 1.]

Effective dates—1996 c 182: "This act shall take effect July 1, 1996, except section 3 of this act, which shall take effect July 1, 1997." [1996 c 182 § 16.]

18.140.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Appraisal" means the act or process of estimating value; an estimate of value; or of or pertaining to appraising and related functions.

(2) "Appraisal report" means any communication, written or oral, of an appraisal, review, or consulting service in accordance with the standards of professional conduct or practice, adopted by the director, that is transmitted to the client upon completion of an assignment.

(3) "Appraisal assignment" means an engagement for which an appraiser is employed or retained to act, or would be perceived by third parties or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the value of specified interests in, or aspects of, identified real estate. The term "appraisal assignment" may apply to valuation work and analysis work.

(4) "Brokers price opinion" means an oral or written report of property value that is prepared by a real estate broker or salesperson licensed under chapter 18.85 RCW for listing, sale, purchase, or rental purposes.

(5) "Certified appraisal" means an appraisal prepared or signed by a state-certified real estate appraiser. A certified appraisal represents to the public that it meets the appraisal standards defined in this chapter.

(6) "Client" means any party for whom an appraiser performs a service.

(7) "Committee" means the real estate appraiser advisory committee of the state of Washington.

(8) "Comparative market analysis" means a brokers price opinion.

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

(10) "Director" means the director of the department of licensing.

(11) "Expert review appraiser" means a state-certified or state-licensed real estate appraiser chosen by the director for the purpose of providing appraisal review assistance to the director.

(12) "Federal department" means an executive department of the United States of America specifically concerned with housing finance issues, such as the department of housing and urban development, the department of veterans affairs, or their legal federal successors.

(13) "Federal financial institutions regulatory agency" means the board of governors of the federal reserve system, the federal deposit insurance corporation, the office of the comptroller of the currency, the office of thrift supervision, the national credit union administration, their successors and/or such other agencies as may be named in future amendments to 12 U.S.C. Sec. 3350(6).

(14) "Federal secondary mortgage marketing agency" means the federal national mortgage association, the government national mortgage association, the federal home loan mortgage corporation, their successors and/or such other similarly functioning housing finance agencies as may be federally chartered in the future.

(15) "Financial institution" means any person doing business under the laws of this state or the United States relating to banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, consumer loan companies, and the affiliates, subsidiaries, and service corporations thereof.

(16) "Licensed appraisal" means an appraisal prepared or signed by a state-licensed real estate appraiser. A licensed appraisal represents to the public that it meets the appraisal standards defined in this chapter.

(17) "Mortgage broker" for the purpose of this chapter means a mortgage broker licensed under chapter 19.146 RCW, any mortgage broker approved and subject to audit by the federal national mortgage association, the government national mortgage association, or the federal home loan mortgage corporation as provided in RCW 19.146.020, any mortgage broker approved by the United States secretary of housing and urban development for participation in any mortgage insurance under the national housing act, 12 U.S.C. Sec. 1201, and the affiliates, subsidiaries, and service corporations thereof.

(18) "Real estate" means an identified parcel or tract of land, including improvements, if any.

(19) "Real property" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

(20) "Review" means the act or process of critically studying an appraisal report prepared by another.

(21) "Specialized appraisal services" means all appraisal services which do not fall within the definition of appraisal assignment. The term "specialized appraisal service" may apply to valuation work and to analysis work. Regardless of the intention of the client or employer, if the appraiser would be perceived by third parties or the public as acting as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion, the work is classified as an appraisal assignment and not a specialized appraisal service.

(22) "State-certified general real estate appraiser" means a person certified by the director to develop and communicate real estate appraisals of all types of property. A state-

certified general real estate appraiser may designate or identify an appraisal rendered by him or her as a "certified appraisal."

(23) "State-certified residential real estate appraiser" means a person certified by the director to develop and communicate real estate appraisals of all types of residential property of one to four units without regard to transaction value or complexity and nonresidential property having a transaction value as specified in rules adopted by the director. A state certified residential real estate appraiser may designate or identify an appraisal rendered by him or her as a "certified appraisal."

(24) "State-licensed real estate appraiser" means a person licensed by the director to develop and communicate real estate appraisals of noncomplex one to four residential units and complex one to four residential units and nonresidential property having transaction values as specified in rules adopted by the director. [1996 c 182 § 2; 1993 c 30 § 2; 1989 c 414 § 3.]

Effective dates—1996 c 182: See note following RCW 18.140.005.

18.140.020 Use of title by unauthorized person. (*Effective until July 1, 1997.*) (1) No person, other than a state-certified or state-licensed real estate appraiser, may assume or use that title or any title, designation, or abbreviation likely to create the impression of certification or licensure as a real estate appraiser by this state. A person who is not certified or licensed under this chapter shall not describe or refer to any appraisal of real estate located in this state by the term "certified" or "licensed."

(2) This section does not preclude a person who is not certified or licensed as a state-certified or state-licensed real estate appraiser from appraising real estate in this state for compensation, except in federally related transactions requiring licensure or certification to perform appraisal services. [1993 c 30 § 3; 1989 c 414 § 4.]

18.140.020 Use of title by unauthorized person. (*Effective July 1, 1997.*) (1) No person other than a state-certified or state-licensed real estate appraiser may receive compensation of any form for a real estate appraisal or an appraisal review.

(2) No person, other than a state-certified or state-licensed real estate appraiser, may assume or use that title or any title, designation, or abbreviation likely to create the impression of certification or licensure as a real estate appraiser by this state.

(3) A person who is not certified or licensed under this chapter shall not prepare any appraisal of real estate located in this state, except as provided under subsection (1) of this section.

(4) This section does not preclude a staff employee of a governmental entity from performing an appraisal or an appraisal assignment within the scope of his or her employment insofar as the performance of official duties for the governmental entity are concerned. Such an activity for the benefit of the governmental entity is exempt from the requirements of this chapter.

(5) This section does not preclude an individual person licensed by the state of Washington as a real estate broker or as a real estate salesperson and who performs a brokers price

opinion as a service to a prospective seller, buyer, lessor, or lessee as the only intended user, and not for dissemination to a third party, within the scope of his or her employment or agency. Such an activity for the sole benefit of the prospective seller, buyer, lessor, or lessee is exempt from the requirements of this chapter.

(6) This section does not apply to an appraisal or an appraisal review performed for a financial institution or mortgage broker, whether conducted by an employee or third party, when such appraisal or appraisal review is not required to be performed by a state-certified or state-licensed real estate appraiser by the appropriate federal financial institutions regulatory agency.

(7) This section does not apply to an attorney licensed to practice law in this state or to a certified public accountant, as defined in RCW 18.04.025, who evaluates real property in the normal scope of his or her professional services. [1996 c 182 § 3; 1993 c 30 § 3; 1989 c 414 § 4.]

Effective dates—1996 c 182: See note following RCW 18.140.005.

18.140.030 Powers and duties of director. The director shall have the following powers and duties:

(1) To adopt rules in accordance with chapter 34.05 RCW necessary to implement this chapter;

(2) To receive and approve or deny applications for certification or licensure as a state-certified or state-licensed real estate appraiser under this chapter; to establish appropriate administrative procedures for the processing of such applications; to issue certificates or licenses to qualified applicants pursuant to the provisions of this chapter; and to maintain a register of the names and addresses of individuals who are currently certified or licensed under this chapter;

(3) To establish, provide administrative assistance, and appoint the members for the real estate appraiser advisory committee to enable the committee to act in an advisory capacity to the director;

(4) To solicit bids and enter into contracts with educational testing services or organizations for the preparation of questions and answers for certification or licensure examinations;

(5) To administer or contract for administration of certification or licensure examinations at locations and times as may be required to carry out the responsibilities under this chapter;

(6) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(7) To consider recommendations by the real estate appraiser advisory committee relating to the experience, education, and examination requirements for each classification of state-certified appraiser and for licensure;

(8) To impose continuing education requirements as a prerequisite to renewal of certification or licensure;

(9) To consider recommendations by the real estate appraiser advisory committee relating to standards of professional appraisal practice in the enforcement of this chapter;

(10) To investigate all complaints or reports of unprofessional conduct as defined in this chapter and to hold hearings as provided in this chapter;

(11) To establish appropriate administrative procedures for disciplinary proceedings conducted pursuant to the provisions of this chapter;

(12) To compel the attendance of witnesses and production of books, documents, records, and other papers; to administer oaths; and to take testimony and receive evidence concerning all matters within their jurisdiction. These powers may be exercised directly by the director or the director's authorized representatives acting by authority of law;

(13) To take emergency action ordering summary suspension of a license or certification pending proceedings by the director;

(14) To employ such professional, clerical, and technical assistance as may be necessary to properly administer the work of the director;

(15) To establish forms necessary to administer this chapter;

(16) To adopt standards of professional conduct or practice;

(17) To establish an expert review appraiser roster comprised of state-certified or licensed real estate appraisers whose purpose is to assist the director by applying their individual expertise by reviewing real estate appraisals for compliance with this chapter. Qualifications to act as an expert review appraiser shall be established by the director with the advice of the committee. An application to serve as an expert review appraiser shall be submitted to the real estate appraiser program, and the roster of accepted expert review appraisers shall be maintained by the department. An expert review appraiser may be added to or deleted from that roster by the director. The expert review appraiser shall be reimbursed for expenses in the same manner as the department reimburses the committee; and

(18) To do all other things necessary to carry out the provisions of this chapter and minimally meet the requirements of federal guidelines regarding state certification or licensure of appraisers that the director determines are appropriate for state-certified and state-licensed appraisers in this state. [1996 c 182 § 4; 1993 c 30 § 4; 1989 c 414 § 7.]

Effective dates—1996 c 182: See note following RCW 18.140.005.

18.140.040 Immunity. The director or individuals acting on behalf of the director are immune from suit in any action, civil or criminal, based on any acts performed in the course of their duties except for their intentional or willful misconduct. [1993 c 30 § 5; 1989 c 414 § 8.]

18.140.050 Fees and collection procedures. The director shall establish fees by rule, under RCW 43.24.086 and chapter 34.05 RCW and establish collection procedures for the fees. [1989 c 414 § 9.]

18.140.060 Applications—Original and renewal certification and licensure. (1) Applications for examinations, original certification or licensure, and renewal certification or licensure shall be made in writing to the department on forms approved by the director. Applications for original and renewal certification or licensure shall include a statement confirming that the applicant shall comply with

applicable rules and regulations and that the applicant understands the penalties for misconduct.

(2) The appropriate fees shall accompany all applications for examination, reexamination, original certification or licensure, and renewal certification or licensure. [1993 c 30 § 6; 1989 c 414 § 10.]

18.140.070 Categories of state-certified or licensed real estate appraisers. There shall be one category of state-licensed real estate appraisers and two categories of state-certified real estate appraisers as follows:

- (1) The state-licensed real estate appraiser;
 - (2) The state-certified residential real estate appraiser;
 - (3) The state-certified general real estate appraiser.
- [1993 c 30 § 7; 1989 c 414 § 11.]

18.140.080 Education requirements. As a prerequisite to taking an examination for certification or licensure, an applicant shall present evidence satisfactory to the director that he or she has successfully completed the education requirements adopted by the director. [1993 c 30 § 8; 1989 c 414 § 12.]

18.140.090 Experience requirements. (1) As a prerequisite to taking an examination for certification or licensure, an applicant must meet the experience requirements adopted by the director.

(2) The preexamination experience claimed by an applicant, and accepted by the department for the purpose of taking the examination, shall remain subject to postlicensure auditing by the department. [1996 c 182 § 5; 1993 c 30 § 9; 1989 c 414 § 13.]

Effective dates—1996 c 182: See note following RCW 18.140.005.

18.140.100 Examination requirements. An original license or certificate shall be issued to persons who have satisfactorily passed the written examination as endorsed by the Appraiser Qualifications Board of the Appraisal Foundation and as adopted by the director. [1993 c 30 § 10; 1989 c 414 § 14.]

18.140.110 Nonresident applicants—Consent for service of process. Every applicant for licensing or certification who is not a resident of this state shall submit, with the application for licensing or certification, an irrevocable consent that service of process upon him or her may be made by service on the director if, in an action against the applicant in a court of this state arising out of the applicant's activities as a state-licensed or state-certified real estate appraiser, the plaintiff cannot, in the exercise of due diligence, obtain personal service upon the applicant. [1993 c 30 § 11; 1989 c 414 § 15.]

18.140.120 Reciprocity. An applicant for licensure or certification who is currently licensed or certified and in good standing under the laws of another state may obtain a license or certificate as a Washington state-licensed or state-certified real estate appraiser without being required to satisfy the examination requirements of this chapter if: The director determines that the licensure or certification require-

ments are substantially similar to those found in Washington state; and that the other state has a written reciprocal agreement to provide similar treatment to holders of Washington state licenses and/or certificates. [1993 c 30 § 12; 1989 c 414 § 16.]

18.140.130 Expiration of license or certificate—Renewal—Failure to renew in timely manner. (1) Each original and renewal license or certificate issued under this chapter shall expire on the applicant's second birthday following issuance of the license or certificate.

(2) To be renewed as a state-licensed or state-certified real estate appraiser, the holder of a valid license or certificate shall apply and pay the prescribed fee to the director no earlier than one hundred twenty days prior to the expiration date of the license or certificate and shall demonstrate satisfaction of any continuing education requirements.

(3) If a person fails to renew a license or certificate prior to its expiration and no more than one year has passed since the person last held a valid license or certificate, the person may obtain a renewal license or certificate by satisfying all of the requirements for renewal and paying late renewal fees.

The director shall cancel the license or certificate of any person whose renewal fee is not received within one year from the date of expiration. A person may obtain a new license or certificate by satisfying the procedures and qualifications for initial licensure or certification, including the successful completion of any applicable examinations. [1996 c 182 § 6; 1993 c 30 § 13; 1989 c 414 § 17.]

Effective dates—1996 c 182: See note following RCW 18.140.005.

18.140.140 Licenses and certificates—Required use of number. (1) A license or certificate issued under this chapter shall bear the signature or facsimile signature of the director and a license or certificate number assigned by the director.

(2) Each state-licensed or state-certified real estate appraiser shall place his or her license or certificate number adjacent to or immediately below the title "state-licensed real estate appraiser," "state-certified residential real estate appraiser," or "state-certified general real estate appraiser" when used in an appraisal report or in a contract or other instrument used by the licensee or certificate holder in conducting real property appraisal activities, except that the license or certificate number shall not be required to appear when the title is not accompanied by a signature as is typical on such promotional and stationery items as brochures, business cards, forms, or letterhead. [1996 c 182 § 7; 1993 c 30 § 14; 1989 c 414 § 18.]

Effective dates—1996 c 182: See note following RCW 18.140.005.

18.140.150 Use of term restricted—Group licenses or certificates prohibited. (1) The term "state-licensed" or "state-certified real estate appraiser" may only be used to refer to individuals who hold the license or certificate and may not be used following or immediately in connection with the name or signature of a firm, partnership, corporation, group, or limited liability company, or in such manner that it might be interpreted as referring to a firm, partnership,

corporation, group, limited liability company, or anyone other than an individual holder of the license or certificate.

(2) No license or certificate may be issued under this chapter to a corporation, partnership, firm, limited liability company, or group. This shall not be construed to prevent a state-licensed or state-certified appraiser from signing an appraisal report on behalf of a corporation, partnership, firm, group practice, or limited liability company. [1996 c 182 § 8; 1993 c 30 § 15; 1989 c 414 § 19.]

Effective dates—1996 c 182: See note following RCW 18.140.005.

18.140.155 Temporary licensing or certification. (1) A real estate appraiser from another state who is licensed or certified by another state may apply for registration to receive temporary licensing or certification in Washington by paying a fee and filing a notarized application with the department on a form provided by the department.

(2) Licensing and certification privileges granted under the provisions of this section shall expire ninety days from issuance. Licensing or certification shall not be renewed, nor shall an applicant receive more than two registrations within any twelve-month period.

(3) Persons granted temporary licensing or certification privileges under this section shall not advertise or otherwise hold themselves out as being licensed or certified by the state of Washington.

(4) Persons granted temporary licensure or certification are subject to all provisions under this chapter. [1993 c 30 § 16.]

18.140.160 Sanctions against license or certificate—Grounds. The director may deny an application for licensure or certification and may impose any one or more of the following sanctions against a state-licensed or state-certified appraiser: Suspend, revoke, or levy a fine not to exceed one thousand dollars for each offense and/or otherwise discipline in accordance with the provisions of this chapter, for any of the following acts or omissions:

(1) Failing to meet the minimum qualifications for state licensure or certification established by or pursuant to this chapter;

(2) Procuring or attempting to procure state licensure or certification under this chapter by knowingly making a false statement, knowingly submitting false information, or knowingly making a material misrepresentation on any application filed with the director;

(3) Paying money other than the fees provided for by this chapter to any employee of the director or the committee to procure state licensure or certification under this chapter;

(4) Obtaining a license or certification through the mistake or inadvertence of the director;

(5) Conviction of any gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether or not the act constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license or certificate holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which

it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(6) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(7) Negligence or incompetence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(8) Continuing to act as a state-licensed or state-certified real estate appraiser when his or her license or certificate is on an expired status;

(9) Failing, upon demand, to disclose any information within his or her knowledge to, or to produce any document, book, or record in his or her possession for inspection of the director or the director's authorized representatives acting by authority of law;

(10) Violating any provision of this chapter or any lawful rule or regulation made by the director pursuant thereto;

(11) Advertising in a false, fraudulent, or misleading manner;

(12) Suspension, revocation, or restriction of the individual's license or certification to practice the profession by competent authority in any state, federal, or foreign jurisdiction, with a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(13) Failing to comply with an order issued by the director;

(14) Committing any act of fraudulent or dishonest dealing or a crime involving moral turpitude, with a certified copy of the final holding of any court of competent jurisdiction in such matter being conclusive evidence in any hearing under this chapter; and

(15) Issuing an appraisal report on any real property in which the appraiser has an interest unless his or her interest is clearly stated in the appraisal report. [1996 c 182 § 9; 1993 c 30 § 17; 1989 c 414 § 20.]

Effective dates—1996 c 182: See note following RCW 18.140.005.

18.140.170 Violations—Investigations—Charges—Hearings. The director may investigate the actions of a state-licensed or state-certified real estate appraiser or an applicant for licensure or certification or relicensure or recertification. Upon receipt of information indicating that a state-licensed or state-certified real estate appraiser under this chapter may have violated this chapter, the director shall cause one or more of the staff investigators to make an investigation of the facts to determine whether or not there is admissible evidence of any such violation. If technical assistance is required, a staff investigator may consult with one or more of the members of the committee.

In any investigation made by the director's investigative staff, the director shall have the power to compel the attendance of witnesses and the production of books, documents, records, and other papers, to administer oaths,

and to take testimony and receive evidence concerning all matters within the director's jurisdiction.

If the director determines, upon investigation, that a state-licensed or state-certified real estate appraiser under this chapter has violated this chapter, a statement of charges shall be prepared and served upon the state-licensed or state-certified real estate appraiser. The statement of charges shall be served as follows: The statement of charges shall be sent by certified or registered mail, and if no receipt of service is received, two attempts to personally serve the statement of charges shall be made. This statement of charges shall require the accused party to file an answer to the statement of charges within twenty days of the date of service.

In responding to a statement of charges, the accused party may admit to the allegations, deny the allegations, or otherwise plead. Failure to make a timely response shall be deemed an admission of the allegations contained in the statement of charges and will result in a default whereupon the director may enter an order under RCW 34.05.440. If a hearing is requested, the time of the hearing shall be scheduled but the hearing shall not be held earlier than thirty days after service of the charges upon the accused. A notice of hearing shall be issued at least twenty days prior to the hearing, specifying the time, date, and place of hearing. [1996 c 182 § 10; 1993 c 30 § 18; 1989 c 414 § 21.]

Effective dates—1996 c 182: See note following RCW 18.140.005.

18.140.175 Cease and desist orders. (1) The director may issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated a provision of this chapter or a lawful order or rule of the director.

(2) If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. Before issuing the temporary cease and desist order, whenever possible, the director shall give notice by telephone or otherwise of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include a provision that a hearing will be held upon request to determine whether the order will become permanent.

At the time the temporary cease and desist order is served, the person shall be notified that he or she is entitled to request a hearing for the sole purpose of determining whether the public interest requires that the temporary cease and desist order be continued or modified pending the outcome of the hearing to determine whether the order will become permanent. The hearing shall be held within thirty days after the department receives the request for hearing, unless the person requests a later hearing. A person may secure review of any decision rendered at a temporary cease and desist order review hearing in the same manner as an adjudicative proceeding. [1993 c 30 § 19.]

18.140.180 Hearings—Orders—Judicial review. The administrative hearing on the allegations in the statement of charges may be heard by an administrative law judge appointed under chapter 34.12 RCW at the time and place prescribed by the director and in accordance with the provisions of the Administrative Procedure Act, chapter

34.05 RCW. If the administrative law judge determines that a state-licensed or state-certified real estate appraiser is guilty of a violation of any of the provisions of this chapter, a formal decision shall be prepared that contains findings of fact and recommendations to the director concerning the appropriate disciplinary action to be taken.

In such event the director shall enter an order to that effect and shall file the same in his or her office and immediately mail a copy thereof to the affected party at the addresses of record with the department. Such order shall not be operative for a period of ten days from the date thereof. Any party aggrieved by a final decision by the director in an adjudicative proceeding whether such decision is affirmative or negative in form, is entitled to a judicial review in the superior court under the provisions of the Administrative Procedure Act, chapter 34.05 RCW. [1993 c 30 § 20; 1989 c 414 § 22.]

18.140.190 Duties of attorney general. The attorney general shall render to the director opinions upon all questions of law relating to the construction or interpretation of this chapter, or arising in the administration thereof that may be submitted by the director, and shall act as attorney for the director in all actions and proceedings brought by or against the director under or pursuant to any provisions of this chapter. [1993 c 30 § 21; 1989 c 414 § 23.]

18.140.200 Certificate or license suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the certificate or license of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's certificate or license shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for certification or licensure during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 19.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.140.210 Violation of chapter—Procedure. The director may refer a complaint for violation of any section of this chapter before any court of competent jurisdiction.

Any violation of the provisions of this chapter shall be prosecuted by the prosecuting attorney of each county in which the violation occurs, and if the prosecuting attorney fails to act, the director may request the attorney general to take action in lieu of the prosecuting attorney.

Whenever evidence satisfactory to the director suggests that any person has violated any of the provisions of this chapter, or any part or provision thereof, the director may

bring an action, in the superior court in the county where the person resides, against the person to enjoin any person from continuing a violation or engaging or doing any act or acts in furtherance thereof. In this action an order or judgment may be entered awarding a preliminary or final injunction as may be proper.

The director may petition the superior court in any county in this state for the appointment of a receiver to take over, operate, or close any real estate appraisal activity or practice in this state which is found upon inspection of its books and records to be operating in violation of the provisions of this chapter, pending a hearing. [1996 c 182 § 11.]

Effective dates—1996 c 182: See note following RCW 18.140.005.

18.140.220 Acting without certificate or license—Penalty. Any person acting as a state-certified or state-licensed real estate appraiser without a certificate or license that is currently valid is guilty of a misdemeanor. [1996 c 182 § 12.]

Effective dates—1996 c 182: See note following RCW 18.140.005.

18.140.900 Short title. This chapter may be known and cited as the real estate appraiser act. [1993 c 30 § 22; 1989 c 414 § 2.]

18.140.910 Severability—1989 c 414. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 414 § 26.]

Chapter 18.145

COURT REPORTING PRACTICE ACT

(Formerly: Shorthand reporting practice act)

Sections

- 18.145.005 Findings.
- 18.145.010 Certificate required.
- 18.145.020 Practice of court reporting defined.
- 18.145.030 Definitions.
- 18.145.040 Exemptions.
- 18.145.050 Powers of director.
- 18.145.070 Liability of director.
- 18.145.080 Certification requirements.
- 18.145.090 Certification applications—Fee.
- 18.145.100 Renewals—Late fees—Reinstatement.
- 18.145.110 Persons with stenomask reporting experience.
- 18.145.120 Sanctions against certificate—Director's powers—Costs.
- 18.145.125 Certificate suspension—Nonpayment or default on educational loan or scholarship.
- 18.145.130 Unprofessional conduct.
- 18.145.900 Short title.
- 18.145.910 Effective date—Implementation—1989 c 382.
- 18.145.911 Severability—1989 c 382.

18.145.005 Findings. The legislature finds it necessary to regulate the practice of court reporting at the level of certification to protect the public safety and well-being. The legislature intends that only individuals who meet and maintain minimum standards of competence may represent themselves as court reporters. [1995 c 27 § 1; 1989 c 382 § 1.]

18.145.010 Certificate required. (1) No person may represent himself or herself as a *shorthand reporter or a court reporter without first obtaining a certificate as required by this chapter.

(2) A person represents himself or herself to be a *shorthand reporter or court reporter when the person adopts or uses any title or description of services that incorporates one or more of the following terms: "Shorthand reporter," "court reporter," "certified shorthand reporter," or "certified court reporter." [1989 c 382 § 2.]

***Reviser's note:** "Shorthand reporter" or "court reporter" now just "court reporter" pursuant to 1995 c 27.

18.145.020 Practice of court reporting defined. The "practice of court reporting" means the making by means of written symbols or abbreviations in shorthand or machine writing or oral recording by a stenomask reporter of a verbatim record of any oral court proceeding, deposition, or proceeding before a jury, referee, court commissioner, special master, governmental entity, or administrative agency and the producing of a transcript from the proceeding. [1995 c 27 § 3; 1989 c 382 § 3.]

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

(1) "Department" means the department of licensing.

(2) "Director" means the director of licensing.

(3) "Court reporter" means an individual certified under this chapter. [1995 c 269 § 501; 1995 c 27 § 4; 1989 c 382 § 4.]

Reviser's note: This section was amended by 1995 c 27 § 4 and by 1995 c 269 § 501, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

18.145.040 Exemptions. Nothing in this chapter prohibits or restricts:

(1) The practice of court reporting by individuals who are licensed, certified, or registered as court reporters under other laws of this state and who are performing services within their authorized scope of practice;

(2) The practice of court reporting by an individual employed by the government of the United States while the individual is performing duties prescribed by the laws and regulations of the United States; or

(3) The introduction of alternate technology in court reporting practice. [1995 c 27 § 5; 1989 c 382 § 5.]

18.145.050 Powers of director. In addition to any other authority provided by law, the director may:

(1) Adopt rules in accordance with chapter 34.05 RCW that are necessary to implement this chapter;

(2) Set all renewal, late renewal, duplicate, and verification fees in accordance with RCW 43.24.086;

(3) Establish the forms and procedures necessary to administer this chapter;

(4) Issue a certificate to any applicant who has met the requirements for certification;

(5) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter;

(6) Investigate complaints or reports of unprofessional conduct as defined in this chapter and hold hearings under chapter 34.05 RCW;

(7) Issue subpoenas for records and attendance of witnesses, statements of charges, statements of intent to deny certificates, and orders; administer oaths; take or cause depositions to be taken; and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;

(8) Maintain the official departmental record of all applicants and certificate holders;

(9) Delegate, in writing to a designee, the authority to issue subpoenas, statements of charges, and statements of intent to deny certification;

(10) Approve the preparation and administration of examinations for certification;

(11) Establish by rule the procedures for an appeal of a failure of an examination;

(12) Conduct a hearing under chapter 34.05 RCW on an appeal of a denial of a certificate based on the applicant's failure to meet minimum qualifications for certification;

(13) Set the criteria for meeting the standard required for certification;

(14) Establish advisory committees whose membership shall include representatives of professional court reporting and stenomasking associations and representatives from accredited schools offering degrees in court reporting or stenomasking to advise the director on testing procedures, professional standards, disciplinary activities, or any other matters deemed necessary;

(15) Establish ad hoc advisory committees whose membership shall include representatives of professional court reporting and stenomasking associations and representatives from accredited schools offering degrees in court reporting or stenomasking to advise the director on testing procedures, professional standards, disciplinary activities, or any other matters deemed necessary. [1995 c 269 § 502; 1995 c 27 § 6; 1989 c 382 § 6.]

Reviser's note: This section was amended by 1995 c 27 § 6 and by 1995 c 269 § 502, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

18.145.070 Liability of director. The director and individuals acting on the director's behalf shall not be civilly liable for any act performed in good faith in the course of their duties. [1995 c 269 § 503; 1995 c 27 § 7; 1989 c 382 § 8.]

Reviser's note: This section was amended by 1995 c 27 § 7 and by 1995 c 269 § 503, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

18.145.080 Certification requirements. The department shall issue a certificate to any applicant who meets the standards established under this chapter and who:

(1) Is holding one of the following:

(a) Certificate of proficiency, registered professional reporter, registered merit reporter, or registered diplomate reporter from [the] national court reporters association;

(b) Certificate of proficiency or certificate of merit from [the] national stenomask verbatim reporters association; or

(c) A current Washington state court reporter certification; or

(2) Has passed an examination approved by the director or an examination that meets or exceeds the standards established by the director. [1995 c 269 § 504; 1995 c 27 § 8; 1989 c 382 § 9.]

Reviser's note: This section was amended by 1995 c 27 § 8 and by 1995 c 269 § 504, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1995 c 269: See note following RCW 13.40.025.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

18.145.090 Certification applications—Fee. Applications for certification shall be submitted on forms provided by the department. The department may require information and documentation to determine whether the applicant meets the standard for certification as provided in this chapter. Each applicant shall pay a fee determined by the director as provided in RCW 43.24.086 which shall accompany the application. [1995 c 27 § 9; 1989 c 382 § 10.]

18.145.100 Renewals—Late fees—Reinstatement. The director shall establish by rule the requirements and the renewal and late renewal fees for certification. Failure to renew the certificate on or before the expiration date cancels all privileges granted by the certificate. If an individual desires to reinstate a certificate which had not been renewed for three years or more, the individual shall satisfactorily demonstrate continued competence in conformance with standards determined by the director. [1989 c 382 § 11.]

18.145.110 Persons with stenomask reporting experience. Persons with two or more years' experience in stenomask reporting in Washington state as of January 1, 1996, shall be granted a court reporter certificate without examination, if application is made before January 1, 1996. [1995 c 27 § 10; 1989 c 382 § 12.]

18.145.120 Sanctions against certificate—Director's powers—Costs. (1) Upon receipt of complaints against court reporters, the director shall investigate and evaluate the complaint to determine if disciplinary action is appropriate. The director shall hold disciplinary hearings pursuant to chapter 34.05 RCW.

(2) After a hearing conducted under chapter 34.05 RCW and upon a finding that a certificate holder or applicant has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental

condition, the director may issue an order providing for one or any combination of the following:

- (a) Revocation of the certification;
- (b) Suspension of the certificate for a fixed or indefinite term;
- (c) Restriction or limitation of the practice;
- (d) Requiring the satisfactory completion of a specific program or remedial education;
- (e) The monitoring of the practice by a supervisor approved by the director;
- (f) Censure or reprimand;
- (g) Compliance with conditions of probation for a designated period of time;
- (h) Denial of the certification request;
- (i) Corrective action;
- (j) Refund of fees billed to or collected from the consumer.

Any of the actions under this section may be totally or partly stayed by the director. In determining what action is appropriate, the director shall consider sanctions necessary to protect the public, after which the director may consider and include in the order requirements designed to rehabilitate the certificate holder or applicant. All costs associated with compliance to orders issued under this section are the obligation of the certificate holder or applicant. [1995 c 27 § 11; 1989 c 382 § 13.]

18.145.125 Certificate suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the certificate of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's certificate shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for certification during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 20.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.145.130 Unprofessional conduct. The following conduct, acts, or conditions constitute unprofessional conduct for any certificate holder or applicant under the jurisdiction of this chapter:

- (1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of court reporting, whether or not the act constitutes a crime. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action;
- (2) Misrepresentation or concealment of a material fact in obtaining or in seeking reinstatement of a certificate;

(3) Advertising in a false, fraudulent, or misleading manner;

- (4) Incompetence or negligence;
- (5) Suspension, revocation, or restriction of the individual's certificate, registration, or license to practice court reporting by a regulatory authority in any state, federal, or foreign jurisdiction;
- (6) Violation of any state or federal statute or administrative rule regulating the profession;
- (7) Failure to cooperate in an inquiry, investigation, or disciplinary action by:

- (a) Not furnishing papers or documents;
- (b) Not furnishing in writing a full and complete explanation of the matter contained in the complaint filed with the director;
- (c) Not responding to subpoenas issued by the director, regardless of whether the recipient of the subpoena is the accused in the proceeding;

(8) Failure to comply with an order issued by the director or an assurance of discontinuance entered into with the director;

(9) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(10) Conviction of any gross misdemeanor or felony relating to the practice of the profession. For the purpose of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW. [1995 c 27 § 12; 1989 c.382 § 14.]

18.145.900 Short title. This chapter may be known and cited as the court reporting practice act. [1995 c 27 § 13; 1989 c 382 § 15.]

18.145.910 Effective date—Implementation—1989 c 382. This act shall take effect September 1, 1989, except that the director may immediately take such steps as are necessary to ensure that this act is implemented on its effective date. [1989 c 382 § 16.]

18.145.911 Severability—1989 c 382. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 382 § 17.]

Chapter 18.155

SEX OFFENDER TREATMENT PROVIDERS

Sections

- 18.155.010 Findings—Construction.
- 18.155.020 Definitions.
- 18.155.030 Certificate required.
- 18.155.040 Secretary—Authority.
- 18.155.050 Sexual offender treatment providers advisory committee.
- 18.155.060 Immunity.
- 18.155.070 Certificate—Requirements.
- 18.155.080 Standards and procedures.
- 18.155.090 Application of uniform disciplinary act.
- 18.155.900 Index, part headings not law—1990 c 3.

18.155.901 Severability—1990 c 3.

18.155.902 Effective dates—Application—1990 c 3.

18.155.010 Findings—Construction. The legislature finds that sex offender therapists who examine and treat sex offenders pursuant to the special sexual offender sentencing alternative under *RCW 9.94A.120(7)(a) and who may treat juvenile sex offenders pursuant to RCW 13.40.160, play a vital role in protecting the public from sex offenders who remain in the community following conviction. The legislature finds that the qualifications, practices, techniques, and effectiveness of sex offender treatment providers vary widely and that the court's ability to effectively determine the appropriateness of granting the sentencing alternative and monitoring the offender to ensure continued protection of the community is undermined by a lack of regulated practices. The legislature recognizes the right of sex offender therapists to practice, consistent with the paramount requirements of public safety. Public safety is best served by regulating sex offender therapists whose clients are being evaluated and being treated pursuant to *RCW 9.94A.120(7)(a) and 13.40.160. This chapter shall be construed to require only those sex offender therapists who examine and treat sex offenders pursuant to *RCW 9.94A.120(7)(a) and 13.40.160 to obtain a sexual offender treatment certification as provided in this chapter. [1990 c 3 § 801.]

*Reviser's note: RCW 9.94A.120 was amended by 1995 c 108 § 3, changing subsection (7) to subsection (8).

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

(1) "Certified sex offender treatment provider" means a licensed, certified, or registered health professional who is certified to examine and treat sex offenders pursuant to *RCW 9.94A.120(7)(a) and 13.40.160.

(2) "Department" means the department of health.

(3) "Secretary" means the secretary of health.

(4) "Sex offender treatment provider" means a person who counsels or treats sex offenders accused of or convicted of a sex offense as defined by RCW 9.94A.030. [1990 c 3 § 802.]

*Reviser's note: RCW 9.94A.120 was amended by 1995 c 108 § 3, changing subsection (7) to subsection (8).

18.155.030 Certificate required. (1) No person shall represent himself or herself as a certified sex offender treatment provider without first applying for and receiving a certificate pursuant to this chapter.

(2) Only a certified sex offender treatment provider may perform or provide the following services:

(a) Evaluations conducted for the purposes of and pursuant to *RCW 9.94A.120(7)(a) and 13.40.160;

(b) Treatment of convicted sex offenders who are sentenced and ordered into treatment pursuant to *RCW 9.94A.120(7)(a) and adjudicated juvenile sex offenders who are ordered into treatment pursuant to RCW 13.40.160. [1990 c 3 § 803.]

*Reviser's note: RCW 9.94A.120 was amended by 1995 c 108 § 3, changing subsection (7) to subsection (8).

18.155.040 Secretary—Authority. In addition to any other authority provided by law, the secretary shall have the following authority:

(1) To set administrative procedures, administrative requirements, and fees in accordance with RCW 43.70.250 and 43.70.280;

(2) To establish forms necessary to administer this chapter;

(3) To issue a certificate to any applicant who has met the education, training, and examination requirements for certification and deny a certificate to applicants who do not meet the minimum qualifications for certification. Proceedings concerning the denial of certificates based on unprofessional conduct or impaired practice shall be governed by the uniform disciplinary act, chapter 18.130 RCW;

(4) To hire clerical, administrative, and investigative staff as needed to implement and administer this chapter and to hire individuals including those certified under this chapter to serve as examiners or consultants as necessary to implement and administer this chapter;

(5) To maintain the official department record of all applicants and certifications;

(6) To conduct a hearing on an appeal of a denial of a certificate on the applicant's failure to meet the minimum qualifications for certification. The hearing shall be conducted pursuant to chapter 34.05 RCW;

(7) To issue subpoenas, statements of charges, statements of intent to deny certificates, and orders and to delegate in writing to a designee the authority to issue subpoenas, statements of charges, and statements of intent to deny certificates;

(8) To determine the minimum education, work experience, and training requirements for certification, including but not limited to approval of educational programs;

(9) To prepare and administer or approve the preparation and administration of examinations for certification;

(10) To establish by rule the procedure for appeal of an examination failure;

(11) To adopt rules implementing a continuing competency program;

(12) To adopt rules in accordance with chapter 34.05 RCW as necessary to implement this chapter. [1996 c 191 § 86; 1990 c 3 § 804.]

18.155.050 Sexual offender treatment providers advisory committee. (1) The sexual offender treatment providers advisory committee is established to advise the secretary concerning the administration of this chapter.

(2) The secretary shall appoint the members of the advisory committee who shall consist of the following persons:

(a) One superior court judge;

(b) Three sexual offender treatment providers;

(c) One mental health practitioner who specializes in treating victims of sexual assault;

(d) One defense attorney with experience in representing persons charged with sexual offenses;

(e) One representative from the Washington association of prosecuting attorneys;

(f) The secretary of the department of social and health services or his or her designee;

(g) The secretary of the department of corrections or his or her designee.

The secretary shall develop and implement the certification procedures with the advice of the committee by July 1, 1991. Following implementation of these procedures by the secretary, the committee shall be a permanent body. The members shall serve staggered six-year terms, to be set by the secretary. No person other than the members representing the departments of social and health services and corrections may serve more than two consecutive terms.

The secretary may remove any member of the advisory committee for cause as specified by rule. In a case of a vacancy, the secretary shall appoint a person to serve for the remainder of the unexpired term.

(3) Committee members shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(4) The committee shall elect officers as deemed necessary to administer its duties. A simple majority of the committee members currently serving shall constitute a quorum of the committee.

(5) Members of the advisory committee shall be residents of this state. The members who are sex offender treatment providers must have a minimum of five years of extensive work experience in treating sex offenders to qualify for appointment to the initial committee, which shall develop and implement the certification program. After July 1, 1991, the sex offender treatment providers on the committee must be certified pursuant to this chapter.

(6) The committee shall meet at times as necessary to conduct committee business. [1990 c 3 § 805.]

18.155.060 Immunity. The secretary, members of the committee, and individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any acts performed in the course of their duties. [1990 c 3 § 806.]

18.155.070 Certificate—Requirements. The department shall issue a certificate to any applicant who meets the following requirements:

(1) Successful completion of an educational program approved by the secretary or successful completion of alternate training which meets the criteria of the secretary;

(2) Successful completion of any experience requirement established by the secretary;

(3) Successful completion of an examination administered or approved by the secretary;

(4) Not having engaged in unprofessional conduct or being unable to practice with reasonable skill and safety as a result of a physical or mental impairment;

(5) Other requirements as may be established by the secretary that impact the competence of the sex offender treatment provider. [1990 c 3 § 807.]

18.155.080 Standards and procedures. The secretary shall establish standards and procedures for approval of the following:

(1) Educational programs and alternate training;

(2) Examination procedures;

(3) Certifying applicants who have a comparable certification in another jurisdiction;

(4) Application method and forms;

(5) Requirements for renewals of certificates;

(6) Requirements of certified sex offender treatment providers who seek inactive status;

(7) Other rules, policies, administrative procedures, and administrative requirements as appropriate to carry out the purposes of this chapter. [1996 c 191 § 87; 1990 c 3 § 808.]

18.155.090 Application of uniform disciplinary act. The uniform disciplinary act, chapter 18.130 RCW, governs unauthorized practice, the issuance and denial of certificates, and the discipline of certified sex offender treatment providers under this chapter. [1990 c 3 § 809.]

18.155.900 Index, part headings not law—1990 c 3. The index and part headings used in this act do not constitute any part of the law. [1990 c 3 § 1404.]

18.155.901 Severability—1990 c 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 3 § 1405.]

18.155.902 Effective dates—Application—1990 c 3. (1) Sections 101 through 131, 401 through 409, 501 through 504, 606, 707 and 708, 801 through 810, 1101 through 1104, 1201 through 1210, and 1401 through 1403 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [February 28, 1990].

(2) Sections 201 through 203, 301 through 305, 701 through 706, and 901 through 904 shall take effect July 1, 1990, and shall apply to crimes committed on or after July 1, 1990.

(3) Sections 1001 through 1012 shall take effect July 1, 1990.

(4) Section 1301 shall take effect July 1, 1991.

(5) Sections 601 through 605, for purposes of sentencing adult or juvenile offenders shall take effect July 1, 1990, and shall apply to crimes or offenses committed on or after July 1, 1990. For purposes of defining a "sexually violent offense" pursuant to section 1002(4) of this act, sections 601 through 605 of this act shall take effect July 1, 1990, and shall apply to crimes committed on, before, or after July 1, 1990. [1990 c 3 § 1406.]

Chapter 18.160

FIRE SPRINKLER SYSTEM CONTRACTORS

Sections

18.160.010 Definitions.

18.160.020 Local government license and permit requirements—Exemptions from chapter.

18.160.030 State director of fire protection—Duties.

18.160.040 Certificate of competency—Contractor license.

18.160.050 Renewal—Certificate of competency—Contractor license—Fire protection license fund created.

18.160.070 Local government regulation—Application to state and government contractors.

18.160.080 Actions against certificates or licenses—Grounds—Appeal.

- 18.160.085 Certificate suspension—Nonpayment or default on educational loan or scholarship.
- 18.160.090 Surety bond—Security deposit—Venue and time limit for actions upon bonds—Limit of liability of surety—Payment of claims.
- 18.160.100 Unlicensed operations—Penalty.
- 18.160.110 Enforcement—Civil proceedings.
- 18.160.900 Prospective application.
- 18.160.901 Effective date—1990 c 177.
- 18.160.902 Severability—1990 c 177.

Criminal penalties: RCW 9.45.260.

18.160.010 Definitions. The following words or terms shall have the meanings indicated unless the context clearly indicates otherwise.

(1) "Certificate of competency holder" means an individual who has satisfactorily met the qualifications and has received a certificate of competency from the state director of fire protection under the provisions of this chapter.

(2) "Fire protection sprinkler system contractor" means a person or organization that offers to undertake the execution of contracts for the installation, inspection, maintenance, or servicing of a fire protection sprinkler system or any part of such a system.

(3) "Fire protection sprinkler system" means an assembly of underground and/or overhead piping or conduit beginning at the connection to the primary water supply, whether public or private, that conveys water with or without other agents to dispersal openings or devices to extinguish, control, or contain fire and to provide protection from exposure to fire or other products of combustion.

(4) "Fire protection sprinkler system contractor's license" means the license issued by the state director of fire protection to a fire protection sprinkler system contractor upon an application being approved, the fee being paid, and the satisfactory completion of the requirements of this chapter. The license shall be issued in the name of the fire protection sprinkler system contractor with the name or names of the certificate of competency holder noted thereon.

(5) "NFPA 13-D" means whatever standard that is used by the national fire protection association for the installation of fire protection sprinkler systems in one or two-family residential dwellings or mobile homes.

(6) "NFPA 13-R" means whatever standard that is used by the national fire protection association for the installation of fire protection sprinkler systems in residential dwellings up to four stories in height.

(7) "Inspection" means a visual examination of a fire protection sprinkler system or portion of the system to verify that the system appears to be in operating condition and is free from physical damage and complies with the applicable statutes and regulations adopted by the state director of fire protection.

(8) "Installation" means the initial placement of fire protection sprinkler system equipment or the extension, modification, or alteration of equipment after the initial placement. Installation shall include the work from a street or main water access throughout the entire building.

(9) "Maintenance" means to maintain in the condition of repair that provides performance as originally planned.

(10) "Organization" means a corporation, partnership, firm, or other business association, governmental entity, or any other legal or commercial entity.

(11) "Person" means a natural person, including an owner, manager, partner, officer, employee, or occupant.

(12) "Service" means to repair or test. [1990 c 177 § 2.]

18.160.020 Local government license and permit requirements—Exemptions from chapter. (1) A municipality or county may not enact an order, ordinance, rule, or regulation requiring a fire protection sprinkler system contractor to obtain a fire sprinkler contractor license from the municipality or county. However, a municipality or county may require a fire protection sprinkler system contractor to obtain a permit and pay a fee for the installation of a fire protection sprinkler system and require the installation of such systems to conform with the building code or other construction requirements of the municipality or county, but may not impose financial responsibility requirements other than proof of a valid license.

(2) This chapter does not apply to:

(a) United States, state, and local government employees, building officials, fire marshals, fire inspectors, or insurance inspectors when acting in their official capacities;

(b) A person or organization acting under court order;

(c) A person or organization that sells or supplies products or materials to a licensed fire protection sprinkler system contractor;

(d) A registered professional engineer acting solely in a professional capacity;

(e) An employee of a licensed fire protection sprinkler system contractor performing duties for the registered fire protection sprinkler system contractor; and

(f) An owner/occupier of a single-family residence performing his or her own installation in that residence. [1990 c 177 § 3.]

18.160.030 State director of fire protection—Duties.

(1) This chapter shall be administered by the state director of fire protection.

(2) The state director of fire protection shall have the authority, and it shall be his or her duty to:

(a) Issue such administrative regulations as necessary for the administration of this chapter;

(b)(i) Set reasonable fees for licenses, certificates, testing, and other aspects of the administration of this chapter. However, the license fee for fire protection sprinkler system contractors engaged solely in the installation, inspection, maintenance, or servicing of NFPA 13-D fire protection sprinkler systems shall not exceed one hundred dollars, and the license fee for fire protection sprinkler system contractors engaged solely in the installation, inspection, maintenance, or servicing of NFPA 13-R fire protection sprinkler systems shall not exceed three hundred dollars;

(ii) Adopt rules establishing a special category restricted to contractors registered under chapter 18.27 RCW who install underground systems that service fire protection sprinkler systems. The rules shall be adopted within ninety days of March 31, 1992;

(c) Enforce the provisions of this chapter;

(d) Conduct investigations of complaints to determine if any infractions of this chapter or the regulations developed under this chapter have occurred;

(e) Work with the *fire sprinkler advisory committee consisting of fire protection sprinkler system contractors and other related officials;

(f) Assign a certificate number to each certificate of competency holder; and

(g) Adopt rules necessary to implement and administer a program which requires the affixation of a seal any time a fire protection sprinkler system is installed, which seal shall include the certificate number of any certificate of competency holder who installs, in whole or in part, the fire protection sprinkler system. [1992 c 116 § 2; 1990 c 177 § 4.]

***Reviser's note:** The section creating the fire sprinkler advisory committee, 1990 c 177 § 9, was vetoed by the governor.

18.160.040 Certificate of competency—Contractor license. (1) To become a certificate of competency holder under this chapter, an applicant must have satisfactorily passed an examination administered by the state director of fire protection. A certificate of competency holder can satisfy this examination requirement by presenting a copy of a current certificate of competency from the national institute for certification in engineering technologies showing that the applicant has achieved the classification of engineering technician level 3 or senior engineering technician level 4 in the field of fire protection, automatic sprinkler system layout. The state director of fire protection may accept equivalent proof of qualification in lieu of examination, as recommended by the *fire sprinkler advisory committee. This examination requirement is mandatory except as otherwise provided in this chapter.

(2) Every applicant for a certificate of competency shall fulfill the requirements established by the state director of fire protection and the *fire protection sprinkler system technical advisory committee under chapter 34.05 RCW.

(3) Every applicant for a certificate of competency shall make application to the state director of fire protection and pay the fees required.

(4) Provided the application for the certificate of competency is made prior to ninety days after May 1, 1991, the state director of fire protection, in lieu of the examination requirements of the applicant for a certificate of competency, may accept as satisfactory evidence of competency and qualification, affidavits attesting that the applicant has had a minimum of three years' experience.

(5) The state director of fire protection may, after consultation with the *fire sprinkler advisory committee, issue a temporary certificate of competency to an applicant who, in his or her judgment, will satisfactorily perform as a certificate of competency holder under the provisions of this chapter. The temporary certificate of competency shall remain in effect for a period of up to three years. The temporary certificate of competency holder shall, within the three-year period, complete the examination requirements specified in subsection (1) of this section. There shall be no examination exemption for an individual issued a temporary certificate of competency. Prior to the expiration of the three-year period, the temporary certificate of competency holder shall make application for a regular certificate of competency. The procedures and qualifications for issuance

of a regular certificate of competency shall be applicable to the temporary certificate of competency holder. When a temporary certificate of competency expires, the holder shall cease all activities associated with the holding of a temporary certificate of competency, subject to the penalties contained in this chapter.

(6) To become a licensed fire protection sprinkler system contractor under this chapter, a person or firm must comply with the following:

(a) Must be or have in his or her full-time employ a holder of a valid certificate of competency;

(b) Comply with the minimum insurance requirements of this chapter; and

(c) Make application to the state director of fire protection for a license and pay the fees required.

(7) Each license and certificate of competency issued under this chapter must be posted in a conspicuous place in the fire protection sprinkler system contractor's place of business.

(8) All bids, advertisements, proposals, offers, and installation drawings for fire protection sprinkler systems must prominently display the fire protection sprinkler system contractor's license number.

(9) A certificate of competency or license issued under this chapter is not transferable.

(10) In no case shall a certificate of competency holder be employed full time by more than one fire protection sprinkler system contractor at the same time. If the certificate of competency holder should leave the employment of the fire protection sprinkler system contractor, he or she must notify the state director of fire protection within thirty days. If the certificate of competency holder should leave the employment of the fire protection sprinkler system contractor, the contractor shall have six months or until the expiration of the current license, whichever occurs last, to submit a new application identifying another certificate of competency holder who is at the time of application an owner of the fire protection sprinkler system business or a full-time employee of the fire protection sprinkler system contractor, in order to be issued a new license. If such application is not received and a new license issued within the allotted time, the state director of fire protection shall revoke the license of the fire protection sprinkler system contractor. [1990 c 177 § 5.]

***Reviser's note:** The section creating the fire sprinkler advisory committee, 1990 c 177 § 9, was vetoed by the governor.

18.160.050 Renewal—Certificate of competency—Contractor license—Fire protection license fund created.

(1)(a) All certificate of competency holders that desire to continue in the fire protection sprinkler business shall annually, prior to January 1, secure from the state director of fire protection a renewal certificate of competency upon payment of the fee as prescribed by the state director of fire protection. Application for renewal shall be upon a form prescribed by the state director of fire protection and the certificate holder shall furnish the information required by the director.

(b) Failure of any certificate of competency holder to secure his or her renewal certificate of competency within sixty days after the due date shall constitute sufficient cause

for the state director of fire protection to suspend the certificate of competency.

(c) The state director of fire protection may, upon the receipt of payment of all delinquent fees including a late charge, restore a certificate of competency that has been suspended for failure to pay the renewal fee.

(d) A certificate of competency holder may voluntarily surrender his or her certificate of competency to the state director of fire protection and be relieved of the annual renewal fee. After surrendering the certificate of competency, he or she shall not be known as a certificate of competency holder and shall desist from the practice thereof. Within two years from the time of surrender of the certificate of competency, he or she may again qualify for a certificate of competency, without examination, by the payment of the required fee. If two or more years have elapsed, he or she shall return to the status of a new applicant.

(2)(a) All licensed fire protection sprinkler system contractors desiring to continue to be licensed shall annually, prior to January 1, secure from the state director of fire protection a renewal license upon payment of the fee as prescribed by the state director of fire protection. Application for renewal shall be upon a form prescribed by the state director of fire protection and the license holder shall furnish the information required by the director.

(b) Failure of any license holder to secure his or her renewal license within sixty days after the due date shall constitute sufficient cause for the state director of fire protection to suspend the license.

(c) The state director of fire protection may, upon the receipt of payment of all delinquent fees including a late charge, restore a license that has been suspended for failure to pay the renewal fee.

(3) The initial certificate of competency or license fee shall be prorated based upon the portion of the year such certificate of competency or license is in effect, prior to renewal on January 1.

(4) The fire protection contractor license fund is created in the custody of the state treasurer. All receipts from license and certificate fees and charges or from the money generated by the rules and regulations promulgated under this chapter shall be deposited into the fund. Expenditures from the fund may be used only for purposes authorized under this chapter. Only the state director of fire protection or the director's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [1990 c 177 § 6.]

18.160.070 Local government regulation—Application to state and government contractors. (1) Nothing in this chapter limits the power of a municipality, county, or the state to regulate the quality and character of work performed by contractors, through a system of permits, fees, and inspections which are designed to assure compliance with and aid in the implementation of state and local building laws or to enforce other local laws for the protection of the public health and safety. Nothing in this chapter limits the power of the municipality, county, or the state to adopt any system of permits requiring submission to and

approval by the municipality, county, or the state, of technical drawings and specifications for work to be performed by contractors before commencement of the work. The official authorized to issue building or other related permits shall ascertain that the fire protection sprinkler system contractor is duly licensed by requiring evidence of a valid fire protection sprinkler system contractor's license.

(2) This chapter applies to any fire protection sprinkler system contractor performing work for any municipality, county, or the state. Officials of any municipality, county, or the state are required to determine compliance with this chapter before awarding any contracts for the installation, repair, service, alteration, fabrication, addition, or inspection of a fire protection sprinkler system. [1990 c 177 § 8.]

18.160.080 Actions against certificates or licenses—Grounds—Appeal. (1) The state director of fire protection may refuse to issue or renew or may suspend or revoke the privilege of a licensed fire protection sprinkler system contractor or the certificate of a certificate of competency holder to engage in the fire protection sprinkler system business or in lieu thereof, establish penalties as prescribed by Washington state law, for any of the following reasons:

(a) Gross incompetency or gross negligence in the preparation of technical drawings, installation, repair, alteration, maintenance, inspection, service, or addition to fire protection sprinkler systems;

(b) Conviction of a felony;

(c) Fraudulent or dishonest practices while engaging in the fire protection sprinkler systems business;

(d) Use of false evidence or misrepresentation in an application for a license or certificate of competency;

(e) Permitting his or her license to be used in connection with the preparation of any technical drawings which have not been prepared by him or her personally or under his or her immediate supervision, or in violation of this chapter; or

(f) Knowingly violating any provisions of this chapter or the regulations issued thereunder.

(2) The state director of fire protection shall revoke the license of a licensed fire protection sprinkler system contractor or the certificate of a certificate of competency holder who engages in the fire protection sprinkler system business while the license or certificate of competency is suspended.

(3) Any licensee or certificate of competency holder who is aggrieved by an order of the state director of fire protection suspending or revoking a license may, within thirty days after notice of such suspension or revocation, appeal under chapter 34.05 RCW. [1990 c 177 § 10.]

18.160.085 Certificate suspension—Nonpayment or default on educational loan or scholarship. The state director of fire protection shall suspend the certificate of any person who has been certified by a lending agency and reported to the state director of fire protection for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or

service-conditional scholarship. The person's certificate shall not be reissued until the person provides the state director of fire protection a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for certification during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the state director of fire protection may impose. [1996 c 293 § 21.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.160.090 Surety bond—Security deposit—Venue and time limit for actions upon bonds—Limit of liability of surety—Payment of claims. (1) Before granting a license under this chapter, the director of fire protection shall require that the applicant file with the state director of fire protection a surety bond issued by a surety insurer who meets the requirements of chapter 48.28 RCW in a form acceptable to the director of fire protection running to the state of Washington in the penal sum of ten thousand dollars. However, the surety bond for a fire protection sprinkler system contractor whose business is restricted solely to NFPA 13-D or NFPA 13-R systems shall be in the penal sum of six thousand dollars. The bond shall be conditioned that the applicant will pay all purchasers of fire protection sprinkler systems with whom the applicant has a contract for the applicant to install, inspect, maintain, or service a fire protection sprinkler system, and who have obtained a judgment against the applicant for the breach of such a contract. The term "purchaser" means an owner of property who has entered into a contract for the installation of a fire protection sprinkler system on that property, or a contractor who contracts to install, inspect, maintain, or service such a system with an owner of property and subcontracts the work to the applicant. No other person, including, but not limited to, persons who supply labor, materials, or rental equipment to the applicant, shall have any rights against the bond.

(2) In lieu of the surety bond required by this section the applicant may file with the director of fire protection a deposit consisting of cash or other security acceptable to the director of fire protection in an amount equal to the penal sum of the required bond. The director of fire protection may adopt rules necessary for the proper administration of the security.

(3) Before granting renewal of a fire protection sprinkler system contractor's license to any applicant, the director of fire protection shall require that the applicant file with the director satisfactory evidence that the surety bond or cash deposit is in full force.

(4) Any purchaser of a fire protection sprinkler system having a claim against the licensee for the breach of a contract for the licensee to install, inspect, maintain, or service a fire protection sprinkler system may bring suit upon such bond in superior court of the county in which the work was done or of any county in which jurisdiction of the licensee may be had. Any such action must be brought not later than one year after the expiration of the licensee's license or renewal license then in effect at the time of the alleged breach of contract.

(5) The bond shall be considered one continuous obligation, and the surety upon the bond shall not be liable in aggregate or cumulative amount exceeding ten thousand dollars, or six thousand dollars if the bond was issued to a licensee whose business is restricted solely to NFPA 13-D or NFPA 13-R systems, regardless of the number of years the bond is in effect, or whether it is reinstated, renewed, reissued, or otherwise continued, and regardless of the year in which any claim accrued. The bond shall not be liable for any liability of the licensee for tortious acts, whether or not such liability is imposed by statute or common law, or is imposed by contract. The bond shall not be a substitute or supplemental to any liability or other insurance required by law or by the contract.

(6) If the surety desires to make payment without awaiting court action against it, the amount of the bond shall be reduced to the extent of any payment made by the surety in good faith under the bond. Any payment shall be based on final judgments received by the surety.

(7) Claims against the bond shall be satisfied from the bond in the following order:

(a) Claims by a purchaser of a fire protection sprinkler system for the breach of a contract for the licensee to install, inspect, maintain, or service a fire protection sprinkler system;

(b) Any court costs, interest, and attorneys' fees the plaintiff may be entitled to recover by contract, statute, or court rule.

A condition precedent to the surety being liable to any claimant is a final judgment against the licensee, unless the surety desires to make payment without awaiting court action. In the event of a dispute regarding the apportionment of the bond proceeds among claimants, the surety may bring an action for interpleader against all claimants upon the bond.

(8) Any purchaser of a fire protection sprinkler system having an unsatisfied final judgment against the licensee for the breach of a contract for the licensee to install, inspect, maintain, or service a fire protection sprinkler system may execute upon the security held by the director of fire protection by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the director within one year of the date of entry of such judgment. Upon the receipt of service of such certified copy the director shall pay or order paid from the deposit, through the registry of the court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the director shall be the order of receipt by the director, but the director shall have no liability for payment in excess of the amount of the deposit. [1991 sp.s. c 6 § 1.]

18.160.100 Unlicensed operations—Penalty. Any fire protection sprinkler system contractor who constructs, installs, or maintains a fire protection sprinkler system in any occupancy, except an owner-occupied single-family dwelling, without first obtaining a fire sprinkler contractor's license from the state of Washington, is guilty of a gross misdemeanor. This section may not be construed to create any criminal liability for a prime contractor or an owner of an occupancy unless it is proved that the prime contractor or owner had actual knowledge of an illegal construction,

installation, or maintenance of a fire protection sprinkler system by a fire protection sprinkler system contractor. [1992 c 116 § 3.]

Wrongful acts by contractor, criminal penalty: RCW 9.45.260.

18.160.110 Enforcement—Civil proceedings. Civil proceedings to enforce this chapter may be brought by the attorney general or the prosecuting attorney of any county where a violation occurs on his or her own motion or at the request of the state director of fire protection. [1992 c 116 § 4.]

18.160.900 Prospective application. This chapter applies prospectively only and not retroactively. A municipal or county order, ordinance, rule, or regulation that is in effect as of May 1, 1991, is not invalid because of the provisions of this chapter. This chapter does not prohibit municipalities or counties from adopting stricter guidelines that will assure the proper installation of fire sprinkler systems within their jurisdictions. [1990 c 177 § 12.]

18.160.901 Effective date—1990 c 177. RCW 18.160.010 through 18.160.080 shall take effect May 1, 1991. [1990 c 177 § 13.]

18.160.902 Severability—1990 c 177. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 177 § 14.]

Chapter 18.165

PRIVATE INVESTIGATORS

(Formerly: Private detectives)

Sections

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- 18.165.270 Application of administrative procedure act to acts of the director.
- 18.165.280 License or certificate suspension—Nonpayment or default on educational loan or scholarship.
- 18.165.900 Severability—1991 c 328.
- 18.165.901 Severability—Effective date—1995 c 277.

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

(1) "Armed private investigator" means a private investigator who has a current firearms certificate issued by the commission and is licensed as an armed private investigator under this chapter.

(2) "Chief law enforcement officer" means the elected or appointed police administrator of a municipal, county, or state police or sheriff's department that has full law enforcement powers in its jurisdiction.

(3) "Commission" means the criminal justice training commission established in chapter 43.101 RCW.

(4) "Department" means the department of licensing.

(5) "Director" means the director of the department of licensing.

(6) "Employer" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent of any of the foregoing that employs or seeks to enter into an arrangement to employ any person as a private investigator.

(7) "Firearms certificate" means a certificate issued by the commission.

(8) "Forensic scientist" or "accident reconstructionist" means a person engaged exclusively in collecting and analyzing physical evidence and data relating to an accident or other matter and compiling such evidence or data to render an opinion of likely cause, fault, or circumstance of the accident or matter.

(9) "Person" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent or employee of any of the foregoing.

(10) "Principal" of a private investigator agency means the owner or manager appointed by a corporation.

(11) "Private investigator" means a person who is licensed under this chapter and is employed by a private investigator agency for the purpose of investigation, escort or body guard services, or property loss prevention activities.

(12) "Private investigator agency" means a person or entity licensed under this chapter and engaged in the business of detecting, discovering, or revealing one or more of the following:

(a) Crime, criminals, or related information;

(b) The identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affilia-

tions, associations, transactions, acts, reputation, or character of any person or thing;

(c) The location, disposition, or recovery of lost or stolen property;

(d) The cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or to property;

(e) Evidence to be used before a court, board, officer, or investigative committee;

(f) Detecting the presence of electronic eavesdropping devices; or

(g) The truth or falsity of a statement or representation.

(13) "Qualifying agent" means an officer or manager of a corporation who meets the requirements set forth in this chapter for obtaining a private investigator agency license.

(14) "Sworn peace officer" means a person who is an employee of the federal government, the state, or a political subdivision, agency, or department branch of a municipality or other unit of local government, and has law enforcement powers. [1995 c 277 § 17; 1991 c 328 § 1.]

18.165.020 Exemptions. The requirements of this chapter do not apply to:

(1) A person who is employed exclusively or regularly by one employer and performs investigations solely in connection with the affairs of that employer, if the employer is not a private investigator agency;

(2) An officer or employee of the United States or of this state or a political subdivision thereof, while engaged in the performance of the officer's official duties;

(3) A person engaged exclusively in the business of obtaining and furnishing information about the financial rating of persons;

(4) An attorney at law while performing the attorney's duties as an attorney;

(5) A licensed collection agency or its employee, while acting within the scope of that person's employment and making an investigation incidental to the business of the agency;

(6) Insurers, agents, and insurance brokers licensed by the state, while performing duties in connection with insurance transacted by them;

(7) A bank subject to the jurisdiction of the *Washington state banking commission or the comptroller of currency of the United States, or a savings and loan association subject to the jurisdiction of this state or the federal home loan bank board;

(8) A licensed insurance adjuster performing the adjuster's duties within the scope of the adjuster's license;

(9) A secured creditor engaged in the repossession of the creditor's collateral, or a lessor engaged in the repossession of leased property in which it claims an interest;

(10) A person who is a forensic scientist, accident reconstructionist, or other person who performs similar functions and does not hold himself or herself out to be an investigator in any other capacity; or

(11) A person solely engaged in the business of securing information about persons or property from public records. [1995 c 277 § 18; 1991 c 328 § 2.]

*Reviser's note: Powers, duties, and functions of the department of general administration relating to financial institutions were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See chapter 43.320 RCW.

18.165.030 Private investigator license—Requirements. An applicant must meet the following minimum requirements to obtain a private investigator license:

(1) Be at least eighteen years of age;

(2) Be a citizen or resident alien of the United States;

(3) Not have been convicted of a crime in any jurisdiction, if the director determines that the applicant's particular crime directly relates to his or her capacity to perform the duties of a private investigator and the director determines that the license should be withheld to protect the citizens of Washington state. The director shall make her or his determination to withhold a license because of previous convictions notwithstanding the restoration of employment rights act, chapter 9.96A RCW;

(4) Be employed by or have an employment offer from a private investigator agency or be licensed as a private investigator agency;

(5) Submit a set of fingerprints;

(6) Pay the required nonrefundable fee for each application; and

(7) Submit a fully completed application that includes proper identification on a form prescribed by the director for each company of employment. [1995 c 277 § 19; 1991 c 328 § 3.]

18.165.040 Armed private investigator license—Requirements. (1) An applicant must meet the following minimum requirements to obtain an armed private investigator license:

(a) Be licensed as a private investigator;

(b) Be at least twenty-one years of age;

(c) Have a current firearms certificate issued by the commission;

(d) Have a license to carry a concealed pistol; and

(e) Pay the fee established by the director.

(2) The armed private investigator license may take the form of an endorsement to the private investigator license if deemed appropriate by the director. [1995 c 277 § 21; 1991 c 328 § 4.]

18.165.050 Private investigator agency license—Requirements, restrictions—Assignment or transfer. (1) In addition to meeting the minimum requirements to obtain a license as a private investigator, an applicant, or, in the case of a partnership or limited partnership, each partner, or, in the case of a corporation, the qualifying agent must meet the following additional requirements to obtain a private investigator agency license:

(a) Pass an examination determined by the director to measure the person's knowledge and competence in the private investigator agency business; or

(b) Have had at least three years' experience in investigative work or its equivalent as determined by the director. A year's experience means not less than two thousand hours of actual compensated work performed before the filing of an application. An applicant shall substantiate the experience by written certifications from previous employers. If the applicant is unable to supply written certifications from previous employers, applicants may offer written certifications from professional persons other than employers who,

based on personal professional knowledge, can substantiate the employment.

(2) An agency license issued pursuant to this section may not be assigned or transferred without prior written approval of the director.

(3) No license to own or operate a private investigator company may be issued to an applicant if the name of the company portrays the company as a public law enforcement agency, or in association with a public law enforcement agency, or includes the word "police." [1995 c 277 § 22; 1991 c 328 § 5.]

18.165.060 Armed private investigator license authority—Registration of firearms. (1) An armed private investigator license grants authority to the holder, while in the performance of his or her duties, to carry a firearm with which the holder has met the proficiency requirements established by the commission.

(2) All firearms carried by armed private investigators in the performance of their duties must be owned by the employer and, if required by law, must be registered with the proper government agency. [1995 c 277 § 23; 1991 c 328 § 6.]

18.165.070 Investigation of applicants. (1) Applications for licenses required under this chapter shall be filed with the director on a form provided by the director. The director may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria.

(2) After receipt of an application for a license, the director shall conduct an investigation to determine whether the facts set forth in the application are true and shall request that the Washington state patrol compare the fingerprints submitted with the application to fingerprint records available to the Washington state patrol. The Washington state patrol shall forward the fingerprints of applicants for an armed private investigator license to the federal bureau of investigation for a national criminal history records check. The director may require that fingerprint cards of licensees be periodically reprocessed to identify criminal convictions subsequent to registration.

(3) The director shall solicit comments from the chief law enforcement officer of the county and city or town in which the applicant's employer is located on issuance of a permanent private investigator license.

(4) A summary of the information acquired under this section, to the extent that it is public information, may be forwarded by the department to the applicant's employer. [1995 c 277 § 25; 1991 c 328 § 7.]

18.165.080 License cards and certificates—Issuance and requirements. (1) The director shall issue a private investigator license card to each licensed private investigator and an armed private investigator license card to each armed private investigator.

(a) The license card may not be used as security clearance.

(b) A private investigator shall carry the license card whenever he or she is performing the duties of a private investigator and shall exhibit the card upon request.

(c) An armed private investigator shall carry the license card whenever he or she is performing the duties of an armed private investigator and shall exhibit the card upon request.

(2) The director shall issue a license certificate to each licensed private investigator agency.

(a) Within seventy-two hours after receipt of the license certificate, the licensee shall post and display the certificate in a conspicuous place in the principal office of the licensee within the state.

(b) It is unlawful for any person holding a license certificate to knowingly and willfully post the license certificate upon premises other than those described in the license certificate or to materially alter a license certificate.

(c) Every advertisement by a licensee that solicits or advertises business shall contain the name of the licensee, the address of record, and the license number as they appear in the records of the director.

(d) The licensee shall notify the director within thirty days of any change in the licensee's officers or directors or any material change in the information furnished or required to be furnished to the director. [1995 c 277 § 26; 1991 c 328 § 8.]

18.165.090 Preassignment training and testing. (1) The director shall adopt rules establishing preassignment training and testing requirements. The director may establish, by rule, continuing education requirements for private investigators.

(2) The director shall consult with the private investigator industry and law enforcement before adopting or amending the preassignment training or continuing education requirements of this section. [1995 c 277 § 27; 1991 c 328 § 9.]

18.165.100 Agency license—Surety bond or certificate of insurance required. (1) No private investigator agency license may be issued under the provisions of this chapter unless the applicant files with the director a surety bond, executed by a surety company authorized to do business in this state, in the sum of ten thousand dollars conditioned to recover against the principal and its servants, officers, agents, and employees by reason of its wrongful or illegal acts in conducting business licensed under this chapter. The bond shall be made payable to the state of Washington, and anyone so injured by the principal or its servants, officers, agents, or employees shall have the right and shall be permitted to sue directly upon this obligation in his or her own name. This obligation shall be subject to successive suits for recovery until the face amount is completely exhausted.

(2) Every licensee must at all times maintain on file with the director the surety bond required by this section in full force and effect. Upon failure by a licensee to do so, the director shall suspend the licensee's license and shall not reinstate the license until this requirement is met.

(3) In lieu of posting bond, a licensed private investigator agency may file with the director a certificate of insurance as evidence that it has comprehensive general liability coverage of at least twenty-five thousand dollars for bodily

or personal injury and twenty-five thousand dollars for property damage.

(4) The director may approve alternative methods of guaranteeing financial responsibility. [1995 c 277 § 28; 1991 c 328 § 10.]

18.165.110 Regulatory provisions exclusive—Authority of the state and political subdivisions. (1) The provisions of this chapter relating to the licensing for regulatory purposes of private investigators, armed private investigators, and private investigator agencies are exclusive. No governmental subdivision of this state may enact any laws or rules licensing for regulatory purposes such persons, except as provided in subsections (2) and (3) of this section.

(2) This section shall not be construed to prevent a political subdivision of this state from levying a business fee, business and occupation tax, or other tax upon private investigator agencies if such fees or taxes are levied by the state on other types of businesses within its boundaries.

(3) This section shall not be construed to prevent this state or a political subdivision of this state from licensing for regulatory purposes private investigator agencies with respect to activities that are not regulated under this chapter. [1995 c 277 § 29; 1991 c 328 § 11.]

18.165.120 Out-of-state private investigators operating across state lines. Private investigators or armed private investigators whose duties require them to operate across state lines may operate in this state for up to thirty days per year, if they are properly registered and certified in another state with training and certification requirements that the director finds are at least equal to the requirements of this state. [1995 c 277 § 30; 1991 c 328 § 12.]

18.165.130 Required notice of certain occurrences. (1) A private investigator agency shall notify the director within thirty days after the death or termination of employment of any employee who is a licensed private investigator or armed private investigator by returning the license to the department with the word ["terminated"] written across the face of the license, the date of termination, and the signature of the principal of the private investigator company.

(2) A private investigator agency shall notify the director within seventy-two hours and the chief law enforcement officer of the county, city, or town in which the agency is located immediately upon receipt of information affecting a licensed private investigator's or armed private investigator's continuing eligibility to hold a license under the provisions of this chapter.

(3) A private investigator company shall notify the local law enforcement agency whenever an employee who is an armed private investigator discharges his or her firearm while on duty other than on a supervised firearm range. The notification shall be made within ten business days of the date the firearm is discharged. [1995 c 277 § 31; 1991 c 328 § 13.]

18.165.140 Out-of-state private investigators—Application—Fee—Temporary assignment. (1) Any person from another state that the director determines has selection, training, and other requirements at least equal to

those required by this chapter, and who holds a valid license, registration, identification, or similar card issued by the other state, may apply for a private investigator license card or armed private investigator license card on a form prescribed by the director. Upon receipt of an application fee to be determined by the director, the director shall issue the individual a private investigator license card or armed private investigator license card.

(2) A valid license, registration, identification, or similar card issued by any other state of the United States is valid in this state for a period of ninety days, but only if the licensee is on temporary assignment for the same employer that employs the licensee in the state in which he or she is a permanent resident.

(3) A person from another state on temporary assignment in Washington may not solicit business in this state or represent himself or herself as licensed in this state. [1995 c 277 § 32; 1991 c 328 § 14.]

18.165.150 Licenses required—Use of public law enforcement insignia prohibited—Penalties—Enforcement. (1) After June 30, 1992, any person who performs the functions and duties of a private investigator in this state without being licensed in accordance with the provisions of this chapter, or any person presenting or attempting to use as his or her own the license of another, or any person who gives false or forged evidence of any kind to the director in obtaining a license, or any person who falsely impersonates any other licensee, or any person who attempts to use an expired or revoked license, or any person who violates any of the provisions of this chapter is guilty of a gross misdemeanor.

(2) After January 1, 1992, a person is guilty of a gross misdemeanor if he or she owns or operates a private investigator agency in this state without first obtaining a private investigator agency license.

(3) After June 30, 1992, the owner or qualifying agent of a private investigator agency is guilty of a gross misdemeanor if he or she employs any person to perform the duties of a private investigator without the employee having in his or her possession a permanent private investigator license issued by the department. This shall not preclude a private investigator agency from requiring applicants to attend preassignment training classes or from paying wages for attending the required preassignment training classes.

(4) After June 30, 1992, a person is guilty of a gross misdemeanor if he or she performs the functions and duties of an armed private investigator in this state unless the person holds a valid armed private investigator license issued by the department.

(5) After June 30, 1992, it is a gross misdemeanor for a private investigator agency to hire, contract with, or otherwise engage the services of an unlicensed armed private investigator knowing that the private investigator does not have a valid armed private investigator license issued by the director.

(6) It is a gross misdemeanor for a person to possess or use any vehicle or equipment displaying the word "police" or "law enforcement officer" or having any sign, shield, marking, accessory, or insignia that indicates that the

equipment or vehicle belongs to a public law enforcement agency.

(7) It is the duty of all officers of the state and political subdivisions thereof to enforce the provisions of this chapter. The attorney general shall act as legal adviser of the director, and render such legal assistance as may be necessary in carrying out the provisions of this chapter. [1995 c 277 § 33; 1991 c 328 § 15.]

18.165.155 Transfer of license. A licensee who transfers from one company to another must submit a transfer application on a form prescribed by the director along with a transfer fee established by the director. [1995 c 277 § 20.]

18.165.160 Prohibited acts. The following acts are prohibited and constitute grounds for disciplinary action, assessing administrative penalties, or denial, suspension, or revocation of any license under this chapter, as deemed appropriate by the director:

(1) Knowingly violating any of the provisions of this chapter or the rules adopted under this chapter;

(2) Knowingly making a material misstatement or omission in the application for or renewal of a license or firearms certificate, including falsifying requested identification information;

(3) Not meeting the qualifications set forth in RCW 18.165.030, 18.165.040, or 18.165.050;

(4) Failing to return immediately on demand a firearm issued by an employer;

(5) Carrying a firearm in the performance of his or her duties if not the holder of a valid armed private investigator license, or carrying a firearm not meeting the provisions of this chapter while in the performance of his or her duties;

(6) Failing to return immediately on demand company identification, badges, or other items issued to the private investigator by an employer;

(7) Making any statement that would reasonably cause another person to believe that the private investigator is a sworn peace officer;

(8) Divulging confidential information obtained in the course of any investigation to which he or she was assigned;

(9) Acceptance of employment that is adverse to a client or former client and relates to a matter about which a licensee has obtained confidential information by reason of or in the course of the licensee's employment by the client;

(10) Conviction of a gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended;

(11) Advertising that is false, fraudulent, or misleading;

(12) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(13) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(14) Failure to cooperate with the director by:

(a) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation for disciplinary action, denial, suspension, or revocation of a license under this chapter;

(b) Not furnishing in writing a full and complete explanation covering the matter contained in a complaint filed with the department; or

(c) Not responding to subpoenas issued by the director, whether or not the recipient of the subpoena is the accused in the proceeding;

(15) Failure to comply with an order issued by the director or an assurance of discontinuance entered into with the director;

(16) Aiding or abetting an unlicensed person to practice if a license is required;

(17) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(18) Failure to adequately supervise employees to the extent that the public health or safety is at risk;

(19) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's authorized representative, or by the use of threats or harassment against any client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

(20) Assigning or transferring any license issued pursuant to the provisions of this chapter, except as provided in RCW 18.165.050;

(21) Assisting a client to locate, trace, or contact a person when the investigator knows that the client is prohibited by any court order from harassing or contacting the person whom the investigator is being asked to locate, trace, or contact, as it pertains to domestic violence, stalking, or minor children;

(22) Failure to maintain bond or insurance; or

(23) Failure to have a qualifying principal in place. [1995 c 277 § 34; 1991 c 328 § 16.]

18.165.165 Display of firearms while soliciting clients. No licensee, employee or agent of a licensee, or anyone accompanying a licensee, employee, or agent may display a firearm while soliciting a client. [1995 c 277 § 24.]

18.165.170 Authority of director. The director has the following authority in administering this chapter:

(1) To adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

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

(3) To take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;

(4) To compel attendance of witnesses at hearings;

(5) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews;

(6) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the director;

(7) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the director or the director's designee shall make the final decision in the hearing;

(8) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(9) To adopt standards of professional conduct or practice;

(10) In the event of a finding of unprofessional conduct by an applicant or license holder, to impose sanctions against a license applicant or license holder as provided by this chapter;

(11) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action;

(12) To designate individuals authorized to sign subpoenas and statements of charges;

(13) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter;

(14) To compel attendance of witnesses at hearings; and

(15) To assess administrative penalties for violations of law, rules, or regulations. [1995 c 277 § 35; 1991 c 328 § 17.]

18.165.180 Complaints—Investigation—Immunity.

A person, including but not limited to consumers, licensees, corporations, organizations, and state and local governmental agencies, may submit a written complaint to the department charging a license holder or applicant with unprofessional or unlawful conduct and specifying the grounds for the charge. If the director determines that the complaint merits investigation, or if the director has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional or unlawful conduct, the director shall investigate to determine if there has been unprofessional or unlawful conduct. A person who files a complaint under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint. [1995 c 277 § 36; 1991 c 328 § 18.]

18.165.190 Violations—Statement of charges—Hearings. (1) If the director determines, upon investigation, that there is reason to believe a violation of this chapter has occurred, a statement of charges shall be prepared and served upon the license holder or applicant and notice of this

action given to the owner or qualifying agent of the employing private investigator agency. The statement of charges shall be accompanied by a notice that the license holder or applicant may request a hearing to contest the charges. The license holder or applicant must file a request for hearing with the department within twenty days after being served the statement of charges. The failure to request a hearing constitutes a default, whereupon the director may enter an order pursuant to RCW 34.05.440.

(2) If a hearing is requested, the time of the hearing shall be scheduled but the hearing shall not be held earlier than thirty days after service of the charges upon the license holder or applicant. A notice of hearing shall be issued at least twenty days prior to the hearing, specifying the time, date, and place of the hearing. [1995 c 277 § 37; 1991 c 328 § 19.]

18.165.200 Application of administrative procedure act to hearings. The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the administrative procedure act, govern all hearings before the director. [1991 c 328 § 20.]

18.165.210 Inability to practice by reason of a mental or physical condition—Statement of charges—Hearing—Sanctions—Mental or physical examinations—Presumed consent for examination. (1) If the director believes a license holder or applicant may be unable to practice with reasonable skill and safety to the public by reason of any mental or physical condition, a statement of charges shall be served on the license holder or applicant and notice shall also be issued providing an opportunity for a hearing. The hearing shall be limited to the sole issue of the capacity of the license holder or applicant to practice with reasonable skill or safety. If the director determines that the license holder or applicant is unable to practice with reasonable skill and safety for one of the reasons stated in this subsection, the director shall impose such sanctions as are deemed necessary to protect the public.

(2) In investigating or adjudicating a complaint or report that a license holder or applicant may be unable to practice with reasonable skill or safety by reason of a mental or physical condition, the department may require a license holder or applicant to submit to a mental or physical examination by one or more licensed or certified health professionals designated by the director. The cost of the examinations ordered by the department shall be paid by the department. In addition to any examinations ordered by the department, the licensee may submit physical or mental examination reports from licensed or certified health professionals of the license holder's or applicant's choosing and expense. Failure of the license holder or applicant to submit to examination when directed constitutes grounds for immediate suspension or withholding of the license, consequent upon which a default and final order may be entered without the taking of testimony or presentations of evidence, unless the failure was due to circumstances beyond the person's control. A determination by a court of competent jurisdiction that a license holder or applicant is mentally incompetent or mentally ill is presumptive evidence of the license holder's or applicant's inability to practice with

reasonable skill and safety. An individual affected under this section shall at reasonable intervals be afforded an opportunity to demonstrate that the individual can resume competent practice with reasonable skill and safety to the public.

(3) For the purpose of subsection (2) of this section, an applicant or license holder governed by this chapter, by making application, practicing, or filing a license renewal, is deemed to have given consent to submit to a mental, physical, or psychological examination if directed in writing by the department and further to have waived all objections to the admissibility or use of the examining health professional's testimony or examination reports by the director on the ground that the testimony or reports constitute hearsay or privileged communications. [1991 c 328 § 21.]

18.165.220 Unprofessional, unlawful conduct or inability to practice—Penalties. Upon a finding that a license holder or applicant has committed unprofessional or unlawful conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the director may issue an order providing for one or any combination of the following:

- (1) Revocation of the license;
- (2) Suspension of the license for a fixed or indefinite term;
- (3) Restriction or limitation of the practice;
- (4) Requiring the satisfactory completion of a specific program of remedial education or treatment;
- (5) Monitoring of the practice by a supervisor approved by the director;
- (6) Censure or reprimand;
- (7) Compliance with conditions of probation for a designated period of time;
- (8) Withholding a license request;
- (9) Other corrective action;
- (10) Refund of fees billed to and collected from the consumer; or
- (11) Assessing administrative penalties.

Any of the actions under this section may be totally or partly stayed by the director. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant. [1995 c 277 § 38; 1991 c 328 § 22.]

18.165.230 Enforcement of orders for payment of fines. If an order for payment of a fine is made as a result of a hearing and timely payment is not made as directed in the final order, the director may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement shall be in addition to any other rights the director may have as to a licensee ordered to pay a fine but shall not be construed to limit a licensee's ability to seek judicial review.

In an action for enforcement of an order of payment of a fine, the director's order is conclusive proof of the validity of the order of payment of a fine and the terms of payment. [1991 c 328 § 23.]

18.165.240 Unlicensed practice—Complaints—Director's authority—Injunctions—Penalty. (1) The

director shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by this chapter. In the investigation of the complaints, the director shall have the same authority as provided the director under RCW 18.165.190. The director shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection. If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. The cease and desist order shall not relieve the person practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders.

(2) The attorney general, a county prosecuting attorney, the director, or any person may, in accordance with the law of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by this chapter without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(3) Unlicensed practice of a profession or operating a business for which a license is required by this chapter, unless otherwise exempted by law, constitutes a gross misdemeanor. [1995 c 277 § 39; 1991 c 328 § 24.]

18.165.250 Violation of injunction—Penalty. A person or business that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be paid to the department. For the purpose of this section, the superior court issuing any injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1991 c 328 § 25.]

18.165.260 Immunity. The director or individuals acting on the director's behalf are immune from suit in any action, civil or criminal, based on disciplinary proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter. [1991 c 328 § 26.]

18.165.270 Application of administrative procedure act to acts of the director. The director, in implementing and administering the provisions of this chapter, shall act in accordance with the administrative procedure act, chapter 34.05 RCW. [1991 c 328 § 27.]

18.165.280 License or certificate suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the license or certificate of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license or certificate shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure or certification during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 22.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.165.900 Severability—1991 c 328. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 328 § 29.]

18.165.901 Severability—Effective date—1995 c 277. See RCW 18.170.901 and 18.170.902.

Chapter 18.170 SECURITY GUARDS

Sections

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- 18.170.901 Severability—1995 c 277.
- 18.170.902 Effective date—1995 c 277.

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

(1) "Armed private security guard" means a private security guard who has a current firearms certificate issued by the commission and is licensed as an armed private security guard under this chapter.

(2) "Armored vehicle guard" means a person who transports in an armored vehicle under armed guard, from one place to another place, valuables, jewelry, currency, documents, or any other item that requires secure delivery.

(3) "Burglar alarm response runner" means a person employed by a private security company to respond to burglar alarm system signals.

(4) "Burglar alarm system" means a device or an assembly of equipment and devices used to detect or signal unauthorized intrusion, movement, or exit at a protected premises, other than in a vehicle, to which police or private security guards are expected to respond.

(5) "Chief law enforcement officer" means the elected or appointed police administrator of a municipal, county, or state police or sheriff's department that has full law enforcement powers in its jurisdiction.

(6) "Commission" means the criminal justice training commission established in chapter 43.101 RCW.

(7) "Department" means the department of licensing.

(8) "Director" means the director of the department of licensing.

(9) "Employer" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent of any of the foregoing that employs or seeks to enter into an arrangement to employ any person as a private security guard.

(10) "Firearms certificate" means the certificate issued by the commission.

(11) "Licensee" means a person granted a license required by this chapter.

(12) "Person" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent or employee of any of the foregoing.

(13) "Principal corporate officer" means the president, vice-president, treasurer, secretary, comptroller, or any other person who performs the same functions for the corporation as performed by these officers.

(14) "Private security company" means a person or entity licensed under this chapter and engaged in the business of providing the services of private security guards on a contractual basis.

(15) "Private security guard" means an individual who is licensed under this chapter and principally employed as or typically referred to as one of the following:

- (a) Security officer or guard;
- (b) Patrol or merchant patrol service officer or guard;
- (c) Armed escort or bodyguard;
- (d) Armored vehicle guard;
- (e) Burglar alarm response runner; or
- (f) Crowd control officer or guard.

(16) "Qualifying agent" means an officer or manager of a corporation who meets the requirements set forth in this chapter for obtaining a license to own or operate a private security company.

(17) "Sworn peace officer" means a person who is an employee of the federal government, the state, a political subdivision, agency, or department branch of a municipality, or other unit of local government, and has law enforcement powers. [1991 c 334 § 1.]

18.170.020 Exemptions. The requirements of this chapter do not apply to:

(1) A person who is employed exclusively or regularly by one employer and performs the functions of a private security guard solely in connection with the affairs of that employer, if the employer is not a private security company;

(2) A sworn peace officer while engaged in the performance of the officer's official duties; or

(3) A sworn peace officer while employed by any person to engage in off-duty employment as a private security guard, but only if the employment is approved by the chief law enforcement officer of the jurisdiction where the employment takes place and the sworn peace officer does not employ, contract with, or broker for profit other persons to assist him or her in performing the duties related to his or her private employer. [1991 c 334 § 2.]

18.170.030 Security guard license—Requirements. An applicant must meet the following minimum requirements to obtain a private security guard license:

- (1) Be at least eighteen years of age;
- (2) Be a citizen of the United States or a resident alien;

(3) Not have been convicted of a crime in any jurisdiction, if the director determines that the applicant's particular crime directly relates to his or her capacity to perform the duties of a private security guard, and the director determines that the license should be withheld to protect the citizens of Washington state. The director shall make her or his determination to withhold a license because of previous convictions notwithstanding the restoration of employment rights act, chapter 9.96A RCW;

(4) Be employed by or have an employment offer from a licensed private security company or be licensed as a private security company;

(5) Satisfy the training requirements established by the director;

- (6) Submit a set of fingerprints;

(7) Pay the required nonrefundable fee for each application; and

(8) Submit a fully completed application that includes proper identification on a form prescribed by the director for each company of employment. [1995 c 277 § 1; 1991 c 334 § 3.]

18.170.040 Armed private security guard license—Requirements. (1) An applicant must meet the following minimum requirements to obtain an armed private security guard license:

- (a) Be licensed as a private security guard;
- (b) Be at least twenty-one years of age;
- (c) Have a current firearms certificate issued by the commission; and

(d) Pay the fee established by the director.

(2) An armed private security guard license may take the form of an endorsement to the security guard license if deemed appropriate by the director. [1991 c 334 § 4.]

18.170.050 Armed private security guard license authority—Registration of firearms. (1) An armed private security guard license grants authority to the holder, while in the performance of his or her duties, to carry a firearm with which the holder has met the proficiency requirements established by the commission.

(2) All firearms carried by armed private security guards in the performance of their duties must be owned or leased by the employer and, if required by law, must be registered with the proper government agency. [1991 c 334 § 5.]

18.170.060 Private security company license—Requirements, restrictions—Qualifying agent—Assignment or transfer of license. (1) In addition to meeting the minimum requirements to obtain a license as a private security guard, an applicant, or, in the case of a partnership, each partner, or, in the case of a corporation, the qualifying agent must meet the following requirements to obtain a license to own or operate a private security company:

(a) Possess three years' experience as a manager, supervisor, or administrator in the private security business or a related field approved by the director, or be at least twenty-one years of age and pass an examination determined by the director to measure the person's knowledge and competence in the private security business;

(b) Meet the insurance requirements of this chapter; and

(c) Pay any additional fees established by the director.

(2) If the qualifying agent upon whom the licensee relies to comply with subsection (1) of this section ceases to perform his or her duties on a regular basis, the licensee must promptly notify the director by certified or registered mail. Within sixty days of sending notification to the director, the licensee must obtain a substitute qualifying agent who meets the requirements of this section. The director may extend the period for obtaining a substitute qualifying agent.

(3) A company license issued pursuant to this section may not be assigned or transferred without prior written approval of the director.

(4) No license to own or operate a private security guard company may be issued to an applicant if the name of the company portrays the company as a public law enforcement agency, or in association with a public law enforcement agency, or includes the word "police." [1995 c 277 § 4; 1991 c 334 § 6.]

18.170.070 License cards and certificates—Issuance and requirements. (1) The director shall issue a private security guard license card to each licensed private security guard and an armed private security guard license card to each armed private security guard.

(a) The license card may not be used as security clearance.

(b) A private security guard shall carry the license card whenever he or she is performing the duties of a private security guard and shall exhibit the card upon request.

(c) An armed private security guard shall carry the license card whenever he or she is performing the duties of an armed private security guard and shall exhibit the card upon request.

(2) The director shall issue a license certificate to each licensed private security company.

(a) Within seventy-two hours after receipt of the license certificate, the licensee shall post and display the certificate in a conspicuous place in the principal office of the licensee within the state.

(b) It is unlawful for any person holding a license certificate to knowingly and willfully post the license certificate upon premises other than those described in the license certificate or to materially alter a license certificate.

(c) Every advertisement by a licensee that solicits or advertises business shall contain the name of the licensee, the address of record, and the license number as they appear in the records of the director.

(d) The licensee shall notify the director within thirty days of any change in the licensee's officers or directors or any material change in the information furnished or required to be furnished to the director. [1995 c 277 § 5; 1991 c 334 § 7.]

18.170.080 Licensed private security companies—Certificate of insurance required. A licensed private security company shall file and maintain with the director a certificate of insurance as evidence that it has comprehensive general liability coverage of at least twenty-five thousand dollars for bodily or personal injury and twenty-five thousand dollars for property damage. [1991 c 334 § 8.]

18.170.090 Temporary registration cards—Requirements—Expiration—Suspension. (1) A licensed private security company may issue an employee a temporary registration card of the type and form provided by the director, but only after the employee has completed preassignment training and submitted a full and complete application for a private security guard license to the department. The application must be mailed to the department within three business days after issuance of the temporary registration card. The temporary registration card is valid for a maximum period of sixty days and does not authorize a person to carry firearms during the performance

of his or her duties as a private security guard. The temporary registration card permits the applicant to perform the duties of a private security guard for the issuing licensee.

(2) Upon expiration of a temporary registration card or upon the receipt of a permanent registration card or notification from the department that a permanent license is being withheld from an applicant, the applicant shall surrender his or her temporary registration card to the licensee.

(3) The director may suspend the authority to use temporary registration cards for a period of one year for any private security guard company that fails to comply with the provisions of this section. After the suspension period, the director may reinstate the company's use of temporary registration cards after receipt of a written request from the company. [1995 c 277 § 6; 1991 c 334 § 9.]

18.170.100 Preassignment training and testing. (1) The director shall adopt rules establishing preassignment training and testing requirements, which shall include a minimum of four hours of classes. The director may establish, by rule, continuing education requirements for private security guards.

(2) The director shall consult with the private security industry and law enforcement before adopting or amending the preassignment training or continuing education requirements of this section. [1995 c 277 § 7; 1991 c 334 § 10.]

18.170.110 Required notice of certain occurrences. (1) A private security company shall notify the director within thirty days after the death or termination of employment of any employee who is a licensed private security guard or armed private security guard by returning the license to the department with the word ["]terminated["] written across the face of the license, the date of termination, and the signature of the principal or the principal's designee of the private security guard company.

(2) A private security company shall notify the department within seventy-two hours and the chief law enforcement officer of the county, city, or town in which the private security guard or armed private security guard was last employed immediately upon receipt of information affecting his or her continuing eligibility to hold a license under the provisions of this chapter.

(3) A private security guard company shall notify the local law enforcement agency whenever an employee who is an armed private security guard discharges his or her firearm while on duty other than on a supervised firearm range. The notification shall be made within ten business days of the date the firearm is discharged. [1995 c 277 § 8; 1991 c 334 § 11.]

18.170.120 Out-of-state licensees—Application—Fee—Temporary assignment. (1) Any person from another state that the director determines has selection, training, and other requirements at least equal to those required by this chapter, and who holds a valid license, registration, identification, or similar card issued by the other state, may apply for a private security guard license card or armed private security guard license card on a form prescribed by the director. Upon receipt of a processing fee to be determined by the director, the director shall issue the individual a

private security guard license card or armed private security guard license card.

(2) A valid private security guard license, registration, identification, or similar card issued by any other state of the United States is valid in this state for a period of ninety days, but only if the licensee is on temporary assignment as a private security guard for the same employer that employs the licensee in the state in which he or she is a permanent resident.

(3) A person from another state on temporary assignment in Washington may not solicit business in this state or represent himself or herself as licensed in this state. [1995 c 277 § 9; 1991 c 334 § 12.]

18.170.130 Investigation of applicants. (1) Applications for licenses required under this chapter shall be filed with the director on a form provided by the director. The director may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria.

(2) After receipt of an application for a license, the director shall conduct an investigation to determine whether the facts set forth in the application are true and shall request that the Washington state patrol compare the fingerprints submitted with the application to fingerprint records available to the Washington state patrol. The Washington state patrol shall forward the fingerprints of applicants for an armed private security guard license to the Federal Bureau of Investigation for a national criminal history records check. The director may require that fingerprint cards of licensees be periodically reprocessed to identify criminal convictions subsequent to registration.

(3) The director shall solicit comments from the chief law enforcement officer of the county and city or town in which the applicant's employer is located on issuance of a permanent private security guard license.

(4) A summary of the information acquired under this section, to the extent that it is public information, shall be forwarded by the department to the applicant's employer. [1995 c 277 § 10; 1991 c 334 § 13.]

18.170.140 Regulatory provisions exclusive—Authority of the state and political subdivisions. (1) The provisions of this chapter relating to the licensing for regulatory purposes of private security guards, armed private security guards, and private security companies are exclusive. No governmental subdivision of this state may enact any laws or rules licensing for regulatory purposes such persons, except as provided in subsections (2) and (3) of this section.

(2) This section shall not be construed to prevent a political subdivision of this state from levying a business license fee, business and occupation tax, or other tax upon private security companies if such fees or taxes are levied on other types of businesses within its boundaries.

(3) This section shall not be construed to prevent this state or a political subdivision of this state from licensing or regulating private security companies with respect to activities performed or offered that are not of a security nature. [1991 c 334 § 14.]

18.170.150 Out-of-state private security guards operating across state lines. Private security guards or armed private security guards whose duties require them to operate across state lines may operate in this state if they are properly registered and certified in another state with training, insurance, and certification requirements that the director finds are at least equal to the requirements of this state. [1991 c 334 § 15.]

18.170.160 Licenses required—Use of public law enforcement insignia prohibited—Penalties—Enforcement. (1) After June 30, 1992, any person who performs the functions and duties of a private security guard in this state without being licensed in accordance with this chapter, or any person presenting or attempting to use as his or her own the license of another, or any person who gives false or forged evidence of any kind to the director in obtaining a license, or any person who falsely impersonates any other licensee, or any person who attempts to use an expired or revoked license, or any person who violates any of the provisions of this chapter is guilty of a gross misdemeanor.

(2) After January 1, 1992, a person is guilty of a gross misdemeanor if he or she owns or operates a private security company in this state without first obtaining a private security company license.

(3) After June 30, 1992, the owner or qualifying agent of a private security company is guilty of a gross misdemeanor if he or she employs an unlicensed person to perform the duties of a private security guard without issuing the employee a valid temporary registration card if the employee does not have in his or her possession a permanent private security guard license issued by the department. This subsection does not preclude a private security company from requiring applicants to attend preassignment training classes or from paying wages for attending the required preassignment training classes.

(4) After June 30, 1992, a person is guilty of a gross misdemeanor if he or she performs the functions and duties of an armed private security guard in this state unless the person holds a valid armed private security guard license issued by the department.

(5) After June 30, 1992, it is a gross misdemeanor for a private security company to hire, contract with, or otherwise engage the services of an unlicensed armed private security guard knowing that he or she does not have a valid armed private security guard license issued by the director.

(6) It is a gross misdemeanor for a person to possess or use any vehicle or equipment displaying the word "police" or "law enforcement officer" or having any sign, shield, marking, accessory, or insignia that indicates that the equipment or vehicle belongs to a public law enforcement agency.

(7) It is a gross misdemeanor for any person who performs the functions and duties of a private security guard to use any name that includes the word "police" or "law enforcement" or that portrays the individual or a business as a public law enforcement agency.

(8) It is the duty of all officers of the state and political subdivisions thereof to enforce the provisions of this chapter. The attorney general shall act as legal adviser of the director,

and render such legal assistance as may be necessary in carrying out the provisions of this chapter. [1995 c 277 § 11; 1991 c 334 § 16.]

18.170.163 License or certificate suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the license or certificate of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license or certificate shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure or certification during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 23.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.170.165 Transfer of license. A licensee who transfers from one company to another must submit a transfer application on a form prescribed by the director along with a transfer fee established by the director. [1995 c 277 § 2.]

18.170.170 Prohibited acts. The following acts are prohibited and constitute grounds for disciplinary action, assessing administrative penalties, or denial, suspension, or revocation of any license under this chapter, as deemed appropriate by the director:

- (1) Knowingly violating any of the provisions of this chapter or the rules adopted under this chapter;
- (2) Practicing fraud, deceit, or misrepresentation in any of the private security activities covered by this chapter;
- (3) Knowingly making a material misstatement or omission in the application for a license or firearms certificate;
- (4) Not meeting the qualifications set forth in RCW 18.170.030, 18.170.040, or 18.170.060;
- (5) Failing to return immediately on demand a firearm issued by an employer;
- (6) Carrying a firearm in the performance of his or her duties if not the holder of a valid armed private security guard license, or carrying a firearm not meeting the provisions of this chapter while in the performance of his or her duties;
- (7) Failing to return immediately on demand any uniform, badge, or other item of equipment issued to the private security guard by an employer;
- (8) Making any statement that would reasonably cause another person to believe that the private security guard is a sworn peace officer;

(9) Divulging confidential information that may compromise the security of any premises, or valuables shipment, or any activity of a client to which he or she was assigned;

(10) Conviction of a gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended;

(11) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;

(12) Advertising that is false, fraudulent, or misleading;

(13) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(14) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(15) Failure to cooperate with the director by:

(a) Not furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation for disciplinary action, denial, suspension, or revocation of a license under this chapter;

(b) Not furnishing in writing a full and complete explanation covering the matter contained in a complaint filed with the department; or

(c) Not responding to subpoenas issued by the director, whether or not the recipient of the subpoena is the accused in the proceeding;

(16) Failure to comply with an order issued by the director or an assurance of discontinuance entered into with the disciplining authority;

(17) Aiding or abetting an unlicensed person to practice if a license is required;

(18) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(19) Failure to adequately supervise employees to the extent that the public health or safety is at risk;

(20) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's authorized representative, or by the use of threats or harassment against a client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

(21) Assigning or transferring any license issued pursuant to the provisions of this chapter, except as provided in RCW 18.170.060;

(22) Failure to maintain insurance; and

(23) Failure to have a qualifying principal in place. [1995 c 277 § 12; 1991 c 334 § 17.]

18.170.175 Display of firearms while soliciting clients. No licensee, employee or agent of a licensee, or anyone accompanying a licensee, employee, or agent may display a firearm while soliciting a client. [1995 c 277 § 3.]

18.170.180 Authority of director. The director has the following authority in administering this chapter:

(1) To adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

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

(3) To take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;

(4) To compel attendance of witnesses at hearings;

(5) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews;

(6) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the director;

(7) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the director or the director's designee shall make the final decision in the hearing;

(8) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(9) To adopt standards of professional conduct or practice;

(10) In the event of a finding of unprofessional conduct by an applicant or license holder, to impose sanctions against a license applicant or license holder as provided by this chapter;

(11) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action;

(12) To designate individuals authorized to sign subpoenas and statements of charges;

(13) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter; and

(14) To compel the attendance of witnesses at hearings. [1991 c 334 § 18.]

18.170.190 Complaints—Investigation—Immunity. A person, including but not limited to consumers, licensees, corporations, organizations, and state and local governmental agencies, may submit a written complaint to the department charging a license holder or applicant with unprofessional or unlawful conduct and specifying the grounds for this charge. If the director determines that the complaint merits investigation, or if the director has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional or unlawful conduct, the director shall investigate to determine if there has been unprofession-

al or unlawful conduct. A person who files a complaint under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint. [1995 c 277 § 14; 1991 c 334 § 19.]

18.170.200 Violations—Statement of charges—Hearings. (1) If the director determines, upon investigation, that there is reason to believe a violation of this chapter has occurred, a statement of charges shall be prepared and served upon the license holder or applicant and notice of this action given to the owner or qualifying agent of the employing private security company. The statement of charges shall be accompanied by a notice that the license holder or applicant may request a hearing to contest the charges. The license holder or applicant must file a request for hearing with the department within twenty days after being served the statement of charges. The failure to request a hearing constitutes a default, whereupon the director may enter an order pursuant to RCW 34.05.440.

(2) If a hearing is requested, the time of the hearing shall be scheduled but the hearing shall not be held earlier than thirty days after service of the charges upon the license holder or applicant. A notice of hearing shall be issued at least twenty days prior to the hearing, specifying the time, date, and place of the hearing. [1991 c 334 § 20.]

18.170.210 Application of administrative procedure act to hearings. The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the administrative procedure act, govern all hearings before the director. [1991 c 334 § 21.]

18.170.220 Inability to practice by reason of a mental or physical condition—Statement of charges—Hearing—Sanctions—Examinations—Presumed consent.

(1) If the director believes a license holder or applicant may be unable to practice with reasonable skill and safety to the public by reason of a mental or physical condition, a statement of charges shall be served on the license holder or applicant and notice shall also be issued providing an opportunity for a hearing. The hearing shall be limited to the sole issue of the capacity of the license holder or applicant to practice with reasonable skill or safety. If the director determines that the license holder or applicant is unable to practice with reasonable skill and safety for one of the reasons stated in this subsection, the director shall impose such sanctions as are deemed necessary to protect the public.

(2) In investigating or adjudicating a complaint or report that a license holder or applicant may be unable to practice with reasonable skill or safety by reason of a mental or physical condition, the department may require a license holder or applicant to submit to a mental or physical examination by one or more licensed or certified health professionals designated by the director. The cost of the examinations ordered by the department shall be paid by the department. In addition to any examinations ordered by the department, the licensee may submit physical or mental examination reports from licensed or certified health professionals of the license holder's or applicant's choosing and

expense. Failure of the license holder or applicant to submit to examination when directed constitutes grounds for immediate suspension or withholding of the license, consequent upon which a default and final order may be entered without the taking of testimony or presentations of evidence, unless the failure was due to circumstances beyond the person's control. A determination by a court of competent jurisdiction that a license holder or applicant is mentally incompetent or mentally ill is presumptive evidence of the license holder's or applicant's inability to practice with reasonable skill and safety. An individual affected under this section shall at reasonable intervals be afforded an opportunity to demonstrate that the individual can resume competent practice with reasonable skill and safety to the public.

(3) For the purpose of subsection (2) of this section, an applicant or license holder governed by this chapter, by making application, practicing, or filing a license renewal, is deemed to have given consent to submit to a mental, physical, or psychological examination if directed in writing by the department and further to have waived all objections to the admissibility or use of the examining health professional's testimony or examination reports by the director on the ground that the testimony or reports constitute hearsay or privileged communications. [1991 c 334 § 22.]

18.170.230 Unprofessional conduct or inability to practice—Penalties. Upon a finding that a license holder or applicant has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the director may issue an order providing for one or any combination of the following:

- (1) Revocation of the license;
- (2) Suspension of the license for a fixed or indefinite term;
- (3) Restriction or limitation of the practice;
- (4) Requiring the satisfactory completion of a specific program of remedial education or treatment;
- (5) Monitoring of the practice by a supervisor approved by the director;
- (6) Censure or reprimand;
- (7) Compliance with conditions of probation for a designated period of time;
- (8) Withholding a license request;
- (9) Other corrective action;
- (10) Refund of fees billed to and collected from the consumer; or
- (11) The assessment of administrative penalties.

Any of the actions under this section may be totally or partly stayed by the director. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant. [1995 c 277 § 15; 1991 c 334 § 23.]

18.170.240 Enforcement of orders for payment of fines. If an order for payment of a fine is made as a result of a hearing and timely payment is not made as directed in the final order, the director may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement shall be in addition to any other rights the director may have as to a

licensee ordered to pay a fine but shall not be construed to limit a licensee's ability to seek judicial review.

In an action for enforcement of an order of payment of a fine, the director's order is conclusive proof of the validity of the order of payment of a fine and the terms of payment. [1991 c 334 § 24.]

18.170.250 Unlicensed practice—Complaints—Director's authority—Injunctions—Penalty. (1) The director shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by this chapter. In the investigation of the complaints, the director shall have the same authority as provided the director under RCW 18.170.190. The director shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection. If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. The cease and desist order shall not relieve the person practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders.

(2) The attorney general, a county prosecuting attorney, the director, or any person may, in accordance with the law of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by this chapter without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(3) Unlicensed practice of a profession or operating a business for which a license is required by this chapter, unless otherwise exempted by law, constitutes a gross misdemeanor. [1995 c 277 § 16; 1991 c 334 § 25.]

18.170.260 Violation of injunction—Penalty. A person or business that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be paid to the department. For the purpose of this section, the superior court issuing any injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1991 c 334 § 26.]

18.170.270 Immunity. The director or individuals acting on the director's behalf are immune from suit in any action, civil or criminal, based on disciplinary proceedings or other official acts performed in the course of their duties

in the administration and enforcement of this chapter. [1991 c 334 § 27.]

18.170.280 Application of administrative procedure act to acts of the director. The director, in implementing and administering the provisions of this chapter, shall act in accordance with the administrative procedure act, chapter 34.05 RCW. [1991 c 334 § 28.]

18.170.900 Severability—1991 c 334. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 334 § 30.]

18.170.901 Severability—1995 c 277. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 277 § 40.]

18.170.902 Effective date—1995 c 277. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 9, 1995]. [1995 c 277 § 41.]

Chapter 18.175 ATHLETE AGENTS

Sections

- 18.175.010 Findings.
- 18.175.020 Athlete agents and athlete agent firms—Certificate of registration required—Violations.
- 18.175.025 Certificate of registration suspension—Nonpayment or default on educational loan or scholarship.
- 18.175.030 Definitions.
- 18.175.040 Exemptions.
- 18.175.050 Authority of director.
- 18.175.060 Disclosure statements.
- 18.175.070 Penalties.
- 18.175.080 Application of consumer protection act.

18.175.010 Findings. The legislature finds it necessary to regulate the practice of athlete agents and athlete agent firms to protect the public health, safety, and welfare. The public has a right to be kept informed about the role of athlete agents. The purpose of this chapter is to help ensure that public information is available and that the integrity of interscholastic athletics is preserved. [1991 c 236 § 1.]

18.175.020 Athlete agents and athlete agent firms—Certificate of registration required—Violations. (1) It is a violation of this chapter for a person to practice or represent himself or herself as an athlete agent or athlete agent firm without a certificate of registration as an athlete agent or athlete agent firm.

(2) It is a violation of this chapter for a person other than a registered athlete agent or an employee or representative of a professional sport team to directly or indirectly solicit an individual to enter into an agent contract or

professional sport services contract or procure, offer, promise, or attempt to obtain employment for an individual with a professional sport team or as a professional athlete. [1991 c 236 § 2.]

18.175.025 Certificate of registration suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the certificate of registration of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's certificate of registration shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for certification of registration during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 24.]

Severability—1996 c 293: See note following RCW 18.04.420.

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

(1) "Department" means the department of licensing.

(2) "Director" means the director of licensing.

(3) "Athlete agent" means an individual registered under this chapter.

(4) "Athlete agent firm" means a sole proprietorship, partnership, association, corporation, or other entity that employs one or more individuals to act as an athlete agent on behalf of the entity.

(5) "Agent contract" means a contract or agreement pursuant to which a person authorizes or empowers an athlete agent to negotiate or solicit on behalf of the person with one or more professional sport teams for the employment of the person by a professional sport team or to negotiate or solicit on behalf of the person for the employment of the person as a professional athlete.

(6) "Institution of higher education" means a public or private college or university in this state.

(7) "Professional athlete" means a person who is under contract to a professional sports team and is no longer enrolled in an institution of higher education as an undergraduate student.

(8) "Professional sport services contract" means a contract or agreement pursuant to which a person is employed or agrees to render services as a player on a professional sport team or as a professional athlete.

(9) "Student athlete" means a person who engages in, is eligible to engage in, or may be eligible to engage in any intercollegiate sporting event, contest, exhibition, or program in this state. The term also includes an individual who has applied for enrollment to an institution of higher education.

A person ceases to be a "student athlete" as soon as his or her collegiate eligibility in the sport in which he or she is under scholarship has expired. [1991 c 236 § 3.]

18.175.040 Exemptions. The registration provisions of this chapter do not apply to a person:

- (1) Who is related to the student athlete by blood or marriage;
- (2) Who represents or advises no more than one student athlete in any given year; or
- (3) Who represents only professional athletes. [1991 c 236 § 4.]

18.175.050 Authority of director. In addition to any other authority provided by law, the director may:

- (1) Adopt rules in accordance with chapter 34.05 RCW as necessary to implement this chapter;
- (2) Establish forms and procedures as necessary to administer this chapter;
- (3) Register applicants;
- (4) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter;
- (5) Maintain the official departmental record of all applicants and registrants; and
- (6) Set all registration, renewal, and late renewal fees in accordance with RCW 43.24.086. [1991 c 236 § 5.]

18.175.060 Disclosure statements. (1) An athlete agent shall file with the department a disclosure statement which contains all of the following:

(a) The educational background, training, and experience of the athlete agent with respect to practice as an athlete agent;

(b) The business name and address of each athlete agent firm represented by the athlete agent;

(c) A record of all felony convictions, or misdemeanor convictions punishable by imprisonment, of the athlete agent and each owner, partner, officer, or shareholder of ten percent or more of the stock of the athlete agent firm represented by the athlete agent; and

(d) A record of any sanctions issued to or disciplinary actions taken against the athlete agent, the athlete agent firm, or any athlete, professional sport team, or institution of higher education as a result of the conduct of the athlete agent or the athlete agent firm.

(2) An athlete agent shall file an updated disclosure statement with the department within thirty days of a change in the information required under subsection (1) (b), (c), or (d) of this section.

(3) Before entering into negotiations for an agent contract, an athlete agent shall give to the prospective client a copy of the current disclosure statement on file with the department.

(4) The department shall make disclosure statements available to the public for inspection and copying. [1991 c 236 § 6.]

18.175.070 Penalties. (1) It is a gross misdemeanor punishable according to chapter 9A.20 RCW for an athlete agent, athlete agent firm, or any person exempt under RCW 18.175.040 to:

(a) Induce a student athlete to enter into an agent contract or professional sport services contract; or

(b) Enter into an agreement whereby the athletic agent offers anything of value to an employee of an institution of higher education in return for the referral of a student athlete by that employee.

(2) It is a class C felony punishable according to chapter 9A.20 RCW for an athlete agent, athlete agent firm, or any person exempt under RCW 18.175.040 to offer money or any valuable consideration to a student athlete to induce the student athlete to enter into a professional sports services contract. [1991 c 236 § 7.]

18.175.080 Application of consumer protection act. The regulation of athlete agents is a matter affecting the public interest for the purpose of applying chapter 19.86 RCW. Activities of athlete agents prohibited under this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter constitutes an unfair or deceptive act or practice in trade or commerce for the purpose of applying chapter 19.86 RCW. [1991 c 236 § 8.]

Chapter 18.180 PROCESS SERVERS

Sections

- 18.180.010 Registration—Exceptions.
- 18.180.020 Registration renewal.
- 18.180.030 Identification of process server on proof of service.
- 18.180.040 Collection of costs of service—Application.
- 18.180.050 Registration suspension—Nonpayment or default on educational loan or scholarship.
- 18.180.900 Construction—1992 c 125.

18.180.010 Registration—Exceptions. (1) A person who serves legal process for a fee in the state of Washington shall register as a process server with the auditor of the county in which the process server resides or operates his or her principal place of business.

(2) The requirement to register under subsection (1) of this section does not apply to any of the following persons:

(a) A sheriff, deputy sheriff, marshal, constable, or government employee who is acting in the course of employment;

(b) An attorney or the attorney's employees, who are not serving process on a fee basis;

(c) A person who is court appointed to serve the court's process;

(d) An employee of a person who is registered under this section;

(e) A person who does not receive a fee or wage for serving process. [1992 c 125 § 1.]

18.180.020 Registration renewal. A process server required to register under RCW 18.180.010 must renew the registration within one year of the date of the initial registration or when the registrant changes his or her name, the name of his or her business, business address, or business telephone number, whichever occurs sooner. If the renewal is required because of a change in the information identify-

ing the process server, the process server must renew the registration within ten days of the date the identifying information changes. The process server shall pay the registration fee upon renewal. [1992 c 125 § 3.]

18.180.030 Identification of process server on proof of service. (1) A process server required to register under RCW 18.180.010 shall indicate the process server's registration number and the process server's county of registration on any proof of service the process server signs.

(2) Employees of a process server required to register under RCW 18.180.010 shall indicate the employer's registration number and the employer's county of registration on any proof of service the registrant's employee signs. [1992 c 125 § 4.]

18.180.040 Collection of costs of service—Application. (1) Except as provided in subsection (2) of this section, any person who is otherwise entitled to collect the costs of service of process shall not be entitled to collect those costs if the person does not use a process server who under this chapter either is required to register or is exempt from the registration requirement.

(2) The person may collect the costs of the service of process if the process server registers within forty-five days after serving the process.

(3) This section shall apply to all process served on or after August 1, 1992. [1992 c 125 § 5.]

18.180.050 Registration suspension—Nonpayment or default on educational loan or scholarship. The auditor of the county shall suspend the registration of any person who has been certified by a lending agency and reported to the auditor of the county for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's registration shall not be reissued until the person provides the auditor of the county a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for registration during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the auditor of the county may impose. [1996 c 293 § 25.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.180.900 Construction—1992 c 125. Nothing in this act modifies Superior Court Civil Rule 4. [1992 c 125 § 7.]

Chapter 18.185 BAIL BOND AGENTS

Sections

18.185.005	Declaration, intent, construction.
18.185.010	Definitions.
18.185.020	Agent license requirements.
18.185.030	Agency license requirements.
18.185.040	License applications.
18.185.050	License cards, certificates—Advertising—Notice of changes.
18.185.055	License suspension—Nonpayment or default on educational loan or scholarship.
18.185.060	Prelicensing training requirements.
18.185.070	Bond.
18.185.080	Relation of this chapter to local regulation, taxation.
18.185.090	Notice concerning agent's status.
18.185.100	Records—Finances—Disposition of security.
18.185.110	Prohibited acts.
18.185.120	Director's powers.
18.185.130	Complaints.
18.185.140	Charges against licensee or applicant—Hearing.
18.185.150	Hearing procedures.
18.185.160	Enforcement of monetary penalty.
18.185.170	Cease and desist orders—Injunctions—Criminal penalties—Disposition of monetary assessments.
18.185.180	Civil penalties.
18.185.190	Official immunity.
18.185.200	Application of Administrative Procedure Act.
18.185.210	Application of Consumer Protection Act.
18.185.220	Branch office—Qualified bail bond agent as manager.
18.185.230	License required for branch office.
18.185.900	Severability—1993 c 260.
18.185.901	Effective date—1993 c 260.

18.185.005 Declaration, intent, construction. The legislature declares that the licensing of bail bond agents should be uniform throughout the state. Therefore, it is the intent of the legislature to preempt any local regulation of bail bond agents, including licensing fees, but not including local business license fees. Nothing in this chapter limits the discretion of the courts of this state to accept or reject a particular surety or recognizance bond in a particular case. [1993 c 260 § 1.]

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

(1) "Department" means the department of licensing.

(2) "Director" means the director of licensing.

(3) "Collateral or security" means property of any kind given as security to obtain a bail bond.

(4) "Bail bond agency" means a business that sells and issues corporate surety bail bonds or that provides security in the form of personal or real property to insure the appearance of a criminal defendant before the courts of this state or the United States.

(5) "Qualified agent" means an owner, sole proprietor, partner, manager, officer, or chief operating officer of a corporation who meets the requirements set forth in this chapter for obtaining a bail bond agency license.

(6) "Bail bond agent" means a person who is employed by a bail bond agency and engages in the sale or issuance of bail bonds, but does not mean a clerical, secretarial, or other support person who does not participate in the sale or issuance of bail bonds.

(7) "Licensee" means a bail bond agency or a bail bond agent or both.

(8) "Branch office" means any office physically separated from the principal place of business of the licensee from which the licensee or an employee or agents conduct any activity meeting the criteria of [a] bail bond agency. [1996 c 242 § 1; 1993 c 260 § 2.]

18.185.020 Agent license requirements. An applicant must meet the following minimum requirements to obtain a bail bond agent license:

- (1) Be at least eighteen years of age;
- (2) Be a citizen or resident alien of the United States;
- (3) Not have been convicted of a crime in any jurisdiction in the preceding ten years, if the director determines that the applicant's particular crime directly relates to a capacity to perform the duties of a bail bond agent and the director determines that the license should be withheld to protect the citizens of Washington state. If the director shall make a determination to withhold a license because of previous convictions, the determination shall be consistent with the restoration of employment rights act, chapter 9.96A RCW;
- (4) Be employed by a bail bond agency or be licensed as a bail bond agency; and
- (5) Pay the required fee. [1993 c 260 § 3.]

18.185.030 Agency license requirements. (1) In addition to meeting the minimum requirements to obtain a license as a bail bond agent, a qualified agent must meet the following additional requirements to obtain a bail bond agency license:

- (a) Pass an examination determined by the director to measure the person's knowledge and competence in the bail bond agency business; or
 - (b) Have had at least three years' experience as a manager, supervisor, or administrator in the bail bond business or a related field as determined by the director. A year's experience means not less than two thousand hours of actual compensated work performed before the filing of an application. An applicant shall substantiate the experience by written certifications from previous employers. If the applicant is unable to supply written certifications from previous employers, applicants may offer written certifications from persons other than employers who, based on personal knowledge, can substantiate the employment; and
 - (c) Pay any additional fees as established by the director.
- (2) An agency license issued under this section may not be assigned or transferred without prior written approval of the director. [1993 c 260 § 4.]

18.185.040 License applications. (1) Applications for licenses required under this chapter shall be filed with the director on a form provided by the director. The director may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria, which may include fingerprints.

(2) After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth in the application are true. [1993 c 260 § 5.]

18.185.050 License cards, certificates—Advertising—Notice of changes. (1) The director shall issue a bail bond agent license card to each licensed bail bond agent. A bail bond agent shall carry the license card whenever he or she is performing the duties of a bail bond agent and shall exhibit the card upon request.

(2) The director shall issue a license certificate to each licensed bail bond agency.

(a) Within seventy-two hours after receipt of the license certificate, the licensee shall post and display the certificate in a conspicuous place in the principal office of the licensee within the state.

(b) It is unlawful for any person holding a license certificate to knowingly and willfully post the license certificate upon premises other than those described in the license certificate or to materially alter a license certificate.

(c) Every advertisement by a licensee that solicits or advertises business shall contain the name of the licensee, the address of record, and the license number as they appear in the records of the director.

(d) The licensee shall notify the director within thirty days of any change in the licensee's officers or directors or any material change in the information furnished or required to be furnished to the director. [1993 c 260 § 6.]

18.185.055 License suspension—Nonpayment or default on educational loan or scholarship. The director shall suspend the license of any person who has been certified by a lending agency and reported to the director for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license shall not be reissued until the person provides the director a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for licensure during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [1996 c 293 § 26.]

Severability—1996 c 293: See note following RCW 18.04.420.

18.185.060 Prelicensing training requirements. (1) The director shall adopt rules establishing prelicense training and testing requirements, which shall include a minimum of four hours of classes. The director may establish, by rule, continuing education requirements for bail bond agents.

(2) The director shall consult with the bail bond industry before adopting or amending the prelicensing training or continuing education requirements of this section.

(3) The director may appoint an advisory committee consisting of representatives from the bail bond industry and a consumer to assist in the development of rules to implement this chapter.

(4) A bail bond agent need not fulfill the prelicensing training requirements of this chapter if he or she, within

sixty days prior to July 1, 1994, provides proof to the director that he or she previously has met the training requirements of this chapter or has been employed as a bail bond agent for at least eighteen consecutive months immediately prior to the date of application. [1993 c 260 § 7.]

18.185.070 Bond. (1) No bail bond agency license may be issued under the provisions of this chapter unless the qualified agent files with the director a bond, executed by a surety company authorized to do business in this state, in the sum of ten thousand dollars conditioned to recover against the agency and its servants, officers, agents, and employees by reason of its violation of the provisions of RCW 18.185.100. The bond shall be made payable to the state of Washington, and anyone so injured by the agency or its servants, officers, agents, or employees may bring suit upon the bond in any county in which jurisdiction over the licensee may be obtained. The suit must be brought not later than two years after the failure to return property in accordance with RCW 18.185.100. If valid claims against the bond exceed the amount of the bond or deposit, each claimant shall be entitled only to a pro rata amount, based on the amount of the claim as it is valid against the bond, without regard to the date of filing of any claim or action.

(2) Every licensed bail bond agency must at all times maintain on file with the director the bond required by this section in full force and effect. Upon failure by a licensee to do so, the director shall suspend the licensee's license and shall not reinstate the license until this requirement is met.

(3) In lieu of posting a bond, a qualified agent may deposit in an interest-bearing account, ten thousand dollars.

(4) The director may waive the bond requirements of this section, in his or her discretion, pursuant to adopted rules. [1993 c 260 § 8.]

18.185.080 Relation of this chapter to local regulation, taxation. (1) The provisions of this chapter relating to the licensing for regulatory purposes of bail bond agents and bail bond agencies are exclusive. No governmental subdivision of this state may enact any laws or rules licensing for regulatory purposes such persons, except as provided in subsections (2) and (3) of this section.

(2) This section shall not be construed to prevent a political subdivision of this state from levying a business fee, business and occupation tax, or other tax upon bail bond agencies if such fees or taxes are levied by the political subdivision on other types of businesses within its boundaries.

(3) This section shall not be construed to prevent this state or a political subdivision of this state from licensing for regulatory purposes bail bond agencies with respect to activities that are not regulated under this chapter. [1993 c 260 § 9.]

18.185.090 Notice concerning agent's status. (1) A bail bond agency shall notify the director within thirty days after the death or termination of employment of any employee who is a licensed bail bond agent.

(2) A bail bond agency shall notify the director within seventy-two hours upon receipt of information affecting a licensed bail bond agent's continuing eligibility to hold a

license under the provisions of this chapter. [1993 c 260 § 10.]

18.185.100 Records—Finances—Disposition of security. (1) Every qualified agent shall keep adequate records for three years of all collateral and security received, all trust accounts required by this section, and all bail bond transactions handled by the bail bond agency, as specified by rule. The records shall be open to inspection without notice by the director or authorized representatives of the director.

(2) Every qualified agent who receives collateral or security is a fiduciary of the property and shall keep adequate records for three years of the receipt, safekeeping, and disposition of the collateral or security. Every qualified agent shall maintain a trust account in a federally insured financial institution located in this state. All moneys, including cash, checks, money orders, wire transfers, and credit card sales drafts, received as collateral or security or otherwise held for a bail bond agency's client shall be deposited in the trust account not later than the third banking day following receipt of the funds or money. A qualified agent shall not in any way encumber the corpus of the trust account or commingle any other moneys with moneys properly maintained in the trust account. Each qualified agent required to maintain a trust account shall report annually under oath to the director the account number and balance of the trust account, and the name and address of the institution that holds the trust account, and shall report to the director within ten business days whenever the trust account is changed or relocated or a new trust account is opened.

(3) Whenever a bail bond is exonerated by the court, the qualified agent shall, within five business days after written notification of exoneration and upon written demand, return all collateral or security to the person entitled thereto. [1996 c 242 § 3; 1993 c 260 § 11.]

18.185.110 Prohibited acts. The following acts are prohibited and constitute grounds for disciplinary action or denial, suspension, or revocation of any license under this chapter, as deemed appropriate by the director:

(1) Knowingly violating any of the provisions of this chapter or the rules adopted under this chapter;

(2) Knowingly making a material misstatement or omission in the application for or renewal of a license;

(3) Failing to meet the qualifications set forth in RCW 18.185.020 and 18.185.030;

(4) Conviction of a gross misdemeanor or felony or the commission of any act involving moral turpitude, dishonesty, or corruption whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(5) Advertising that is false, fraudulent, or misleading;
 (6) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(7) Suspension, revocation, or restriction of the individual's license to practice the profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(8) Failure to cooperate with the director by not:

(a) Furnishing any necessary papers or documents requested by the director for purposes of conducting an investigation for disciplinary action, denial, suspension, or revocation of a license under this chapter;

(b) Furnishing in writing a full and complete explanation covering the matter contained in a complaint filed with the department; or

(c) Responding to subpoenas issued by the director, whether or not the recipient of the subpoena is the accused in the proceeding;

(9) Failure to comply with an order issued by the director or an assurance of discontinuance entered into with the director;

(10) Aiding or abetting an unlicensed person to practice if a license is required;

(11) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relies upon the word, representation, or conduct of the licensee;

(12) Failure to adequately supervise employees to the extent that the client funds are at risk;

(13) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the director or the director's authorized representative, or by the use of threats or harassment against any client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

(14) Assigning or transferring any license issued pursuant to the provisions of this chapter, except as provided in RCW 18.185.030;

(15) Conversion of any money or contract, deed, note, mortgage, or other evidence of title, to his or her own use or to the use of his or her principal or of any other person, when delivered to him or her in trust or on condition, in violation of the trust or before the happening of the condition; and failure to return any money or contract, deed, note, mortgage, or other evidence of title within thirty days after the owner is entitled to possession, and makes demand for possession, shall be prima facie evidence of conversion;

(16) Failing to keep records, maintain a trust account, or return collateral or security, as required by RCW 18.185.100;

(17) Any conduct in a bail bond transaction which demonstrates bad faith, dishonesty, or untrustworthiness; or

(18) Violation of an order to cease and desist that is issued by the director under this chapter. [1993 c 260 § 12.]

18.185.120 Director's powers. The director has the following authority in administering this chapter:

(1) To adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

(2) To issue an order providing for one or any combination of the following upon violation or violations of this chapter: Denying, suspending, or revoking a license; assessing monetary penalties; restricting or limiting practice; complying with conditions of probation for a designated period of time; making restitution to the person harmed by the licensee; or other corrective action;

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

(4) To take or cause depositions to be taken and use other discovery procedures as needed in an investigation, hearing, or proceeding held under this chapter;

(5) To compel attendance of witnesses at hearings;

(6) To establish fees by rule under RCW 43.24.086 and chapter 34.05 RCW;

(7) To take emergency action ordering summary suspension of a license, or restriction or limitation of the licensee's practice pending proceedings by the director;

(8) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the director or the director's designee shall make the final decision in the hearing;

(9) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

(10) To adopt standards of professional conduct or practice;

(11) In the event of a finding of unprofessional conduct by an applicant or license holder, to impose sanctions against an applicant or license holder as provided by this chapter;

(12) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action;

(13) To designate individuals authorized to sign subpoenas and statements of charges; and

(14) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter. [1993 c 260 § 13.]

18.185.130 Complaints. Any person may submit a written complaint to the department charging a license holder or applicant with unprofessional conduct and specifying the grounds for the charge. If the director determines that the complaint merits investigation, or if the director has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the director shall investigate to determine if there has been unprofessional conduct. A person who files a complaint under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint. [1993 c 260 § 14.]

18.185.140 Charges against licensee or applicant—Hearing. (1) If the director determines, upon investigation, that there is reason to believe a violation of this chapter has occurred, a statement of charges shall be prepared and served upon the license holder or applicant and notice of this action given to the owner or qualified agent of the employing bail bond agency. The statement of charges shall be accompanied by a notice that the license holder or applicant may request a hearing to contest the charges. The license holder or applicant must file a request for hearing with the department within twenty days after being served the statement of charges. The failure to request a hearing constitutes a default, whereupon the director may enter an order under RCW 34.05.440.

(2) If a hearing is requested, the time of the hearing shall be scheduled but the hearing shall not be held earlier than thirty days after service of the charges upon the license holder or applicant. A notice of hearing shall be issued at least twenty days prior to the hearing, specifying the time, date, and place of the hearing. [1993 c 260 § 15.]

18.185.150 Hearing procedures. The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the Administrative Procedure Act, shall govern all hearings before the director. [1993 c 260 § 16.]

18.185.160 Enforcement of monetary penalty. If an order for payment of a monetary penalty is made as a result of a hearing and timely payment is not made as directed in the final order, the director may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement shall be in addition to any other rights the director may have as to a licensee ordered to pay a monetary penalty but shall not be construed to limit a licensee's ability to seek judicial review.

In an action for enforcement of an order of payment of a monetary penalty, the director's order is conclusive proof of the validity of the order of payment of a penalty and the terms of payment. [1993 c 260 § 17.]

18.185.170 Cease and desist orders—Injunctions—Criminal penalties—Disposition of monetary assessments.

(1) The director shall investigate complaints concerning practice by unlicensed persons of a profession or business for which a license is required by this chapter. In the investigation of the complaints, the director has the same authority as provided the director under RCW 18.185.140. The director shall issue a cease and desist order to a person after notice and hearing and upon a determination that the person has violated this subsection. If the director makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the director may issue a temporary cease and desist order. The cease and desist order shall not relieve the person practicing or operating a business without a license from criminal prosecution therefor, but the remedy of a cease and desist order shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed practice and may be enforced under RCW 7.21.060. This method of enforcement of the cease and desist order may be used in

addition to, or as an alternative to, any provisions for enforcement of agency orders.

(2) The attorney general, a county prosecuting attorney, the director, or any person may, in accordance with the law of this state governing injunctions, maintain an action in the name of this state to enjoin any person practicing a profession or business for which a license is required by this chapter without a license from engaging in such practice or operating such business until the required license is secured. However, the injunction shall not relieve the person practicing or operating a business without a license from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability.

(3) After June 30, 1994, any person who performs the functions and duties of a bail bond agent in this state without being licensed in accordance with the provisions of this chapter, or any person presenting or attempting to use as his or her own the license of another, or any person who gives false or forged evidence of any kind to the director in obtaining a license, or any person who falsely impersonates any other licensee, or any person who attempts to use an expired or revoked license, or any person who violates any of the provisions of this chapter is guilty of a gross misdemeanor.

(4) After January 1, 1994, a person is guilty of a gross misdemeanor if he or she owns or operates a bail bond agency in this state without first obtaining a bail bond agency license.

(5) After June 30, 1994, the owner or qualified agent of a bail bond agency is guilty of a gross misdemeanor if he or she employs any person to perform the duties of a bail bond agent without the employee having in his or her possession a permanent bail bond agent license issued by the department.

(6) All fees, fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be remitted to the department. [1993 c 260 § 18.]

18.185.180 Civil penalties. A person or business that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be paid to the department. For the purpose of this section, the superior court issuing any injunction shall retain jurisdiction. [1993 c 260 § 19.]

18.185.190 Official immunity. The director or individuals acting on the director's behalf are immune from suit in any action, civil or criminal, based on disciplinary proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter. [1993 c 260 § 20.]

18.185.200 Application of Administrative Procedure Act. The director, in implementing and administering the provisions of this chapter, shall act in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1993 c 260 § 21.]

18.185.210 Application of Consumer Protection Act. Failure to fulfill the fiduciary duties and other duties as

prescribed in RCW 18.185.100 is not reasonable in relation to the development and preservation of business. A violation of RCW 18.185.100 is an unfair or deceptive act in trade or commerce for the purpose of applying the Consumer Protection Act, chapter 19.86 RCW. [1993 c 260 § 22.]

18.185.220 Branch office—Qualified bail bond agent as manager. A branch office may not operate under a business name other than the name of the principal bail bond agency and must have a qualified bail bond agent as manager of the office. The qualified agent shall comply with the provisions of RCW 18.185.100. [1996 c 242 § 2.]

18.185.230 License required for branch office. If a licensee maintains a branch office, the licensee shall not operate that branch office until a branch office license has been received from the director. A bail bond agency may apply to the director for authority to establish one or more branch offices under the same name as the main office upon the payment of a fee as prescribed by the director by rule. The director shall issue a separate license for each branch office showing the location of each branch which shall be prominently displayed in the office for which it is issued. A corporation, partnership, or sole proprietorship shall not establish more than one principal office within this state. [1996 c 242 § 4.]

18.185.900 Severability—1993 c 260. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1993 c 260 § 23.]

18.185.901 Effective date—1993 c 260. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 260 § 25.]

Implementation—1993 c 260: "The director of licensing may take such steps as are necessary to ensure that this act is implemented on its effective date." [1993 c 260 § 24.]

Chapter 18.190

OPERATION AS LIMITED LIABILITY COMPANY

Sections

18.190.010 License—Requirements.

18.190.010 License—Requirements. Any business or profession licensed under this title may operate as a limited liability company formed under chapter 25.15 RCW. Any such limited liability company must be licensed as a limited liability company in accordance with the otherwise applicable licensing provisions of this title. Any such limited liability company shall meet the following requirements:

(1) The principal purpose and business of the limited liability company shall be to furnish services to the public which are consistent with the applicable chapter under this title;

(2) At least one manager of the limited liability company shall be a person licensed under the applicable chapter under this title; and

(3) Each resident manager or member in charge of an office of the limited liability company in this state and each resident manager or member personally engaged within this state in the business or profession of the company shall be licensed under the applicable chapter under this title. [1994 c 211 § 1403.]

Effective date—Severability—1994 c 211: See RCW 25.15.900 and 25.15.902.

Chapter 18.195

CONSUMER ACCESS TO VISION CARE ACT

Sections

18.195.010 Findings—Intent.

18.195.020 Definitions.

18.195.030 Prohibited practices—Separation of examination and dispensing—Notice—Duplication of lenses.

18.195.040 Prescription not referring to contacts—Verification of performance—Notice—Prescription time limit—Safety notice—Noncompliance.

18.195.050 Rule making—Effect.

18.195.900 Short title.

18.195.901 Construction.

18.195.902 Captions not law.

18.195.903 Severability—1994 c 106.

18.195.010 Findings—Intent. The legislature finds that in the newly reformed health care delivery system it is necessary to clarify providers' roles to ensure that they are working together to maximize patient access while controlling costs. This is especially important in the vision care industry, where the potential for confusion exists due to some overlapping scopes of practice among licensed providers.

The legislature finds that boards regulating health care professions should be mindful of the necessary balance between public safety and access to affordable care, and adopt rules that are consistent with their legislative intent. The risk that this balance may be lost is especially high in the optical industry, where competitive pressures have led to the involvement of the federal trade commission. The legislature recognizes its role in ensuring appropriate access to vision care for state residents by clarifying necessary prescription content and ensuring prescription release to the patient. [1994 c 106 § 1.]

18.195.020 Definitions. For purposes of this chapter, the following definitions apply:

(1) "Dispensing" means the retail delivery of ophthalmic goods to the patient by a prescriber or optician.

(2) "Eye examination" means a testing process administered by a prescriber that includes the process of determining the refractive condition of a patient's eyes. If requested by the patient, it also determines the appropriateness of contact lenses.

(3) "Fitting" means the performance of mechanical procedures and measurements necessary to adapt and fit eyeglasses or contact lenses from a written prescription. In the case of contact lenses, the prescription must be in writing and fitting includes the selection of the physical characteris-

tics of the lenses including conversion of the spectacle power to contact lens equivalents, lens design, material and manufacturer of the lenses, and supervision of the trial wearing of the lenses which may require incidental revisions during the fitting period. The revisions may not alter the effect of the written prescription.

(4) "Ophthalmic goods" means eyeglasses or a component or components of eyeglasses, and contact lenses.

(5) "Ophthalmic services" means the measuring, fitting, adjusting, and fabricating of ophthalmic goods subsequent to an eye examination.

(6) "Optician" means a person licensed under chapter 18.34 RCW.

(7) "Patient" means a person who has had an eye examination.

(8) "Practitioner" includes prescribers and opticians.

(9) "Prescriber" means an ophthalmologist or optometrist who performs eye examinations under chapter 18.53, 18.57, or 18.71 RCW.

(10) "Prescription" means the written directive from a prescriber for corrective lenses and consists of the refractive powers. If the patient wishes to purchase contact lenses, the prescription must contain a notation that the patient is "OK for contacts" or similar language confirming there are no contraindications for contacts.

(11) "Secretary" means the secretary of the department of health. [1994 c 106 § 2.]

18.195.030 Prohibited practices—Separation of examination and dispensing—Notice—Duplication of lenses. (1) No prescriber shall:

(a) Fail to provide to the patient one copy of the patient's prescription at the completion of the eye examination. A prescriber may refuse to give the patient a copy of the patient's prescription until the patient has paid for the eye examination, but only if that prescriber would have required immediate payment from that patient had the examination revealed that no ophthalmic goods were required;

(b) Condition the availability of an eye examination or prescription, or both, to a patient on a requirement that the patient agree to purchase ophthalmic goods from the prescriber or a dispenser approved by the prescriber;

(c) Fail to include a notation of "OK for contacts" or similar language on the prescription if the prescriber would have fitted the patient himself or herself, provided there are no contraindications for contacts, and if the patient has requested contact lenses. Such a notation will indicate to the practitioner fitting the contact lenses that the initial fitting and follow-up must be completed within six months of the date of the eye examination. The prescriber will inform the patient that failure to complete the initial fitting and obtain the follow-up evaluation by a prescriber within the six-month time frame will void the "OK for contacts" portion of the prescription. The prescriber who performs the follow-up will place on the prescription "follow-up completed," or similar language, and include his or her name and the date of the follow-up. Patients who comply with both the initial fitting and follow-up requirements will then be able to obtain replacement contact lenses until the expiration date listed on the prescription. If the prescriber concludes the ocular

health of the eye presents a contraindication for contact lenses, a verbal explanation of that contraindication must be given to the patient by the prescriber at the time of the eye examination and documentation maintained in the patient's records. However, a prescriber may exclude categories of contact lenses where clinically indicated;

(d) Include a prescription expiration date of less than two years, unless warranted by the ocular health of the eye. If a prescription is to expire in less than two years, an explanatory notation must be made by the prescriber in the patient's record and a verbal explanation given to the patient at the time of the eye examination;

(e) Charge the patient a fee in addition to the prescriber's examination fee as a condition to releasing the prescription to the patient. However, a prescriber may charge a reasonable, additional fee for verifying ophthalmic goods dispensed by another practitioner if that fee is imposed at the time the verification is performed; or

(f) Place on the prescription, or require the patient to sign, or deliver to the patient a form or notice waiving or disclaiming the liability or responsibility of the prescriber for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another practitioner. In prohibiting the use of waivers and disclaimers of liability under this subsection, it is not the intent of the legislature to impose liability on an ophthalmologist or optometrist for the ophthalmic goods and services dispensed by another seller pursuant to the ophthalmologist's or optometrist's prescription.

(2) Nothing contained in this title shall prevent a prescriber or optician from measuring the refractive power of eyeglass lenses and duplicating the eyeglass lenses upon the request of a patient. [1994 c 106 § 3.]

18.195.040 Prescription not referring to contacts—Verification of performance—Notice—Prescription time limit—Safety notice—Noncompliance. (1) If the patient chooses to purchase contact lenses from an optician and the prescription is silent regarding contact lenses, the optician shall contact the prescriber and request a written prescription with a notation of "OK for contacts" or similar language. However, if no evaluation for contact lenses had been done during the eye examination, the prescriber may decline to approve the prescription for contact lenses without further evaluation.

(2) If a patient chooses to purchase contact lenses from an optician, the optician shall advise the patient, in writing, that a prescriber is to verify the performance of the initial set of contact lenses on the eyes within six months of the date of the eye examination or the "OK for contacts" portion of the prescription will be void. The patient shall be requested to sign the written advisement and the signed document will be maintained as part of the patient's records. If the patient declines to sign the document, it shall be noted in the record.

(3) No practitioner may dispense contact lenses based on a prescription that is over two years old.

(4) All fitters and dispensers of contact lenses shall distribute safety pamphlets to their patients in order to

improve consumer decisions as well as health-related decisions.

(5) It is unprofessional conduct under chapter 18.130 RCW for a practitioner to fail to comply with this section. [1994 c 106 § 4.]

18.195.050 Rule making—Effect. (1) The secretary shall adopt rules necessary to implement the purposes of this chapter. The secretary is specifically directed to adopt rules that maximize competition in the delivery of vision care limited only by the existing scope of practice of the professions and by provisions preventing demonstrated and substantial threats to the public's vision health.

(2) This chapter and the rules adopted by the secretary pursuant to this section shall supersede rules adopted pursuant to chapter 18.34, 18.53, 18.57, or 18.71 RCW that conflict with this chapter. To the extent that, in the secretary's opinion, these rules conflict with the purposes of this chapter, the secretary may declare such rules null and void. [1994 c 106 § 6.]

18.195.900 Short title. This chapter may be cited as the Consumer Access to Vision Care Act. [1994 c 106 § 7.]

18.195.901 Construction. Nothing in this chapter shall be construed as expanding the scope of practice of a vision care practitioner beyond that currently authorized by state law. [1994 c 106 § 5.]

18.195.902 Captions not law. Section captions as used in this chapter constitute no part of the law. [1994 c 106 § 8.]

18.195.903 Severability—1994 c 106. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 106 § 9.]

Title 19

BUSINESS REGULATIONS—MISCELLANEOUS

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Mutual savings banks: Title 32 RCW.

Partnerships: Title 25 RCW.

Periodicals, postage, purchase by public agencies—Manner of payment: RCW 42.24.035.

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Poisons, dispensing and sale: Chapter 69.40 RCW.

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Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

Public utilities: Title 80 RCW.

Railroads and other common carriers: Title 81 RCW.

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

Sales of personal property: Title 62A RCW.

Savings and loan associations: Title 33 RCW.

Shoefitting devices, x-ray, etc., prohibited: RCW 70.98.170.

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46.08.060, 67.08.020, 67.08.025, 70.72.010 through 70.72.090, 75.28.310, and 78.40.100 through 78.40.145.

19.02.010 Purpose—Intent. Experience under the pilot program of the business coordination act suggests that the number of state licenses required for new businesses and the renewal of existing licenses places an undue burden on business. Studies under this act also show that the state can reduce its costs by coordinating and consolidating application forms, information, and licenses. Therefore, the legislature extends the business coordination act by establishing a business license program and license center to develop and implement the following goals and objectives:

(1) The first goal of this system is to provide a convenient, accessible, and timely one-stop system for the business community to acquire and maintain the necessary state licenses to conduct business. This system shall be developed and operated in the most cost-efficient manner for the business community and state. The objectives of this goal are:

(a) To provide a service whereby information is available to the business community concerning all state licensing and regulatory requirements, and to the extent feasible, include local and federal information concerning the same regulated activities;

(b) To provide a system which will enable state agencies to efficiently store, retrieve, and exchange license information with due regard to privacy statutes; to issue and renew master licenses where such licenses are appropriate; and to provide appropriate support services for this objective;

(c) To provide at designated locations one consolidated application form to be completed by any given applicant; and

(d) To provide a state-wide system of common business identification.

(2) The second goal of this system is to aid business and the growth of business in Washington state by instituting a master license system that will reduce the paperwork burden on business, and promote the elimination of obsolete and duplicative licensing requirements by consolidating existing licenses and applications.

It is the intent of the legislature that the authority for determining if a requested license shall be issued shall remain with the agency legally authorized to issue the license.

It is the further intent of the legislature that those licenses which no longer serve a useful purpose in regulating certain business activities should be eliminated. [1982 c 182 § 1; 1977 ex.s. c 319 § 1.]

19.02.020 Definitions. As used in this chapter, the following words shall have the following meanings:

(1) "System" means the mechanism by which master licenses are issued and renewed, license and regulatory information is disseminated, and account data is exchanged by the agencies;

(2) "Business license center" means the business registration and licensing center established by this chapter and located in and under the administrative control of the department of licensing;

(3) "Master application" means a document incorporating pertinent data from existing applications for licenses covered under this chapter;

Chapter 19.02

BUSINESS LICENSE CENTER ACT

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19.02.910	Effective date—1977 ex.s. c 319.
19.02.920	Construction.

Reviser's note: Throughout chapter 19.02 RCW, the term "this 1977 amendatory act" has been changed to "this chapter." "This 1977 amendatory act" [1977 ex.s. c 319] consists of the enactment of RCW 19.02.010, 19.02.020, 19.02.030, 19.02.040, 19.02.050, 19.02.060, and 19.02.070, the 1977 amendment to RCW 82.24.220, and the repeal of RCW 14.04.260, 14.04.270, 15.14.090, 16.44.100, 16.72.050, 18.04.210, 18.04.230,

(4) "Master license" means the single document designed for public display issued by the business license center which certifies state agency license approval and which incorporates the endorsements for individual licenses included in the master license system, which the state requires for any person subject to this chapter;

(5) "License" means the whole or part of any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity;

(6) "Regulatory" means all licensing and other governmental or statutory requirements pertaining to business or professional activities;

(7) "Person" means any individual, sole proprietorship, partnership, association, cooperative, corporation, nonprofit organization, state or local government agency, and any other organization required to register with the state to do business in the state and to obtain one or more licenses from the state or any of its agencies;

(8) "Director" means the director of licensing;

(9) "Department" means the department of licensing;

(10) "Regulatory agency" means any state agency, board, commission, or division which regulates one or more professions, occupations, industries, businesses, or activities;

(11) "Renewal application" means a document used to collect pertinent data for renewal of licenses covered under this chapter; and

(12) "License information packet" means a collection of information about licensing requirements and application procedures custom-assembled for each request. [1993 c 142 § 3; 1992 c 107 § 1; 1982 c 182 § 2; 1979 c 158 § 75; 1977 ex.s. c 319 § 2.]

Effective dates—1992 c 107: "(1) Sections 1 through 4, 6, and 8 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1992.

(2) Sections 5 and 7 of this act shall take effect July 1, 1992." [1992 c 107 § 9.]

19.02.030 Center—Created—Duties—Administrator—Rules. (1) There is created within the department of licensing a business license center.

(2) The duties of the center shall include:

(a) Developing and administering a computerized one-stop master license system capable of storing, retrieving, and exchanging license information with due regard to privacy statutes, as well as issuing and renewing master licenses in an efficient manner;

(b) Providing a license information service detailing requirements to establish or engage in business in this state;

(c) Providing for staggered master license renewal;

(d) Identifying types of licenses appropriate for inclusion in the master license system;

(e) Recommending in reports to the governor and the legislature the elimination, consolidation, or other modification of duplicative, ineffective, or inefficient licensing or inspection requirements; and

(f) Incorporating licenses into the master license system.

(3) The department of licensing shall establish the position of assistant director of the business license center.

(4) The director of licensing may adopt under chapter 34.05 RCW such rules as may be necessary to effectuate the

purposes of this chapter. [1993 c 142 § 4; 1982 c 182 § 3; 1979 c 158 § 76; 1977 ex.s. c 319 § 3.]

19.02.035 Center to compile and distribute information—Scope. The business license center shall compile information regarding the regulatory programs associated with each of the licenses obtainable under the master license system. This information shall include, at a minimum, a listing of the statutes and administrative rules requiring the licenses and pertaining to the regulatory programs that are directly related to the licensure. For example, for pesticide dealers' licenses, the information shall include the statutes and rules requiring licensing as well as those pertaining to the subject of registering or distributing pesticides.

The business license center shall provide information governed by this section to any person requesting it. Materials used by the center to describe the services provided by the center shall indicate that this information is available upon request. [1982 c 182 § 4.]

19.02.050 Participation of state agencies. (1) The legislature hereby directs the full participation by the following agencies in the implementation of this chapter:

(a) Department of agriculture;

(b) Secretary of state;

(c) Department of social and health services;

(d) Department of revenue;

(e) Department of fish and wildlife;

(f) Department of employment security;

(g) Department of labor and industries;

(h) Department of community, trade, and economic development;

(i) Liquor control board;

(j) Department of health;

(k) Department of licensing;

(l) Utilities and transportation commission; and

(m) Other agencies as determined by the governor. [1994 c 264 § 8; 1989 1st ex.s. c 9 § 317; 1985 c 466 § 38; 1979 c 158 § 78; 1977 ex.s. c 319 § 5.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

19.02.070 Issuance of licenses—Scope—Master application and fees—Action by regulatory agency, when—Agencies provided information. (1) Any person requiring licenses which have been incorporated into the system shall submit a master application to the department requesting the issuance of the licenses. The master application form shall contain in consolidated form information necessary for the issuance of the licenses.

(2) The applicant shall include with the application the sum of all fees and deposits required for the requested individual license endorsements as well as the handling fee established under RCW 19.02.075.

(3) Irrespective of any authority delegated to the department of licensing to implement the provisions of this chapter, the authority for approving issuance and renewal of any requested license that requires a precensing or renewal investigation, inspection, testing, or other judgmental review

by the regulatory agency otherwise legally authorized to issue the license shall remain with that agency. The business license center has the authority to issue those licenses for which proper fee payment and a completed application form have been received and for which no preclicensing or renewal approval action is required by the regulatory agency.

(4) Upon receipt of the application and proper fee payment for any license for which issuance is subject to regulatory agency action under subsection (3) of this section, the department shall immediately notify the regulatory agency with authority to approve issuance or renewal of the license requested by the applicant. Each regulatory agency shall advise the department within a reasonable time after receiving the notice: (a) That the agency approves the issuance of the requested license and will advise the applicant of any specific conditions required for issuing the license; (b) that the agency denies the issuance of the license and gives the applicant reasons for the denial; or (c) that the application is pending.

(5) The department shall issue a master license endorsed for all the approved licenses to the applicant and advise the applicant of the status of other requested licenses. It is the responsibility of the applicant to contest the decision regarding conditions imposed or licenses denied through the normal process established by statute or by the agency with the authority for approving issuance of the license.

(6) Regulatory agencies shall be provided information from the master application for their licensing and regulatory functions. [1990 c 264 § 1; 1982 c 182 § 6; 1979 c 158 § 79; 1977 ex.s. c 319 § 7.]

Effective date—1990 c 264: "This act shall take effect July 1, 1990. The director of licensing may immediately take such steps as are necessary to ensure that sections 1 and 2 of this act are implemented on their effective date." [1990 c 264 § 5.] Sections 1 and 2 of this act are RCW 19.02.070 and 19.02.075, respectively.

19.02.075 Master application fees—Renewal. (1) The department shall collect a fee of fifteen dollars on each master application. The entire master application fee shall be deposited in the master license fund.

(2) The department shall collect a fee of nine dollars on each renewal application. Renewal application fees shall be deposited in the master license fund. [1995 c 403 § 1007; 1992 c 107 § 2; 1990 c 264 § 2.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Effective dates—1992 c 107: See note following RCW 19.02.020.

Effective date—1990 c 264: See note following RCW 19.02.070.

19.02.080 Licensing fees—Disposition of. All fees collected under the system shall be deposited with the state treasurer. Upon issuance or renewal of the master license or supplemental licenses, the department shall distribute the fees, except for fees covered under RCW 19.02.210 and for fees covered under RCW 19.80.075, to the appropriate accounts under the applicable statutes for those agencies' licenses. [1992 c 107 § 3; 1982 c 182 § 7.]

Effective dates—1992 c 107: See note following RCW 19.02.020.

19.02.085 Licensing fees—Master license delinquency fee—Rate—Disposition. To encourage timely renewal by applicants, a master license delinquency fee shall be imposed on licensees who fail to renew by the master license expiration date. The master license delinquency fee shall be the lesser of one hundred fifty dollars or fifty percent of a base comprised of the licensee's renewal fee minus corporate licensing taxes, corporation annual report fee, and any interest fees or penalties charged for late taxes or corporate renewals. The master license delinquency fee shall be added to the renewal fee and paid by the licensee before a master license shall be renewed. The delinquency fee shall be deposited in the master license fund. [1992 c 107 § 5; 1989 c 170 § 1; 1982 c 182 § 9.]

Effective dates—1992 c 107: See note following RCW 19.02.020.

19.02.090 Master license—Expiration date—Prorated fees—Conditions of renewal. (1) The department shall assign an expiration date for each master license. All renewable licenses endorsed on that master license shall expire on that date. License fees shall be prorated to accommodate the staggering of expiration dates.

(2) All renewable licenses endorsed on a master license shall be renewed by the department under conditions originally imposed unless a regulatory agency advises the department of conditions or denials to be imposed before the endorsement is renewed. [1982 c 182 § 8.]

19.02.100 Master license—Issuance or renewal—Denied, when. (1) The department shall not issue or renew a master license to any person if:

(a) The person does not have a valid tax registration, if required;

(b) The person is a corporation delinquent in fees or penalties owing to the secretary of state or is not validly registered under Title 23B RCW, chapter 18.100 RCW, Title 24 RCW, and any other statute now or hereafter adopted which gives corporate or business licensing responsibilities to the secretary of state; or

(c) The person has not submitted the sum of all fees and deposits required for the requested individual license endorsements, any outstanding master license delinquency fee, or other fees and penalties to be collected through the system.

(2) Nothing in this section shall prevent registration by the state of an employer for the purpose of paying an employee of that employer industrial insurance or unemployment insurance benefits. [1991 c 72 § 8; 1982 c 182 § 10.]

19.02.110 Master license—System to include additional licenses. In addition to the licenses processed under the master license system prior to April 1, 1982, on July 1, 1982, use of the master license system shall be expanded as provided by this section.

Applications for the following shall be filed with the business license center and shall be processed, and renewals shall be issued, under the master license system:

(1) Nursery dealer's licenses required by chapter 15.13 RCW;

(2) Seed dealer's licenses required by chapter 15.49 RCW;

(3) Pesticide dealer's licenses required by chapter 15.58 RCW;

(4) Shopkeeper's licenses required by chapter 18.64 RCW;

(5) Refrigerated locker licenses required by chapter 19.32 RCW;

(6) Wholesalers licenses and retailers licenses required by *chapter 19.91 RCW;

(7) Egg dealer's licenses required by chapter 69.25 RCW. [1988 c 5 § 3; 1982 c 182 § 11.]

***Reviser's note:** Chapter 19.91 RCW was repealed by 1986 c 321 § 14, effective July 1, 1991.

19.02.200 Center as secretary of state's agent for corporate renewals—Proposals for—Schedule. See RCW 43.07.200.

19.02.210 Master license fund. The master license fund is created in the state treasury. Unless otherwise indicated in RCW 19.02.075, all receipts from handling and master license delinquency fees shall be deposited into the fund. Moneys in the fund may be spent only after appropriation beginning in fiscal year 1993. Expenditures from the fund may be used only to administer the master license services program. [1992 c 107 § 4.]

Effective dates—1992 c 107: See note following RCW 19.02.020.

19.02.220 Combined licensing project—Report—Evaluation. (1) By June 30, 1997, the department shall have a pilot combined licensing project fully operational in at least two cities within the state of Washington, with at least one city west of the Cascade mountains and at least one city east of the Cascade mountains.

(2) By January 31, 1997, the department shall make an interim report to the legislature on the progress of the pilot combined licensing project.

(3) By January 31, 1998, the department shall have evaluated the pilot combined licensing project and reported to the legislature with a plan for transition of the pilot project into an ongoing program. The transition plan shall include cost, funding sources, and staffing needs for the ongoing program.

(4) Upon approval and continued funding of the transition plan by the legislature under this section, the master license system shall implement a transition from the pilot program to the ongoing program. [1995 c 403 § 1006.]

Findings—1995 c 403: "The master license system of the department of licensing is a proven, progressive program for one-stop state licensing. This flexible system should be expanded into a state-wide shared data base to facilitate combined licensing processes at local, state, and federal levels as a benefit to the business community through improved customer service.

In order to achieve this goal the department of licensing should expand the license information management system, offered by the master license system, to include local and federal licensing requirements, making this information readily accessible at appropriate locations throughout the state. In addition, the department should develop a pilot program expanding the capabilities of the master licensing [license] system to local and federal levels in an efficient manner; and provide access to the expanded master licensing [license] system for all jurisdictions within the state of Washington." [1995 c 403 § 1001.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

(1996 Ed.)

19.02.800 Master license system—Certain business or professional activity licenses exempt. Except as provided in RCW 43.07.200, the provisions of this chapter regarding the processing of license applications and renewals under a master license system shall not apply to those business or professional activities that are licensed or regulated under chapter 31.04, *31.08, 31.12, **31.12A, or 31.13 RCW or under Title 30, 32, 33, or 48 RCW. [1982 c 182 § 17.]

Reviser's note: *(1) Chapter 31.08 RCW was repealed by 1991 c 208 § 24, effective January 1, 1993.

** (2) Chapter 31.12A RCW was repealed by 1996 c 5 § 7, effective December 31, 2000.

19.02.810 Master license system—Existing licenses or permits registered under, when. A license or permit affected by chapter 182, Laws of 1982 and otherwise valid on April 1, 1982, need not be registered under the master license system until the renewal or expiration date of that license or permit under the laws in effect prior to April 1, 1982, unless otherwise revoked or suspended. [1982 c 182 § 46.]

19.02.885 Performance audit. The *legislative budget committee shall conduct a performance audit of the master licensing program and report to the senate economic development and labor committee and the house of representatives trade and economic development committee. At a minimum, this study should include an examination of the program cost and effectiveness. [1990 c 264 § 3.]

***Reviser's note:** The "legislative budget committee" was redesignated the "joint legislative audit and review committee" by 1996 c 288 § 3.

Effective date—1990 c 264: See note following RCW 19.02.070.

19.02.890 Short title. This chapter may be known and cited as the business license center act. [1982 c 182 § 18.]

19.02.900 Severability—1977 ex.s. c 319. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 319 § 10.]

19.02.901 Severability—1982 c 182. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 182 § 47.]

19.02.910 Effective date—1977 ex.s. c 319. This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1977. [1977 ex.s. c 319 § 11.]

19.02.920 Construction. The rule of strict construction shall have no application to this chapter and it shall be liberally construed in order to carry out its purposes. [1982 c 182 § 16.]

Chapter 19.06

BLIND MADE PRODUCTS—SERVICES

Sections

- 19.06.010 Labels—Contents—Requirements—Prohibited acts.
 19.06.020 Governmental agencies shall purchase goods and services—
 Conditions.
 19.06.030 Advertising limitations.
 19.06.040 Penalty.

19.06.010 Labels—Contents—Requirements—Prohibited acts. Products made by blind persons and sold or distributed in this state as blind made may bear a label affixed directly to the product reading "MADE BY THE BLIND" and shall show the distributor's or manufacturer's name. Any product bearing such label shall have been made by blind people to the extent of at least seventy-five percent of the man hours required for its manufacture. No other label, trade name or sales device tending to create the impression that a product is made by blind persons shall be used in connection with the sale or distribution of such product unless the product shall have been made by blind people to the extent of at least seventy-five percent of the man hours required for its manufacture. [1961 c 56 § 1; 1959 c 100 § 1.]

19.06.020 Governmental agencies shall purchase goods and services—Conditions. Any board, commission, officer, employee or other person or persons of the state, or any county, city, town, school district or other agency, political subdivision or taxing district of the state, whose duty it is to purchase materials, supplies, goods, wares, merchandise or produce, or to procure services, for the use of any department or institution within the state, shall make such purchases and procure such services whenever available, from any nonprofit agency for the blind located within the state which manufactures or distributes blind made products: PROVIDED, That the goods and services made by or offered by such agencies shall be equal in quality and price to those available from other sources. [1961 c 56 § 4; 1959 c 100 § 2.]

19.06.030 Advertising limitations. No advertising of blind made products shall refer to any product which is not blind made, nor shall any such advertising contain or refer to names or pictures of any blind persons or otherwise exploit the blind. [1961 c 56 § 2.]

19.06.040 Penalty. Any violation of this chapter shall be a misdemeanor. [1961 c 56 § 3.]

Chapter 19.09

CHARITABLE SOLICITATIONS

Sections

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 19.09.020 Definitions.
 19.09.065 Charitable organizations and commercial fund raisers—
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 19.09.075 Charitable organizations—Application for registration—
 Contents—Fee—Veterans' affairs—Notice, advice.

- 19.09.076 Charitable organizations—Application for registration—
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 19.09.913 Effective date—1986 c 230.
 19.09.914 Severability—1993 c 471.
 19.09.915 Effective date—1993 c 471.

*Fees—Charitable trusts—Charitable solicitations: RCW 43.07.125.
 Telephone, solicitation regulated: RCW 80.36.390.*

19.09.010 Purpose. The purpose of this chapter is to provide citizens of the state of Washington with information relating to persons and organizations who solicit funds from the public for public charitable purposes in order to prevent (1) deceptive and dishonest practices in the conduct of soliciting funds for or in the name of charity; and (2) improper use of contributions intended for charitable purposes. [1986 c 230 § 1; 1973 1st ex.s. c 13 § 1.]

19.09.020 Definitions. When used in this chapter, unless the context otherwise requires:

(1) A "bona fide officer or employee" of a charitable organization is one (a) whose conduct is subject to direct control by such organization; (b) who does not act in the manner of an independent contractor in his or her relation with the organization; and (c) whose compensation is not computed on funds raised or to be raised.

(2) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable activity, but does not include any

commercial fund raiser or commercial fund-raising entity as defined in this section. "Charitable" (a) is not limited to its common law meaning unless the context clearly requires a narrower meaning; (b) does not include religious or political activities; and (c) includes, but is not limited to, educational, recreational, social, patriotic, legal defense, benevolent, and health causes.

(3) "Compensation" means salaries, wages, fees, commissions, or any other remuneration or valuable consideration.

(4) "Contribution" means the payment, donation, promise or grant, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights less the reasonable purchase price to the charitable organization of any such tangible merchandise, rights, or services resold by the organization, and not merely that portion of the purchase price to be applied to a charitable purpose.

(5) "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation. Cost of solicitation does not include the reasonable purchase price to the charitable organization of any tangible goods or services resold by the organization as a part of its fund raising activities.

(6) "Entity" means an individual, organization, group, association, partnership, corporation, agency or unit of state government, or any combination thereof.

(7) "General public" or "public" means any individual located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.

(8) "Commercial fund raiser" or "commercial fund-raising entity" means any entity that for compensation or other consideration within this state directly or indirectly solicits or receives contributions for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of or is held out to persons in this state as independently engaged in the business of soliciting or receiving contributions for such purposes. However, the following shall not be deemed a commercial fund raiser or "commercial fund-raising entity": (a) Any entity that provides fund-raising advice or consultation to a charitable organization within this state but neither directly nor indirectly solicits or receives any contribution for or on behalf of any such charitable organization; and (b) a bona fide officer or other employee of a charitable organization.

(9) "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.

(10) "Other employee" of a charitable organization means any person (a) whose conduct is subject to direct

control by such organization; (b) who does not act in the manner of any independent contractor in his or her relation with the organization; and (c) who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable or religious purposes.

(11) "Parent organization" means that part of a charitable organization that coordinates, supervises, or exercises control over policy, fund raising, or expenditures, or assists or advises one or more related foundations, supporting organizations, chapters, branches, or affiliates of such organization in the state of Washington.

(12) "Political activities" means those activities subject to chapter 42.17 RCW or the Federal Elections Campaign Act of 1971, as amended.

(13) "Religious activities" means those religious, evangelical, or missionary activities under the direction of a religious organization duly organized and operating in good faith that are entitled to receive a declaration of current tax exempt status for religious purposes from the United States government and the duly organized branches or chapters of those organizations.

(14) "Secretary" means the secretary of state.

(15) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with which:

(a) Any appeal is made for any charitable purpose; or

(b) The name of any charitable organization is used as an inducement for consummating the sale; or

(c) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.

The solicitation shall be deemed completed when made, whether or not the person making it receives any contribution or makes any sale.

Bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission are specifically excluded and shall not be deemed a solicitation under this chapter. [1993 c 471 § 1; 1986 c 230 § 2; 1983 c 265 § 1; 1979 c 158 § 80; 1977 ex.s. c 222 § 1; 1974 ex.s. c 106 § 1; 1973 1st ex.s. c 13 § 2.]

19.09.065 Charitable organizations and commercial fund raisers—Registration required—Public record—Registration not endorsement. (1) All charitable organizations and commercial fund raisers shall register with the secretary prior to conducting any solicitations.

(2) Failure to register as required by this chapter is a violation of this chapter.

(3) Information provided to the secretary pursuant to this chapter shall be a public record except as otherwise stated in this chapter.

(4) Registration shall not be considered or be represented as an endorsement by the secretary or the state of Washington. [1993 c 471 § 2; 1986 c 230 § 3; 1983 c 265 § 4.]

19.09.075 Charitable organizations—Application for registration—Contents—Fee—Veterans' affairs—Notice, advice. An application for registration as a charitable organization shall be submitted in the form prescribed by rule by the secretary, containing, but not limited to, the following:

- (1) The name, address, and telephone number of the charitable organization;
- (2) The name(s) under which the organization will solicit contributions;
- (3) The name, address, and telephone number of the officers of or persons accepting responsibility for the organization;
- (4) The names of the three officers or employees receiving the greatest amount of compensation from the organization;
- (5) The purpose of the organization;
- (6)(a) Whether the organization is exempt from federal income tax; and if so the organization shall attach to its application a copy of the letter by which the internal revenue service granted such status; and
 - (b) The name and address of the entity that prepares, reviews, or audits the financial statement of the organization;
- (7) A solicitation report of the organization for the preceding accounting year including:
 - (a) The number and types of solicitations conducted;
 - (b) The total dollar value of support received from solicitations and from all other sources received on behalf of the charitable purpose of the charitable organization;
 - (c) The total amount of money applied to charitable purposes, fund raising costs, and other expenses;
 - (d) The name, address, and telephone number of any commercial fund raiser used by the organization;
- (8) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305; and
- (9) The total revenue of the preceding fiscal year.

The solicitation report required to be submitted under subsection (7) of this section shall be in the form prescribed by rule by the secretary, or as agreed to by the secretary and a charitable organization or a group of charitable organizations. A consolidated application for registration may, at the option of the charitable organization, be submitted by a parent organization for itself and any or all of its related foundations, supporting organizations, chapters, branches, or affiliates in the state of Washington.

The application shall be signed by the president, treasurer, or comparable officer of the organization whose signature shall be notarized. The application shall be submitted with a nonrefundable filing fee which shall be in an amount to be established by the secretary by rule. In determining the amount of this application fee, the secretary may consider factors such as the entity's annual budget and its federal income tax status. If the secretary determines that the application is complete, the application shall be filed and the applicant deemed registered.

The secretary shall notify the director of veterans' affairs upon receipt of an application for registration as a charitable organization from an entity that purports to raise funds to benefit veterans of the United States military services. The director of veterans' affairs may advise the secretary and the attorney general of any information,

reports, or complaints regarding such an organization. [1993 c 471 § 3; 1986 c 230 § 4; 1983 c 265 § 5.]

19.09.076 Charitable organizations—Application for registration—Exemptions—Rules—Compliance with conditions. The application requirements of RCW 19.09.075 do not apply to the following:

- (1) Any charitable organization raising less than an amount as set by rule adopted by the secretary in any accounting year when all the activities of the organization, including all fund raising activities, are carried on by persons who are unpaid for their services and no part of the charitable organization's assets or income inures to the benefit of or is paid to any officer or member of the organization;
- (2) Any charitable organization located outside of the state of Washington if the organization files the following with the secretary:
 - (a) The registration documents required under the charitable solicitation laws of the state in which the charitable organization is located;
 - (b) The registration required under the charitable solicitation laws of the state of California and the state of New York; and
 - (c) Such federal income tax forms as may be required by rule of the secretary.

All entities soliciting charitable donations shall comply with the requirements of RCW 19.09.100. [1994 c 287 § 1; 1993 c 471 § 4; 1986 c 230 § 5.]

19.09.079 Commercial fund raisers—Application for registration—Contents—Fee. An application for registration as a commercial fund raiser shall be submitted in the form prescribed by the secretary, containing, but not limited to, the following:

- (1) The name, address, and telephone number of the commercial fund-raising entity;
- (2) The name(s), address(es), and telephone number(s) of the owner(s) and principal officer(s) of the commercial fund-raising entity;
- (3) The name, address, and telephone number of the individual responsible for the activities of the commercial fund-raising entity in Washington;
- (4) A list of states and Canadian provinces in which fund raising has been performed;
- (5) The names of the three officers or employees receiving the greatest amount of compensation from the commercial fund-raising entity;
- (6) The name and address of the entity that prepares, reviews, or audits the financial statement of the organization;
- (7) A solicitation report of the commercial fund-raising entity for the preceding accounting year, including:
 - (a) The number and types of fund raising services conducted;
 - (b) The names of charitable organizations required to register under RCW 19.09.065 for whom fund raising services have been performed;
 - (c) The total value of contributions received on behalf of charitable organizations required to register under RCW 19.09.065 by the commercial fund raiser, affiliate of the commercial fund raiser, or any entity retained by the commercial fund raiser; and

(d) The amount of money disbursed to charitable organizations for charitable purposes, net of fund raising costs paid by the charitable organization as stipulated in any agreement between charitable organizations and the commercial fund raiser;

(8) The name, address, and telephone number of any commercial fund raiser that was retained in the conduct of providing fund raising services; and

(9) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305.

The application shall be signed by an officer or owner of the commercial fund raiser and shall be submitted with a nonrefundable fee in an amount to be established by rule of the secretary. If the secretary determines that the application is complete, the application shall be filed and the applicant deemed registered. [1993 c 471 § 5; 1986 c 230 § 7; 1983 c 265 § 15.]

19.09.085 Registration—Duration—Change—Notice to reregister. (1) Registration under this chapter shall be effective for one year or longer, as established by the secretary.

(2) Reregistration required under RCW 19.09.075 or 19.09.079 shall be submitted to the secretary no later than the date established by the secretary by rule.

(3) Entities required to register under this chapter shall file a notice of change of information within thirty days of any change in the information contained in RCW 19.09.075 (1) through (6) or 19.09.079 (1) through (6).

(4) The secretary shall notify entities registered under this chapter of the need to reregister upon the expiration of their current registration. The notification shall be by mail, sent at least sixty days prior to the expiration of their current registration. Failure to register shall not be excused by a failure of the secretary to mail the notice or by an entity's failure to receive the notice. [1993 c 471 § 6; 1986 c 230 § 8; 1983 c 265 § 8.]

19.09.095 Subsidiary organizations—Requirement to register—Exemptions. A charitable organization that is supervised and controlled by a superior or parent organization that is incorporated, qualified to do business, or is doing business within this state shall not be required to register under RCW 19.09.065 if the superior or parent organization files an application, on behalf of its subsidiary, in addition to or as a part of its own application. If an application has been filed by a superior or parent organization, on behalf of the subsidiary organization, the superior or parent organization shall (1) report financial information either separately or in consolidated form for its subsidiary organization(s), and (2) identify the subsidiary organization(s) on whose behalf the application is being submitted, indicating which such organization(s), if any, collected or expended five thousand dollars or more during their fiscal year. [1986 c 230 § 9; 1983 c 265 § 6.]

19.09.097 Contract with commercial fund raiser—Limitations—Registration form—Contents—Copy—Fee. (1) No charitable organization may contract with a commercial fund raiser for any fund raising service or activity unless

its contract requires that both parties comply with the law and permits officers of the charity reasonable access to: (a) The fund raisers' financial records relating to that charitable organization; and (b) the fund raisers' operations including without limitation the right to be present during any telephone solicitation. In addition, the contract shall specify the amount of raised funds that the charitable organization will receive or the method of computing that amount, the amount of compensation of the commercial fund raiser or the method of computing that amount, and whether the compensation is fixed or contingent.

(2) Before a charitable organization may contract with a commercial fund raiser for any fund raising service or activity, the charitable organization and commercial fund raiser shall complete a registration form. The registration shall be filed by the charitable organization with the secretary, in the form prescribed by the secretary, within five working days of the execution of the contract containing, but not limited to the following information:

(a) The name and registration number of the commercial fund raiser;

(b) The name of the surety or sureties issuing the bond required by RCW 19.09.190, the aggregate amount of such bond or bonds, the bond number(s), original effective date(s), and termination date(s);

(c) The name and registration number of the charitable organization;

(d) The name of the representative of the commercial fund raiser who will be responsible for the conduct of the fund raising;

(e) The type(s) of service(s) to be provided by the commercial fund raiser;

(f) The dates such service(s) will begin and end;

(g) The terms of the agreement between the charitable organization and commercial fund raiser relating to:

(i) Amount or percentages of amounts to inure to the charitable organization;

(ii) Limitations placed on the maximum amount to be raised by the fund raiser, if the amount to inure to the charitable organization is not stated as a percentage of the amount raised;

(iii) Costs of fund raising that will be the responsibility of the charitable organization, regardless of whether paid as a direct expense, deducted from the amounts disbursed, or otherwise; and

(iv) The manner in which contributions received directly by the charitable organization, not the result of services provided by the commercial fund raiser, will be identified and used in computing the fee owed to the commercial fund raiser; and

(h) The names of any entity to which more than ten percent of the total anticipated fund raising cost is to be paid, and whether any principal officer or owner of the commercial fund raiser or relative by blood or marriage thereof is an owner or officer of any such entity.

(3) A correct copy of the contract shall be filed with the secretary before the commencement of any campaign.

(4) The registration form shall be submitted with a nonrefundable filing fee in an amount to be established by rule of the secretary and shall be signed by an owner or principal officer of the commercial fund raiser and the

president, treasurer, or comparable officer of the charitable organization. [1993 c 471 § 7; 1986 c 230 § 10.]

19.09.100 Conditions applicable to solicitations. The following conditions apply to solicitations as defined by RCW 19.09.020:

(1) A charitable organization, whether or not required to register pursuant to this chapter, that directly solicits contributions from the public in this state shall make the following clear and conspicuous disclosures at the point of solicitation:

(a) The name of the individual making the solicitation;

(b) The identity of the charitable organization and the city of the principal place of business of the charitable organization;

(c) If requested by the solicitee, the published number in the office of the secretary for the donor to obtain additional financial disclosure information on file with the secretary.

(2) A commercial fund raiser shall clearly and conspicuously disclose at the point of solicitation:

(a) The name of the individual making the solicitation;

(b) The name of the entity for which the fund raiser is an agent or employee and the name and city of the charitable organization for which the solicitation is being conducted; and

(c) If requested by the solicitee, the published number in the office of the secretary for the donor to obtain additional financial disclosure information on file with the secretary. The disclosure must be made during an oral solicitation of a contribution, and at the same time at which a written request for a contribution is made.

(3) A person or organization soliciting charitable contributions by telephone shall make the disclosures required under subsection (1) or (2) of this section in the course of the solicitation but prior to asking for a commitment for a contribution from the solicitee, and in writing to any solicitee that makes a pledge within five working days of making the pledge. If the person or organization sends any materials to the person or organization solicited before the receipt of any contribution, those materials shall include the disclosures required in subsection (1) or (2) of this section, whichever is applicable.

(4) In the case of a solicitation by advertisement or mass distribution, including posters, leaflets, automatic dialing machines, publication, and audio or video broadcasts, it shall be clearly and conspicuously disclosed in the body of the solicitation material that:

(a) The solicitation is conducted by a named commercial fund raiser, if it is;

(b) The notice of solicitation required by the charitable solicitation act is on file with the secretary's office; and

(c) The potential donor can obtain additional financial disclosure information at a published number in the office of the secretary.

(5) A container or vending machine displaying a solicitation must also display in a clear and conspicuous manner the name of the charitable organization for which funds are solicited, the name, business address, and telephone number of the individual and any commercial fund raiser responsible for collecting funds placed in the containers or vending machines, and the following statement: "This charity is currently registered with the secretary's office

under the charitable solicitation act, registration number"

(6) A commercial fund raiser shall not represent that tickets to any fund raising event will be donated for use by another person unless all the following requirements are met:

(a) The commercial fund raiser prior to conducting a solicitation has written commitments from persons stating that they will accept donated tickets and specifying the number of tickets they will accept;

(b) The written commitments are kept on file by the commercial fund raiser for three years and are made available to the secretary, attorney general, or county prosecutor on demand;

(c) The contributions solicited for donated tickets may not be more than the amount representing the number of ticket commitments received from persons and kept on file under (a) of this subsection; and

(d) Not later than seven calendar days prior to the date of the event for which ticket donations are solicited, the commercial fund raiser shall give all donated tickets to the persons who made the written commitments to accept them.

(7) Each person or organization soliciting charitable contributions shall not represent orally or in writing that:

(a) The charitable contribution is tax deductible unless the charitable organization for which charitable contributions are being solicited or to which tickets for fund raising events or other services or goods will be donated, has applied for and received from the internal revenue service a letter of determination granting tax deductible status to the charitable organization;

(b) The person soliciting the charitable contribution is a volunteer or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor unless such person is unpaid for his or her services;

(c) The person soliciting the charitable contribution is a member, staffer, helper, or employee of the charitable organization or words of similar meaning or effect that create the impression that the person soliciting is not a paid solicitor if the person soliciting is employed, contracted, or paid by a commercial fund raiser.

(8) If the charitable organization is associated with, or has a name that is similar to, any unit of government each person or organization soliciting contributions shall disclose to each person solicited whether the charitable organization is or is not part of any unit of government and the true nature of its relationship to the unit of government. This subsection does not apply to a foundation or other charitable organization that is organized, operated, or controlled by or in connection with a registered public charity, including any governmental agency or unit, from which it derives its name.

(9) No person may, in conducting any solicitation, use the name "police," "sheriff," "fire fighter," "firemen," or a similar name unless properly authorized by a bona fide police, sheriff, or fire fighter organization or police, sheriff, or fire department. A proper authorization shall be in writing and signed by two authorized officials of the organization or department and shall be filed with the secretary.

(10) A person may not, in conducting any solicitation, use the name of a federally chartered or nationally recognized military veterans' service organization as determined by the United States veterans' administration unless autho-

rized in writing by the highest ranking official of that organization in this state.

(11) A charitable organization shall comply with all local governmental regulations that apply to soliciting for or on behalf of charitable organizations.

(12) The advertising material and the general promotional plan for a solicitation shall not be false, misleading, or deceptive, and shall afford full and fair disclosure.

(13) Solicitations shall not be conducted by a charitable organization or commercial fund raiser that has, or if a corporation, its officers, directors, or principals have, been convicted of a crime involving solicitations for or on behalf of a charitable organization in this state, the United States, or any other state or foreign country within the past ten years or has been subject to any permanent injunction or administrative order or judgment under RCW 19.86.080 or 19.86.090, involving a violation or violations of RCW 19.86.020, within the past ten years, or of restraining a false or misleading promotional plan involving solicitations for charitable organizations.

(14) No charitable organization or commercial fund raiser subject to this chapter may use or exploit the fact of registration under this chapter so as to lead the public to believe that registration constitutes an endorsement or approval by the state, but the use of the following is not deemed prohibited: "Currently registered with the Washington state secretary of state as required by law. Registration number"

(15) No entity may engage in any solicitation for contributions for or on behalf of any charitable organization or commercial fund raiser unless the charitable organization or commercial fund raiser is currently registered with the secretary.

(16) No entity may engage in any solicitation for contributions unless it complies with all provisions of this chapter.

(17)(a) No entity may place a telephone call for the purpose of charitable solicitation that will be received by the solicitee before eight o'clock a.m. or after nine o'clock p.m.

(b) No entity may, while placing a telephone call for the purpose of charitable solicitation, engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the telephone call.

(18) Failure to comply with subsections (1) through (17) of this section is a violation of this chapter. [1994 c 287 § 2; 1993 c 471 § 9; 1986 c 230 § 11; 1983 c 265 § 9; 1982 c 227 § 7; 1977 ex.s. c 222 § 6; 1974 ex.s. c 106 § 3; 1973 1st ex.s. c 13 § 10.]

Effective date—1982 c 227: "Sections 5 and 6 of this act shall take effect June 30, 1983. The remaining sections of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect March 1, 1982." [1982 c 227 § 25.] "Sections 5 and 6 of this act" consist of a temporary section (uncodified) and the 1982 c 227 amendment to RCW 18.34.130, respectively.

Reviser's note: Substitute House Bill No. 778 (1982 c 227), was signed by the governor April 3, 1982.

19.09.190 Commercial fund raisers—Surety bond.

Every commercial fund raiser who (1) directly or indirectly receives contributions from the public on behalf of any charitable organization; or (2) is compensated based upon funds raised or to be raised, number of solicitations made or

to be made, or any other similar method; or (3) incurs or is authorized to incur expenses on behalf of the charitable organization; or (4) has not been registered with the secretary as a commercial fund raiser for the preceding accounting year shall execute a surety bond as principal with one or more sureties whose liability in the aggregate as such sureties will equal at least fifteen thousand dollars. The secretary may, by rule, provide for the reduction and reinstatement of the bond required by this section.

The issuer of the surety bond shall be licensed to do business in this state, and shall promptly notify the secretary when claims or payments are made against the bond or when the bond is canceled. The bond shall be filed with the secretary in the form prescribed by the secretary. The bond shall run to the state and to any person who may have a cause of action against the obligor of said bond for any malfeasance, misfeasance, or deceptive practice in the conduct of such solicitation. [1993 c 471 § 10; 1986 c 230 § 16; 1983 c 265 § 16; 1982 c 227 § 8; 1977 ex.s. c 222 § 9; 1973 1st ex.s. c 13 § 19.]

Effective date—1982 c 227: See note following RCW 19.09.100.

19.09.200 Books, records, and contracts. (1) Charitable organizations and commercial fund raisers shall maintain accurate, current, and readily available books and records at their usual business locations until at least three years have elapsed following the effective period to which they relate.

(2) All contracts between commercial fund raisers and charitable organizations shall be in writing, and true and correct copies of such contracts or records thereof shall be kept on file in the various offices of the charitable organization and the commercial fund raiser for a three-year period. Such records and contracts shall be available for inspection and examination by the attorney general or by the county prosecuting attorney. A copy of such contract or record shall be submitted by the charitable organization or commercial fund raiser, within ten days, following receipt of a written demand therefor from the attorney general or county prosecutor. [1993 c 471 § 11; 1986 c 230 § 12; 1982 c 227 § 9; 1973 1st ex.s. c 13 § 20.]

Effective date—1982 c 227: See note following RCW 19.09.100.

19.09.210 Financial statements. Upon the request of the attorney general or the county prosecutor, a charitable organization or commercial fund raiser shall submit a financial statement containing, but not limited to, the following information:

(1) The gross amount of the contributions pledged and the gross amount collected.

(2) The amount thereof, given or to be given to charitable purposes represented together with details as to the manner of distribution as may be required.

(3) The aggregate amount paid and to be paid for the expenses of such solicitation.

(4) The amounts paid to and to be paid to commercial fund raisers or charitable organizations.

(5) Copies of any annual or periodic reports furnished by the charitable organization, of its activities during or for the same fiscal period, to its parent organization, subsidiaries, or affiliates, if any. [1993 c 471 § 12; 1986 c 230 § 13;

1983 c 265 § 10; 1982 c 227 § 10; 1977 ex.s. c 222 § 10; 1975 1st ex.s. c 219 § 1; 1973 1st ex.s. c 13 § 21.]

Effective date—1982 c 227: See note following RCW 19.09.100.

19.09.230 Using the name, symbol, or emblem of another entity—Filing. No charitable organization, commercial fund raiser, or other entity may knowingly use the identical or deceptively similar name, symbol, or emblem of any other entity for the purpose of soliciting contributions from persons in this state without the written consent of such other entity. If the official name or the "doing business name" being registered is the same or deceptively similar as that of another entity, the secretary may request that a copy of the written consent from that entity be filed with the registration. Such consent may be deemed to have been given by anyone who is a director, trustee, or other authorized officer of that entity. A copy of the written consent must be kept on file by the charitable organization or commercial fund raiser and made available to the secretary, attorney general, or county prosecutor upon demand.

A person may be deemed to have used the name of another person for the purpose of soliciting contributions if such latter person's name is listed on any stationery, advertisement, brochure, or correspondence of the charitable organization or person or if such name is listed or represented to any one who has contributed to, sponsored, or endorsed the charitable organization or person, or its or his activities.

The secretary may revoke or deny any application for registration that violates this section. [1994 c 287 § 3; 1993 c 471 § 13; 1986 c 230 § 14; 1982 c 227 § 11; 1973 1st ex.s. c 13 § 23.]

Effective date—1982 c 227: See note following RCW 19.09.100.

19.09.240 Using similar name, symbol, emblem, or statement. No charitable organization, commercial fund raiser, or other person soliciting contributions for or on behalf of a charitable organization may use a name, symbol, emblem, or statement so closely related or similar to that used by another charitable organization or governmental agency that the use thereof would tend to confuse or mislead the public. The secretary may revoke or deny any application for registration that violates this section.

This section does not apply to a foundation or other charitable organization that is organized, operated, or controlled by or in connection with a registered public charity, including any governmental agency or unit, from which it derives its name. [1993 c 471 § 14; 1986 c 230 § 15; 1973 1st ex.s. c 13 § 24.]

19.09.271 Failure to register—Late filing fee—Notice to attorney general. (1) Any charitable organization or commercial fund raiser who, after notification by the secretary, fails to properly register under this chapter by the end of the first business day following the issuance of the notice, is liable for a late filing fee in an amount to be established by rule of the secretary. The late filing fee is in addition to any other filing fee provided by this chapter.

(2) The secretary shall notify the attorney general of any entity liable for late filing fees under subsection (1) of this section. [1993 c 471 § 8; 1986 c 230 § 17.]

19.09.275 Violations—Penalties. Any person who knowingly violates any provision of this chapter or who knowingly gives false or incorrect information to the secretary, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

Any person who violates any provisions of this chapter or who gives false or incorrect information to the secretary, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified, is guilty of a misdemeanor punishable under chapter 9A.20 RCW. [1993 c 471 § 15; 1986 c 230 § 18; 1983 c 265 § 11; 1982 c 227 § 12; 1977 ex.s. c 222 § 14.]

Effective date—1982 c 227: See note following RCW 19.09.100.

19.09.276 Waiver of rule-set penalties—Notice by organization seeking relief—Investigation. The secretary may waive penalties that have been set by rule and assessed by the secretary due from a registered charitable organization previously in good standing that would otherwise be penalized. A charitable organization desiring to seek relief under this section must, within fifteen days of discovery by its corporate officials, director, or other authorized officer of the missed filing or lapse, notify the secretary in writing. The notification must include the name and mailing address of the organization, the organization's officer to whom correspondence should be sent, and a statement under oath by a responsible officer of the organization, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. Upon receipt of the notice, the secretary shall investigate the circumstances of the missed filing or lapse. If the secretary is satisfied that sufficient exigent or mitigating circumstances exist, that the organization has demonstrated good faith and a reasonable attempt to comply with the applicable corporate statutes of this state, the secretary may issue an order allowing relief from the penalty. If the secretary determines the request does not comply with the requirements for relief, the secretary shall deny the relief and state the reasons for the denial. Notwithstanding chapter 34.05 RCW, a denial of relief by the secretary is not reviewable. [1994 c 287 § 4.]

19.09.277 Violations—Attorney general—Cease and desist order—Temporary order. If it appears to the attorney general that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter or a rule adopted or order issued under this chapter, the attorney general may, in the attorney general's discretion, issue an order directing the person to cease and desist from continuing the act or practice. Reasonable notice of and opportunity for a hearing shall be given. The attorney general may issue a temporary order pending the hearing, which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom the notice is addressed does not request a hearing within fifteen days after the receipt of the notice. [1993 c 471 § 20.]

19.09.279 Violations—Attorney general—Penalty—Hearing—Recovery in superior court. (1) The attorney general may assess against any person or organization who violates this chapter, or any rule adopted under this chapter, a civil penalty of not more than one thousand dollars for each violation.

(2) Such person or organization shall be afforded the opportunity for a hearing, upon request made to the attorney general within thirty days after the date of issuance of the notice of assessment. The hearing shall be conducted in accordance with chapter 34.05 RCW.

(3) If any person fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the state, the attorney general may recover the amount assessed by action in the appropriate superior court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review. [1993 c 471 § 21.]

19.09.305 Service on secretary when registrant not found—Procedure—Fee—Costs. When a person or an organization registered under this chapter, or its president, treasurer, or comparable officers, cannot be found after reasonably diligent effort, the secretary of state shall be an agent of such person or organization upon whom process may be served. Service on the secretary shall be made by delivering to the secretary or the secretary's designee duplicate copies of such process, and a filing fee to be established by rule of the secretary. Thereupon, the secretary shall immediately cause one of the copies thereof to be forwarded to the registrant at the most current address shown in the secretary's files. Any service so had on the secretary shall be returnable in not less than thirty days.

Any fee under this section shall be taxable as costs in the action.

The secretary shall maintain a record of all process served on the secretary under this section, and shall record the date of service and the secretary's action with reference thereto.

Nothing in this section limits or affects the right to serve process required or permitted to be served on a registrant in any other manner now or hereafter permitted by law. [1993 c 471 § 16; 1983 c 265 § 7.]

19.09.315 Forms and procedures—Filing of financial statement—Publications—Fee. (1) The secretary may establish, by rule, standard forms and procedures for the efficient administration of this chapter.

(2) The secretary may provide by rule for the filing of a financial statement by registered entities.

(3) The secretary may issue such publications, reports, or information from the records as may be useful to the solicited public and charitable organizations. To defray the costs of any such publication, the secretary is authorized to charge a reasonable fee to cover the costs of preparing, printing, and distributing such publications. [1993 c 471 § 17; 1983 c 265 § 17.]

19.09.340 Violations deemed unfair practice under chapter 19.86 RCW—Application of chapter 9.04 RCW—Procedure. (1) The commission by any person of

an act or practice prohibited by this chapter is hereby declared to be an unfair act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of application of the Consumer Protection Act, chapter 19.86 RCW.

(2) The secretary may refer such evidence, as may be available, concerning violations of this chapter to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose. In addition to any other action they might commence, the attorney general or the county prosecuting attorney may bring an action in the name of the state, with or without such reference, against any person to restrain and prevent the doing of any act or practice prohibited by this chapter: PROVIDED, That this chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, as now or hereafter amended, and the powers and duties of the attorney general and the prosecuting attorney as they may appear in the aforementioned chapters, shall apply against all persons subject to this chapter. [1983 c 265 § 12; 1982 c 227 § 13; 1973 1st ex.s. c 13 § 34.]

Effective date—1982 c 227: See note following RCW 19.09.100.

19.09.355 Moneys to be transmitted to general fund. All fees and other moneys received by the secretary of state under this chapter shall be transmitted to the state treasurer for deposit in the state general fund. [1983 c 265 § 18.]

19.09.400 Attorney general—Investigations—Publication of information. The attorney general, in the attorney general's discretion, may:

(1) Annually, or more frequently, make such public or private investigations within or without this state as the attorney general deems necessary to determine whether any registration should be granted, denied, revoked, or suspended, or whether any person has violated or is about to violate a provision of this chapter or any rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter; and

(2) Publish information concerning a violation of this chapter or a rule adopted or order issued under this chapter. [1993 c 471 § 18.]

19.09.410 Attorney general—Investigations—Powers—Superior court may compel. For the purpose of any investigation or proceeding under this chapter, the attorney general or any officer designated by the attorney general may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the attorney general deems relevant or material to the inquiry.

In case of willful failure on the part of a person to comply with a subpoena lawfully issued by the attorney general or on the refusal of a witness to testify to matters regarding which the witness may be lawfully interrogated, the superior court of a county, on application of the attorney general and after satisfactory evidence of willful disobedi-

ence, may compel obedience by proceedings for contempt, as in the case of disobedience of a subpoena issued from the court or a refusal to testify therein. [1993 c 471 § 19.]

19.09.420 Copies of information for attorney general. The secretary shall provide the attorney general with copies of or direct electronic access to all registrations, reports, or other information filed under this chapter. [1993 c 471 § 23.]

19.09.430 Administrative procedure act to govern administration. The administrative procedure act, chapter 34.05 RCW, shall wherever applicable govern the rights, remedies, and procedures respecting the administration of this chapter. [1993 c 471 § 22.]

19.09.440 Annual report by secretary of state. (1) Annually, the secretary of state shall publish a report indicating:

(a) For each charitable organization registered under RCW 19.09.065 the percentage relationship between (i) the total amount of money applied to charitable purposes; and (ii) the dollar value of support received from solicitations and received from all other sources on behalf of the charitable purpose of the organization;

(b) For each commercial fund raiser registered under RCW 19.09.065 the percentage relationship between (i) the amount of money disbursed to charitable organizations for charitable purposes; and (ii) the total value of contributions received on behalf of charitable organizations by the commercial fund raiser; and

(c) Such other information as the secretary of state deems appropriate.

(2) The secretary of state may use the latest information obtained pursuant to RCW 19.09.075 or otherwise under chapter 19.09 RCW to prepare the report. [1993 c 471 § 42.]

19.09.910 Severability—1973 1st ex.s. c 13. The provisions of this chapter are severable, and if any part or provision hereof shall be void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this chapter. [1973 1st ex.s. c 13 § 38.]

19.09.911 Severability—1983 c 265. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 265 § 20.]

19.09.912 Effective date—1983 c 265. With the exception of section 19 of this act, this act shall take effect January 1, 1984. [1983 c 265 § 21.]

Reviser's note: "Section 19 of this act" is an uncodified appropriation section.

19.09.913 Effective date—1986 c 230. This act shall take effect on January 1, 1987. [1986 c 230 § 21.]

19.09.914 Severability—1993 c 471. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 471 § 43.]

19.09.915 Effective date—1993 c 471. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 471 § 44.]

Chapter 19.16 COLLECTION AGENCIES

Sections

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- 19.16.920 Provisions exclusive—Authority of political subdivisions to levy business and occupation taxes not affected.

- 19.16.930 Effective date—1971 ex.s. c 253.
 19.16.940 Short title.
 19.16.950 Section headings.

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

(1) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.

(2) "Collection agency" means and includes:

(a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person;

(b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself in his own name;

(c) Any person who in attempting to collect or in collecting his own claim uses a fictitious name or any name other than his own which would indicate to the debtor that a third person is collecting or attempting to collect such claim.

(3) "Collection agency" does not mean and does not include:

(a) Any individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a licensee under this chapter, if said individual is an employee of the licensee;

(b) Any individual collecting or attempting to collect claims for not more than one employer, if all the collection efforts are carried on in the name of the employer and if the individual is an employee of the employer;

(c) Any person whose collection activities are carried on in his or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to trust companies, savings and loan associations, building and loan associations, abstract companies doing an escrow business, real estate brokers, public officers acting in their official capacities, persons acting under court order, lawyers, insurance companies, credit unions, loan or finance companies, mortgage banks, and banks;

(d) Any person who on behalf of another person prepares or mails monthly or periodic statements of accounts due if all payments are made to that other person and no other collection efforts are made by the person preparing the statements of account; or

(e) An "out-of-state collection agency" as defined in this chapter.

(4) "Out-of-state collection agency" means a person whose activities within this state are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission, from the person's location in another state on behalf of clients located outside of this state.

(5) "Claim" means any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied.

(6) "Statement of account" means a report setting forth only amounts billed, invoices, credits allowed, or aged balance due.

(7) "Director" means the director of licensing.

(8) "Client" or "customer" means any person authorizing or employing a collection agency to collect a claim.

(9) "Licensee" means any person licensed under this chapter.

(10) "Board" means the Washington state collection agency board.

(11) "Debtor" means any person owing or alleged to owe a claim. [1994 c 195 § 1; 1990 c 190 § 1; 1979 c 158 § 81; 1971 ex.s. c 253 § 1.]

19.16.110 License required. No person shall act, assume to act, or advertise as a collection agency or out-of-state collection agency as defined in this chapter, except as authorized by this chapter, without first having applied for and obtained a license from the director.

Nothing contained in this section shall be construed to require a regular employee of a collection agency or out-of-state collection agency duly licensed under this chapter to procure a collection agency license. [1994 c 195 § 2; 1971 ex.s. c 253 § 2.]

19.16.120 Denial, revocation, suspension of, or refusal to renew, license—Civil penalty—Grounds. In addition to other provisions of this chapter, any license issued pursuant to this chapter or any application therefor may be denied, not renewed, revoked, or suspended, or in lieu of or in addition to suspension a licensee may be assessed a civil, monetary penalty in an amount not to exceed one thousand dollars:

(1) If an individual applicant or licensee is less than eighteen years of age or is not a resident of this state.

(2) If an applicant or licensee is not authorized to do business in this state.

(3) If the application or renewal forms required by this chapter are incomplete, fees required under RCW 19.16.140 and 19.16.150, if applicable, have not been paid, and the surety bond or cash deposit or other negotiable security acceptable to the director required by RCW 19.16.190, if applicable, has not been filed or renewed or is canceled.

(4) If any individual applicant, owner, officer, director, or managing employee of a nonindividual applicant or licensee:

(a) Shall have knowingly made a false statement of a material fact in any application for a collection agency license or an out-of-state collection agency license or renewal thereof, or in any data attached thereto and two years have not elapsed since the date of such statement;

(b) Shall have had a license to engage in the business of a collection agency or out-of-state collection agency denied, not renewed, suspended, or revoked by this state, any other state, or foreign country, for any reason other than the nonpayment of licensing fees or failure to meet bonding requirements: PROVIDED, That the terms of this subsection shall not apply if:

(i) Two years have elapsed since the time of any such denial, nonrenewal, or revocation; or

(ii) The terms of any such suspension have been fulfilled;

(c) Has been convicted in any court of any felony involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and is incarcerated for that offense or five years have not elapsed since the date of such conviction;

(d) Has had any judgment entered against him in any civil action involving forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, or conspiracy to defraud and five years have not elapsed since the date of the entry of the final judgment in said action: PROVIDED, That in no event shall a license be issued unless the judgment debt has been discharged;

(e) Has had his license to practice law suspended or revoked and two years have not elapsed since the date of such suspension or revocation, unless he has been relicensed to practice law in this state;

(f) Has had any judgment entered against him or it under the provisions of RCW 19.86.080 or 19.86.090 involving a violation or violations of RCW 19.86.020 and two years have not elapsed since the entry of the final judgment: PROVIDED, That in no event shall a license be issued unless the terms of such judgment, if any, have been fully complied with: PROVIDED FURTHER, That said judgment shall not be grounds for denial, suspension, nonrenewal, or revocation of a license unless the judgment arises out of and is based on acts of the applicant, owner, officer, director, managing employee, or licensee while acting for or as a collection agency or an out-of-state collection agency;

(g) Has petitioned for bankruptcy, and two years have not elapsed since the filing of said petition;

(h) Shall be insolvent in the sense that his or its liabilities exceed his or its assets or in the sense that he or it cannot meet his or its obligations as they mature;

(i) Has failed to pay any civil, monetary penalty assessed in accordance with RCW 19.16.351 or 19.16.360 within ten days after the assessment becomes final;

(j) Has knowingly failed to comply with, or violated any provisions of this chapter or any rule or regulation issued pursuant to this chapter, and two years have not elapsed since the occurrence of said noncompliance or violation; or

(k) Has been found by a court of competent jurisdiction to have violated the federal fair debt collection practices act, 15 U.S.C. Sec. 1692 et seq., or the Washington state consumer protection act, chapter 19.86 RCW, and two years have not elapsed since that finding.

Any person who is engaged in the collection agency business as of January 1, 1972 shall, upon filing the application, paying the fees, and filing the surety bond or cash deposit or other negotiable security in lieu of bond required by this chapter, be issued a license hereunder. [1994 c 195 § 3; 1977 ex.s. c 194 § 1; 1973 1st ex.s. c 20 § 1; 1971 ex.s. c 253 § 3.]

19.16.130 License—Application—Form—Contents.

Every application for a license shall be in writing, under oath, and in the form prescribed by the director.

Every application shall contain such relevant information as the director may require.

The applicant shall furnish the director with such evidence as the director may reasonably require to establish that the requirements and qualifications for a licensee have been fulfilled by the applicant.

Every application for a license shall state, among other things that may be required, the name of the applicant with the name under which the applicant will do business and the location by street and number, city and state of each office of the business for which the license is sought.

No license shall be issued in any fictitious name which may be confused with or which is similar to any federal, state, county, or municipal governmental function or agency or in any name which may tend to describe any business function or enterprise not actually engaged in by the applicant or in any name which is the same as or so similar to that of any existing licensee as would tend to deceive the public or in any name which would otherwise tend to be deceptive or misleading. The foregoing shall not necessarily preclude the use of a name which may be followed by a geographically descriptive title which would distinguish it from a similar name licensed but operating in a different geographical area. [1971 ex.s. c 253 § 4.]

19.16.140 License—Application—Fees—

Exemptions. Each applicant when submitting his application shall pay a licensing fee and an investigation fee determined by the director as provided in RCW 43.24.086. The licensing fee for an out-of-state collection agency shall not exceed fifty percent of the licensing fee for a collection agency. An out-of-state collection agency is exempt from the licensing fee if the agency is licensed or registered in a state that does not require payment of an initial fee by any person who collects debts in the state only by means of interstate communications from the person's location in another state. If a license is not issued in response to the application, the license fee shall be returned to the applicant.

An annual license fee determined by the director as provided in RCW 43.24.086 shall be paid to the director on or before January first of each year. The annual license fee for an out-of-state collection agency shall not exceed fifty percent of the annual license fee for a collection agency. An out-of-state collection agency is exempt from the annual license fee if the agency is licensed or registered in a state that does not require payment of an annual fee by any person who collects debts in the state only by means of interstate communications from the person's location in another state. If the annual license fee is not paid on or before January first, the licensee shall be assessed a penalty for late payment in an amount determined by the director as provided in RCW 43.24.086. If the fee and penalty are not paid by January thirty-first, it will be necessary for the licensee to submit a new application for a license: PROVIDED, That no license shall be issued upon such new application unless and until all fees and penalties previously accrued under this section have been paid.

Any license or branch office certificate issued under the provisions of this chapter shall expire on December thirty-first following the issuance thereof. [1994 c 195 § 4; 1985 c 7 § 81; 1975 1st ex.s. c 30 § 90; 1971 ex.s. c 253 § 5.]

19.16.150 Branch office certificate required. If a licensee maintains a branch office, he or it shall not operate a collection agency business in such branch office until he or it has secured a branch office certificate therefor from the director. A licensee, so long as his or its license is in full force and effect and in good standing, shall be entitled to branch office certificates for any branch office operated by such licensee upon payment of the fee therefor provided in this chapter.

Each licensee when applying for a branch office certificate shall pay a fee determined by the director as provided in RCW 43.24.086. An annual fee determined by the director as provided in RCW 43.24.086 for a branch office certificate shall be paid to the director on or before January first of each year. If the annual fee is not paid on or before January first, a penalty for late payment in an amount determined by the director as provided in RCW 43.24.086 shall be assessed. If the fee and the penalty are not paid by January thirty-first, it will be necessary for the licensee to apply for a new branch office certificate: **PROVIDED**, That no such new branch office certificate shall be issued unless and until all fees and penalties previously accrued under this section have been paid. [1985 c 7 § 82; 1975 1st ex.s. c 30 § 91; 1971 ex.s. c 253 § 6.]

19.16.160 License and branch office certificate—Form—Contents—Display. Each license and branch office certificate, when issued, shall be in the form and size prescribed by the director and shall state in addition to any other matter required by the director:

- (1) The name of the licensee;
- (2) The name under which the licensee will do business;
- (3) The address at which the collection agency business is to be conducted; and
- (4) The number and expiration date of the license or branch office certificate.

A licensee shall display his or its license in a conspicuous place in his or its principal place of business and, if he or it conducts a branch office, the branch office certificate shall be conspicuously displayed in the branch office.

Concurrently with or prior to engaging in any activity as a collection agency, as defined in this chapter, any person shall furnish to his or its client or customer the number indicated on the collection agency license issued to him pursuant to this section. [1973 1st ex.s. c 20 § 2; 1971 ex.s. c 253 § 7.]

19.16.170 Procedure upon change of name or business location. Whenever a licensee shall contemplate a change of his or its trade name or a change in the location of his or its principal place of business or branch office, he or it shall give written notice of such proposed change to the director. The director shall approve the proposed change and issue a new license or a branch office certificate, as the case may be, reflecting the change. [1971 ex.s. c 253 § 8.]

19.16.180 Assignability of license or branch office certificate. (1) Except as provided in subsection (2) of this section, a license or branch office certificate granted under this chapter is not assignable or transferable.

(2) Upon the death of an individual licensee, the director shall have the right to transfer the license and any branch office certificate of the decedent to the personal representative of his estate for the period of the unexpired term of the license and such additional time, not to exceed one year from the date of death of the licensee, as said personal representative may need in order to settle the deceased's estate or sell the collection agency. [1971 ex.s. c 253 § 9.]

19.16.190 Surety bond requirements—Cash deposit or securities—Exception. (1) Except as limited by subsection (7) of this section, each applicant shall, at the time of applying for a license, file with the director a surety bond in the sum of five thousand dollars. The bond shall be annually renewable on January first of each year, shall be approved by the director as to form and content, and shall be executed by the applicant as principal and by a surety company authorized to do business in this state as surety. Such bond shall run to the state of Washington as obligee for the benefit of the state and conditioned that the licensee shall faithfully and truly perform all agreements entered into with the licensee's clients or customers and shall, within thirty days after the close of each calendar month, account to and pay to his client or customer the net proceeds of all collections made during the preceding calendar month and due to each client or customer less any offsets due licensee under RCW 19.16.210 and 19.16.220. The bond required by this section shall remain in effect until canceled by action of the surety or the licensee or the director.

(2) An applicant for a license under this chapter may furnish, file, and deposit with the director, in lieu of the surety bond provided for herein, a cash deposit or other negotiable security acceptable to the director. The security deposited with the director in lieu of the surety bond shall be returned to the licensee at the expiration of one year after the collection agency's license has expired or been revoked if no legal action has been instituted against the licensee or on said security deposit at the expiration of said one year.

(3) A surety may file with the director notice of his or its withdrawal on the bond of the licensee. Upon filing a new bond or upon the revocation of the collection agency license or upon the expiration of sixty days after the filing of notice of withdrawal as surety by the surety, the liability of the former surety for all future acts of the licensee shall terminate.

(4) The director shall immediately cancel the bond given by a surety company upon being advised that the surety company's license to transact business in this state has been revoked.

(5) Upon the filing with the director of notice by a surety of his withdrawal as the surety on the bond of a licensee or upon the cancellation by the director of the bond of a surety as provided in this section, the director shall immediately give notice to the licensee of the withdrawal or cancellation. The notice shall be sent to the licensee by registered or certified mail with request for a return receipt and addressed to the licensee at his or its main office as shown by the records of the director. At the expiration of thirty days from the date of mailing the notice, the license of the licensee shall be terminated, unless the licensee has filed a new bond with a surety satisfactory to the director.

(6) All bonds given under this chapter shall be filed and held in the office of the director.

(7) An out-of-state collection agency need not fulfill the bonding requirements under this section if the out-of-state collection agency maintains an adequate bond or legal alternative as required by the state in which the out-of-state collection agency is located. [1994 c 195 § 5; 1971 ex.s. c 253 § 10.]

19.16.200 Action on bond, cash deposit or securities. In addition to all other legal remedies, an action may be brought in any court of competent jurisdiction upon the bond or cash deposit or security in lieu thereof, required by RCW 19.16.190, by any person to whom the licensee fails to account and pay as set forth in such bond or by any client or customer of the licensee who has been damaged by failure of the licensee to comply with all agreements entered into with such client or customer: PROVIDED, That the aggregate liability of the surety to all such clients or customers shall in no event exceed the sum of such bond.

An action upon such bond or security shall be commenced by serving and filing of the complaint within one year from the date of the cancellation of the bond or, in the case of a cash deposit or other security deposited in lieu of the surety bond, within one year of the date of expiration or revocation of license: PROVIDED, That no action shall be maintained upon such bond or such cash deposit or other security for any claim which has been barred by any nonclaim statute or statute of limitations of this state. Two copies of the complaint shall be served by registered or certified mail upon the director at the time the suit is started. Such service shall constitute service on the surety. The director shall transmit one of said copies of the complaint served on him to the surety within forty-eight hours after it shall have been received.

The director shall maintain a record, available for public inspection, of all suits commenced under this chapter upon surety bonds, or the cash or other security deposited in lieu thereof.

In the event of a judgment being entered against the deposit or security referred to in RCW 19.16.190(2), the director shall, upon receipt of a certified copy of a final judgment, pay said judgment from the amount of the deposit or security. [1971 ex.s. c 253 § 11.]

19.16.210 Accounting and payments by licensee to customer. A licensee shall within thirty days after the close of each calendar month account in writing to his or its customers for all collections made during that calendar month and pay to his or its customers the net proceeds due and payable of all collections made during that calendar month except that a licensee need not account to the customer for:

(1) Court costs recovered which were previously advanced by licensee or his or its attorney.

(2) Attorney's fees and interest or other charges incidental to the principal amount of the obligation legally and properly belonging to the licensee, if such charges are retained by the licensee after the principal amount of the obligation has been accounted for and remitted to the customer. When the net proceeds are less than ten dollars

at the end of any calendar month, payments may be deferred for a period not to exceed three months. [1971 ex.s. c 253 § 12.]

19.16.220 Accounting and payments by customer to licensee. Every customer of a licensee shall, within thirty days after the close of each calendar month, account and pay to his or its collection agency all sums owing to the collection agency for payments received by the customer during that calendar month on claims in the hands of the collection agency.

If a customer fails to pay a licensee any sums due under this section, the licensee shall, in addition to other remedies provided by law, have the right to offset any moneys due the licensee under this section against any moneys due customer under RCW 19.16.210. [1971 ex.s. c 253 § 13.]

19.16.230 Licensee—Business office—Records to be kept. (1) Every licensee required to keep and maintain records pursuant to this section, other than an out-of-state collection agency, shall establish and maintain a regular active business office in the state of Washington for the purpose of conducting his or its collection agency business. Said office must be open to the public during reasonable stated business hours, and must be managed by a resident of the state of Washington.

(2) Every licensee shall keep a record of all sums collected by him or it and all disbursements made by him or it. All such records shall be kept at the business office referred to in subsection (1) of this section, unless the licensee is an out-of-state collection agency, in which case the record shall be kept at the business office listed on the licensee's license.

(3) Licensees shall maintain and preserve accounting records of collections and payments to customers for a period of four years from the date of the last entry thereon. [1994 c 195 § 6; 1987 c 85 § 1; 1973 1st ex.s. c 20 § 3; 1971 ex.s. c 253 § 14.]

19.16.240 Licensee—Trust fund account—Exception. Each licensee, other than an out-of-state collection agency, shall at all times maintain a separate bank account in this state in which all moneys collected by the licensee shall be deposited except that negotiable instruments received may be forwarded directly to a customer. Moneys received must be deposited within ten days after posting to the book of accounts. In no event shall moneys received be disposed of in any manner other than to deposit such moneys in said account or as provided in this section.

The bank account shall bear some title sufficient to distinguish it from the licensee's personal or general checking account, such as "Customer's Trust Fund Account". There shall be sufficient funds in said trust account at all times to pay all moneys due or owing to all customers and no disbursements shall be made from such account except to customers or to remit moneys collected from debtors on assigned claims and due licensee's attorney or to refund over payments except that a licensee may periodically withdraw therefrom such moneys as may accrue to licensee.

Any money in such trust account belonging to a licensee may be withdrawn for the purpose of transferring the same

into the possession of licensee or into a personal or general account of licensee. [1994 c 195 § 7; 1971 ex.s. c 253 § 15.]

19.16.245 Financial statement. No licensee shall receive any money from any debtor as a result of the collection of any claim until he or it shall have submitted a financial statement showing the assets and liabilities of the licensee truly reflecting that the licensee's net worth is not less than the sum of seven thousand five hundred dollars, in cash or its equivalent, of which not less than five thousand dollars shall be deposited in a bank, available for the use of the licensee's business. Any money so collected shall be subject to the provisions of RCW 19.16.430(2). The financial statement shall be sworn to by the licensee, if the licensee is an individual, or by a partner, officer, or manager in its behalf if the licensee is a partnership, corporation, or unincorporated association. The information contained in the financial statement shall be confidential and not a public record, but is admissible in evidence at any hearing held, or in any action instituted in a court of competent jurisdiction, pursuant to the provisions of this chapter: **PROVIDED**, That this section shall not apply to those persons holding a valid license issued pursuant to this chapter on July 16, 1973. [1973 1st ex.s. c 20 § 9.]

19.16.250 Prohibited practices. No licensee or employee of a licensee shall:

(1) Directly or indirectly aid or abet any unlicensed person to engage in business as a collection agency in this state or receive compensation from such unlicensed person: **PROVIDED**, That nothing in this chapter shall prevent a licensee from accepting, as forwarder, claims for collection from a collection agency or attorney whose place of business is outside the state.

(2) Collect or attempt to collect a claim by the use of any means contrary to the postal laws and regulations of the United States postal department.

(3) Publish or post or cause to be published or posted, any list of debtors commonly known as "bad debt lists" or threaten to do so. For purposes of this chapter, a "bad debt list" means any list of natural persons alleged to fail to honor their lawful debts. However, nothing herein shall be construed to prohibit a licensee from communicating to its customers or clients by means of a coded list, the existence of a check dishonored because of insufficient funds, not sufficient funds or closed account by the financial institution servicing the debtor's checking account: **PROVIDED**, That the debtor's identity is not readily apparent: **PROVIDED FURTHER**, That the licensee complies with the requirements of subsection (9)(e) of this section.

(4) Have in his possession or make use of any badge, use a uniform of any law enforcement agency or any simulation thereof, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collection agency business.

(5) Perform any act or acts, either directly or indirectly, constituting the practice of law.

(6) Advertise for sale or threaten to advertise for sale any claim as a means of endeavoring to enforce payment thereof or agreeing to do so for the purpose of soliciting claims, except where the licensee has acquired claims as an assignee for the benefit of creditors or where the licensee is acting under court order.

(7) Use any name while engaged in the making of a demand for any claim other than the name set forth on his or its current license issued hereunder.

(8) Give or send to any debtor or cause to be given or sent to any debtor, any notice, letter, message, or form which represents or implies that a claim exists unless it shall indicate in clear and legible type:

(a) The name of the licensee and the city, street, and number at which he is licensed to do business;

(b) The name of the original creditor to whom the debtor owed the claim if such name is known to the licensee or employee: **PROVIDED**, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain the name of such person and provide this name to the debtor;

(c) If the notice, letter, message, or form is the first notice to the debtor or if the licensee is attempting to collect a different amount than indicated in his or its first notice to the debtor, an itemization of the claim asserted must be made including:

(i) Amount owing on the original obligation at the time it was received by the licensee for collection or by assignment;

(ii) Interest or service charge, collection costs, or late payment charges, if any, added to the original obligation by the original creditor, customer or assignor before it was received by the licensee for collection, if such information is known by the licensee or employee: **PROVIDED**, That upon written request of the debtor, the licensee shall make a reasonable effort to obtain information on such items and provide this information to the debtor;

(iii) Interest or service charge, if any, added by the licensee or customer or assignor after the obligation was received by the licensee for collection;

(iv) Collection costs, if any, that the licensee is attempting to collect;

(v) Attorneys' fees, if any, that the licensee is attempting to collect on his or its behalf or on the behalf of a customer or assignor;

(vi) Any other charge or fee that the licensee is attempting to collect on his or its own behalf or on the behalf of a customer or assignor.

(9) Communicate or threaten to communicate, the existence of a claim to a person other than one who might be reasonably expected to be liable on the claim in any manner other than through proper legal action, process, or proceedings except under the following conditions:

(a) A licensee or employee of a licensee may inform a credit reporting bureau of the existence of a claim: **PROVIDED**, That if the licensee or employee of a licensee reports a claim to a credit reporting bureau, the licensee shall upon receipt of written notice from the debtor that any part of the claim is disputed, forward a copy of such written notice to the credit reporting bureau;

(b) A licensee or employee in collecting or attempting to collect a claim may communicate the existence of a claim

to a debtor's employer if the claim has been reduced to a judgment;

(c) A licensee or employee in collecting or attempting to collect a claim that has not been reduced to judgment, may communicate the existence of a claim to a debtor's employer if:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing to the licensee disputed any part of the claim: PROVIDED, That the licensee or employee may only communicate the existence of a claim which has not been reduced to judgment to the debtor's employer once unless the debtor's employer has agreed to additional communications.

(d) A licensee may for the purpose of locating the debtor or locating assets of the debtor communicate the existence of a claim to any person who might reasonably be expected to have knowledge of the whereabouts of a debtor or the location of assets of the debtor if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee or employee has notified or attempted to notify the debtor in writing at his last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(e) A licensee may communicate the existence of a claim to its customers or clients if the claim is reduced to judgment, or if not reduced to judgment, when:

(i) The licensee has notified or attempted to notify the debtor in writing at his last known address or last known place of employment concerning the claim and the debtor after a reasonable time has failed to pay the claim or has failed to agree to make payments on the claim in a manner acceptable to the licensee, and

(ii) The debtor has not in writing disputed any part of the claim.

(10) Threaten the debtor with impairment of his credit rating if a claim is not paid.

(11) Communicate with the debtor after notification in writing from an attorney representing such debtor that all further communications relative to a claim should be addressed to the attorney: PROVIDED, That if a licensee requests in writing information from an attorney regarding such claim and the attorney does not respond within a reasonable time, the licensee may communicate directly with the debtor until he or it again receives notification in writing that an attorney is representing the debtor.

(12) Communicate with a debtor or anyone else in such a manner as to harass, intimidate, threaten, or embarrass a debtor, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, by threats of criminal prosecution, and by use of offensive language. A communication shall be presumed to have been made for the purposes of harassment if:

(a) It is made with a debtor or spouse in any form, manner, or place, more than three times in a single week;

(b) It is made with a debtor at his or her place of employment more than one time in a single week;

(c) It is made with the debtor or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m.

(13) Communicate with the debtor through use of forms or instruments that simulate the form or appearance of judicial process, the form or appearance of government documents, or the simulation of a form or appearance of a telegraphic or emergency message.

(14) Communicate with the debtor and represent or imply that the existing obligation of the debtor may be or has been increased by the addition of attorney fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation of such debtor.

(15) Threaten to take any action against the debtor which the licensee cannot legally take at the time the threat is made.

(16) Send any telegram or make any telephone calls to a debtor or concerning a debt or for the purpose of demanding payment of a claim or seeking information about a debtor, for which the charges are payable by the addressee or by the person to whom the call is made.

(17) In any manner convey the impression that the licensee is vouched for, bonded to or by, or is an instrumentality of the state of Washington or any agency or department thereof.

(18) Collect or attempt to collect in addition to the principal amount of a claim any sum other than allowable interest, collection costs or handling fees expressly authorized by statute, and, in the case of suit, attorney's fees and taxable court costs.

(19) Procure from a debtor or collect or attempt to collect on any written note, contract, stipulation, promise or acknowledgment under which a debtor may be required to pay any sum other than principal, allowable interest, and, in the case of suit, attorney's fees and taxable court costs. [1983 c 107 § 1; 1981 c 254 § 5; 1971 ex.s. c 253 § 16.]

19.16.260 Licensing prerequisite to suit. No collection agency or out-of-state collection agency may bring or maintain an action in any court of this state involving the collection of a claim of any third party without alleging and proving that he or it is duly licensed under this chapter and has satisfied the bonding requirements hereof, if applicable: PROVIDED, That in any case where judgment is to be entered by default, it shall not be necessary for the collection agency or out-of-state collection agency to prove such matters.

A copy of the current collection agency license or out-of-state collection agency license, certified by the director to be a true and correct copy of the original, shall be prima facie evidence of the licensing and bonding of such collection agency or out-of-state collection agency as required by this chapter. [1994 c 195 § 8; 1971 ex.s. c 253 § 17.]

19.16.270 Presumption of validity of assignment. In any action brought by licensee to collect the claim of his or

its customer, the assignment of the claim to licensee by his or its customer shall be conclusively presumed valid, if the assignment is filed in court with the complaint, unless objection is made thereto by the debtor in a written answer or in writing five days or more prior to trial. [1971 ex.s. c 253 § 18.]

19.16.280 Board created—Composition of board—Qualification of members. There is hereby created a board to be known and designated as the "Washington state collection agency board". The board shall consist of five members, one of whom shall be the director and the other four shall be appointed by the governor. The director may delegate his duties as a board member to a designee from his department. The director or his designee shall be the executive officer of the board and its chairman.

At least two but no more than two members of the board shall be licensees hereunder. Each of the licensee members of the board shall be actively engaged in the collection agency business at the time of his appointment and must continue to be so engaged and continue to be licensed under this chapter during the term of his appointment or he will be deemed to have resigned his position: PROVIDED, That no individual may be a licensee member of the board unless he has been actively engaged as either an owner or executive employee or a combination of both of a collection agency business in this state for a period of not less than five years immediately prior to his appointment.

No board member shall be employed by or have any interest in, directly or indirectly, as owner, partner, officer, director, agent, stockholder, or attorney, any collection agency in which any other board member is employed by or has such an interest.

No member of the board other than the director or his designee shall hold any other elective or appointive state or federal office. [1971 ex.s. c 253 § 19.]

19.16.290 Board—Initial members—Terms—Oath—Removal. The initial members of the board shall be named by the governor within thirty days after January 1, 1972. At the first meeting of the board, the members appointed by the governor shall determine by lot the period of time from January 1, 1972 that each of them shall serve, one for one year; one for two years; one for three years; and one for four years. In the event of a vacancy on the board, the governor shall appoint a successor for the unexpired term.

Each member appointed by the governor shall qualify by taking the usual oath of a state officer, which shall be filed with the secretary of state, and each member shall hold office for the term of his appointment and until his successor is appointed and qualified.

Any member of the board other than the director or his designee may be removed by the governor for neglect of duty, misconduct, malfeasance or misfeasance in office, after being given a written statement of the charges against him and sufficient opportunity to be heard thereon. [1971 ex.s. c 253 § 20.]

19.16.300 Board meetings—Quorum—Effect of vacancy. The board shall meet as soon as practicable after

the governor has appointed the initial members of the board. The board shall meet at least once a year and at such other times as may be necessary for the transaction of its business.

The time and place of the initial meeting of the board and the annual meetings shall be at a time and place fixed by the director. Other meetings of the board shall be held upon written request of the director at a time and place designated by him, or upon the written request of any two members of the board at a time and place designated by them.

A majority of the board shall constitute a quorum.

A vacancy in the board membership shall not impair the right of the remaining members of the board to exercise any power or to perform any duty of the board, so long as the power is exercised or the duty performed by a quorum of the board. [1971 ex.s. c 253 § 21.]

19.16.310 Board—Compensation—Reimbursement of travel expenses. Each member of the board appointed by the governor shall be compensated in accordance with RCW 43.03.240 and in addition thereto shall be reimbursed for travel expenses incurred while on official business of the board and in attending meetings thereof, in accordance with the provisions of RCW 43.03.050 and 43.03.060. [1984 c 287 § 54; 1975-'76 2nd ex.s. c 34 § 58; 1971 ex.s. c 253 § 22.]

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

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

19.16.320 Board—Territorial scope of operations. The board may meet, function and exercise its powers and perform its duties at any place within the state. [1971 ex.s. c 253 § 23.]

19.16.330 Board—Immunity from suit. Members of the board shall be immune from suit in any civil action based upon an official act performed in good faith as members of such board. [1971 ex.s. c 253 § 24.]

19.16.340 Board—Records. All records of the board shall be kept in the office of the director. Copies of all records and papers of the board, certified to be true copies by the director, shall be received in evidence in all cases with like effect as the originals. All actions by the board which require publication, or any writing shall be over the signature of the director or his designee. [1971 ex.s. c 253 § 25.]

19.16.351 Additional powers and duties of board. The board, in addition to any other powers and duties granted under this chapter:

(1) May adopt, amend, and rescind such rules and regulations for its own organization and procedure and such other rules and regulations as it may deem necessary in order to perform its duties hereunder.

(2) When an applicant or licensee has requested a hearing as provided in RCW 19.16.360 the board shall meet and after notice and hearing may deny any application for a license hereunder, and may fail to renew, suspend, or revoke

any license issued hereunder, if the applicant or licensee has failed to comply with or violated any provision of this chapter or any rule or regulation issued pursuant to this chapter. In its discretion, the board may assess a civil, monetary penalty against a licensee in an amount not to exceed one thousand dollars in lieu of or in addition to suspension. It shall be the duty of the board within thirty days after the last day of hearing to notify the appellant of its decision.

(3) May inquire into the needs of the collection agency business, the needs of the director, and the matter of the policy of the director in administering this chapter, and make such recommendations with respect thereto as, after consideration, may be deemed important and necessary for the welfare of the state, the welfare of the public, and the welfare and progress of the collection agency business.

(4) Upon request of the director, confer and advise in matters relating to the administering of this chapter.

(5) May consider and make appropriate recommendations to the director in all matters referred to the board.

(6) Upon his request, confer with and advise the director in the preparation of any rules and regulations to be adopted, amended, or repealed.

(7) May assist the director in the collection of such information and data as the director may deem necessary to the proper administration of this chapter. [1977 ex.s. c 194 § 2; 1973 1st ex.s. c 20 § 8.]

19.16.360 Licenses—Denial, suspension, revocation or refusal to renew—Civil penalty—Hearing. (1) Whenever the director shall have reasonable cause to believe that grounds exist for denial, nonrenewal, revocation or suspension of a license issued or to be issued under this chapter, or in lieu of or in addition to suspension that a licensee should be assessed a civil, monetary penalty not to exceed one thousand dollars, he shall notify the applicant or licensee in writing by certified or registered mail, with return receipt requested, stating the grounds upon which it is proposed that the license be denied, revoked, not renewed, or suspended and upon which any monetary penalty is going to be assessed and the amount of the penalty.

(2) Within thirty days from the receipt of notice of the alleged grounds for denial, revocation, lack of renewal, or suspension or for the monetary penalty to be assessed in lieu of or in addition to suspension, the applicant or licensee may serve upon the director a written request for hearing before the board. Service of a request for a hearing shall be by certified mail and shall be addressed to the director at his office in Thurston county. Upon receiving a request for a hearing, the director shall fix a date for which the matter may be heard by the board, which date shall be not less than thirty days from the receipt of the request for such hearing. If no request for hearing is made within the time specified, the license shall be deemed denied, revoked, or not renewed or the license shall be deemed suspended and/or the civil, monetary penalty shall be deemed assessed.

(3) Whenever a licensee who has made timely and sufficient application for the renewal of a license, receives notice from the director that it is proposed that his or its license is not to be renewed, and said licensee requests a hearing under subsection (2) of this section, the licensee's

current license shall not expire until the last day for seeking review of the board's decision expires or if judicial review of the board's decision is sought until final judgment has been entered by the superior court, or in the event of an appeal or appeals, until final judgment has been entered by the last appellate court in which review has been sought. [1977 ex.s. c 194 § 3; 1973 1st ex.s. c 20 § 4; 1971 ex.s. c 253 § 27.]

19.16.380 Administrative procedure act—Application. Except as specifically provided in this chapter, the rules adopted and the hearings conducted shall be in accordance with the provisions of chapter 34.05 RCW (administrative procedure act). [1971 ex.s. c 253 § 29.]

19.16.390 Personal service of process outside state. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter rephends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185. A holder of an out-of-state collection agency license is deemed to have appointed the director or the director's designee to be the licensee's true and lawful agent upon whom may be served any legal process against that licensee arising or growing out of any violation of this chapter. [1994 c 195 § 9; 1971 ex.s. c 253 § 30.]

19.16.400 Investigations or proceedings—Powers of director or designees—Contempt. (1) The director may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with the provisions of this chapter or any rules and regulations issued hereunder. For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(2) If any individual fails to obey a subpoena or obeys a subpoena but refuses to give evidence, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the court, to show cause why he should not be compelled to obey the subpoena and give evidence material to the matter under investigation. The failure to obey an order of the court may be punishable as contempt. [1973 1st ex.s. c 20 § 5; 1971 ex.s. c 253 § 31.]

19.16.410 Rules, orders, decisions, etc. The director may promulgate rules, make specific decisions, orders and rulings, including therein demands and findings, and take other necessary action for the implementation and enforcement of his duties under this chapter. [1971 ex.s. c 253 § 32.]

19.16.420 Copy of this chapter, rules and regulations available to licensee. On or about the first day of February in each year, the director shall cause to be made available at reasonable expense to a licensee a copy of this chapter, a copy of the current rules and regulations of the director, and board, and such other materials as the director or board prescribe. [1971 ex.s. c 253 § 33.]

19.16.430 Violations—Operating agency without a license—Penalty—Return of fees or compensation. (1) Any person who knowingly operates as a collection agency or out-of-state collection agency without a license or knowingly aids and abets such violation is punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year or both.

(2) Any person who operates as a collection agency or out-of-state collection agency in the state of Washington without a valid license issued pursuant to this chapter shall not charge or receive any fee or compensation on any moneys received or collected while operating without a license or on any moneys received or collected while operating with a license but received or collected as a result of his or its acts as a collection agency or out-of-state collection agency while not licensed hereunder. All such moneys collected or received shall be forthwith returned to the owners of the accounts on which the moneys were paid. [1994 c 195 § 10; 1973 1st ex.s. c 20 § 6; 1971 ex.s. c 253 § 34.]

19.16.440 Violations of RCW 19.16.110 and 19.16.250 are unfair and deceptive trade practices under chapter 19.86 RCW. The operation of a collection agency or out-of-state collection agency without a license as prohibited by RCW 19.16.110 and the commission by a licensee or an employee of a licensee of an act or practice prohibited by RCW 19.16.250 are declared to be unfair acts or practices or unfair methods of competition in the conduct of trade or commerce for the purpose of the application of the Consumer Protection Act found in chapter 19.86 RCW. [1994 c 195 § 11; 1973 1st ex.s. c 20 § 7; 1971 ex.s. c 253 § 35.]

19.16.450 Violation of RCW 19.16.250—Additional penalty. If an act or practice in violation of RCW 19.16.250 is committed by a licensee or an employee of a licensee in the collection of a claim, neither the licensee, the customer of the licensee, nor any other person who may thereafter legally seek to collect on such claim shall ever be allowed to recover any interest, service charge, attorneys' fees, collection costs, delinquency charge, or any other fees or charges otherwise legally chargeable to the debtor on such claim: PROVIDED, That any person asserting the claim may nevertheless recover from the debtor the amount of the original claim or obligation. [1971 ex.s. c 253 § 36.]

19.16.460 Violations may be enjoined. Notwithstanding any other actions which may be brought under the laws of this state, the attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and

prevent any violation of this chapter. [1971 ex.s. c 253 § 37.]

19.16.470 Violations—Assurance of discontinuance—Effect. The attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter from any person engaging in or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in the alternative, in Thurston county.

Such assurance of discontinuance shall not be considered an admission of a violation for any purpose; however, proof of failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter for the purpose of securing an injunction as provided for in RCW 19.16.460: PROVIDED, That after commencement of any action by a prosecuting attorney, as provided therein, the attorney general may not accept an assurance of discontinuance without the consent of said prosecuting attorney. [1971 ex.s. c 253 § 38.]

19.16.480 Violation of injunction—Civil penalty. Any person who violates any injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1971 ex.s. c 253 § 39.]

19.16.500 Public bodies may retain collection agencies to collect public debts. (1) Agencies, departments, taxing districts, political subdivisions of the state, counties, and incorporated cities may retain, by written contract, collection agencies licensed under this chapter for the purpose of collecting public debts owed by any person.

(2) No debt may be assigned to a collection agency unless (a) there has been an attempt to advise the debtor (i) of the existence of the debt and (ii) that the debt may be assigned to a collection agency for collection if the debt is not paid, and (b) at least thirty days have elapsed from the time the notice was sent.

(3) Collection agencies assigned debts under this section shall have only those remedies and powers which would be available to them as assignees of private creditors.

(4) For purposes of this section, the term debt shall include fines and other debts. [1982 c 65 § 1.]

Interest rate: RCW 43.17.240.

19.16.900 Provisions cumulative—Violation of RCW 19.16.250 deemed civil. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law: PROVIDED, That the violation of RCW 19.16.250 shall be construed as exclusively civil and not penal in nature. [1971 ex.s. c 253 § 40.]

19.16.910 Severability—1971 ex.s. c 253. If any section or provision of this act shall be adjudged to be invalid or unconstitutional such adjudication shall not affect the validity of the act as a whole, or any section, provisions, or part thereof not adjudged invalid or unconstitutional. [1971 ex.s. c 253 § 41.]

19.16.920 Provisions exclusive—Authority of political subdivisions to levy business and occupation taxes not affected. (1) The provisions of this chapter relating to the licensing and regulation of collection agencies and out-of-state collection agencies shall be exclusive and no county, city, or other political subdivision of this state shall enact any laws or rules and regulations licensing or regulating collection agencies.

(2) This section shall not be construed to prevent a political subdivision of this state from levying a business and occupation tax upon collection agencies or out-of-state collection agencies maintaining an office within that political subdivision if a business and occupation tax is levied by it upon other types of businesses within its boundaries. [1994 c 195 § 12; 1971 ex.s. c 253 § 42.]

19.16.930 Effective date—1971 ex.s. c 253. This act shall become effective January 1, 1972. [1971 ex.s. c 253 § 44.]

19.16.940 Short title. This chapter shall be known and may be cited as the "Collection Agency Act". [1971 ex.s. c 253 § 45.]

19.16.950 Section headings. Section headings used in this chapter shall not constitute any part of the law. [1971 ex.s. c 253 § 46.]

Chapter 19.25

REPRODUCED SOUND RECORDINGS

Sections

19.25.010	Definitions.
19.25.020	Reproduction of sound without consent of owner unlawful—Fine and penalty.
19.25.030	Use of recording of live performance without consent of owner unlawful—Fine and penalty.
19.25.040	Failure to disclose origin of certain recordings unlawful—Fine and penalty.
19.25.050	Contraband recordings—Disposition, forfeiture, penalty.
19.25.800	Chapter not applicable to broadcast by commercial or educational radio or television.
19.25.810	Chapter not applicable to certain nonrecorded broadcast use.
19.25.820	Chapter not applicable to defined public record.
19.25.900	Severability—1974 ex.s. c 100.
19.25.901	Severability—1991 c 38.

19.25.010 Definitions. As used in this chapter:

(1) "Owner" means a person who owns the sounds fixed in a master phonograph record, master disc, master tape, master film, or other recording on which sound is or can be recorded and from which the transferred recorded sounds are directly or indirectly derived.

(2) "Fixed" means embodied in a recording or other tangible medium of expression, by or under the authority of

the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

(3) "Live performance" means a recitation, rendering, or playing of a series of images; musical, spoken or other sounds; or combination of images and sounds.

(4) "Recording" means a tangible medium on which sounds, images, or both are recorded or otherwise stored, including an original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now existing or developed later on which sounds, images, or both are or can be recorded or otherwise stored or a copy or reproduction that duplicates in whole or in part the original.

(5) "Manufacturer" means the entity authorizing the duplication of the recording in question, but shall not include the manufacturer of the cartridge or casing itself. [1991 c 38 § 1; 1974 ex.s. c 100 § 1.]

19.25.020 Reproduction of sound without consent of owner unlawful—Fine and penalty. (1) A person commits an offense if the person:

(a) Knowingly reproduces for sale or causes to be transferred any recording with intent to sell it or cause it to be sold or use it or cause it to be used for commercial advantage or private financial gain without the consent of the owner;

(b) Transports within this state, for commercial advantage or private financial gain, a recording with the knowledge that the sounds have been reproduced or transferred without the consent of the owner; or

(c) Advertises, offers for sale, sells, or rents, or causes the sale, resale, or rental of or possesses for one or more of these purposes any recording that the person knows has been reproduced or transferred without the consent of the owner.

(2) An offense under this section is a felony punishable by:

(a) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both if:

(i) The offense involves at least one thousand unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section;

(b) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than one hundred but less than one thousand unauthorized recordings during a one hundred eighty-day period.

(3) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

(4) This section does not affect the rights and remedies of a party in private litigation.

(5) This section applies only to recordings that were initially fixed before February 15, 1972. [1991 c 38 § 2; 1974 ex.s. c 100 § 2.]

19.25.030 Use of recording of live performance without consent of owner unlawful—Fine and penalty.

(1) A person commits an offense if the person:

(a) For commercial advantage or private financial gain advertises, offers for sale, sells, rents, transports, causes the sale, resale, rental, or transportation of or possesses for one or more of these purposes a recording of a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner; or

(b) With the intent to sell for commercial advantage or private financial gain records or fixes or causes to be recorded or fixed on a recording a live performance with the knowledge that the live performance has been recorded or fixed without the consent of the owner.

(2) An offense under this section is a felony punishable by:

(a) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one thousand unauthorized recordings embodying sound or at least one hundred unauthorized audiovisual recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section; or

(b) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than one hundred but less than one thousand unauthorized recordings embodying sound or more than ten but less than one hundred unauthorized audiovisual recordings during a one hundred eighty-day period.

(3) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

(4) In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix those sounds.

(5) For the purposes of this section, a person who is authorized to maintain custody and control over business records that reflect whether or not the owner of the live performance consented to having the live performance recorded or fixed is a competent witness in a proceeding regarding the issue of consent.

(6) This section does not affect the rights and remedies of a party in private litigation. [1991 c 38 § 3; 1974 ex.s. c 100 § 3.]

19.25.040 Failure to disclose origin of certain recordings unlawful—Fine and penalty. (1) A person is guilty of failure to disclose the origin of a recording when, for commercial advantage or private financial gain, the person knowingly advertises, or offers for sale, resale, or rent, or sells or resells, or rents, leases, or lends, or possesses for any of these purposes, any recording which does not contain the true name and address of the manufacturer in a prominent place on the cover, jacket, or label of the recording.

(2) An offense under this section is a felony punishable by:

(a) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than ten years, or both, if:

(i) The offense involves at least one hundred unauthorized recordings during a one hundred eighty-day period; or

(ii) The defendant has been previously convicted under this section;

(b) A fine of not more than two hundred fifty thousand dollars, imprisonment for not more than five years, or both, if the offense involves more than ten but less than one hundred unauthorized recordings during a one hundred eighty-day period.

(3) Any other offense under this section is a gross misdemeanor punishable by a fine of not more than twenty-five thousand dollars, imprisonment for not more than one year, or both.

(4) This section does not affect the rights and remedies of a party in private litigation. [1991 c 38 § 4; 1974 ex.s. c 100 § 4.]

19.25.050 Contraband recordings—Disposition, forfeiture, penalty. (1) All recordings which have been fixed transferred, or possessed without the consent of the owner in violation of RCW 19.25.020 or 19.25.030, and any recording which does not contain the true name and address of the manufacturer in violation of RCW 19.25.040 shall be deemed to be contraband. The court shall order the seizure, forfeiture, and destruction or other disposition of such contraband.

(2) The owner or the prosecuting attorney may institute proceedings to forfeit contraband recordings. The provisions of this subsection shall apply to any contraband recording, regardless of lack of knowledge or intent on the part of the possessor, retail seller, manufacturer, or distributor.

(3) Whenever a person is convicted of a violation under this chapter, the court, in its judgment of conviction, shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all contraband recordings and any and all electronic, mechanical, or other devices for manufacturing, reproducing, packaging, or assembling such recordings, which were used to facilitate any violation of this chapter. [1991 c 38 § 5.]

19.25.800 Chapter not applicable to broadcast by commercial or educational radio or television. This chapter shall not be applicable to any recording that is used or intended to be used only for broadcast by commercial or educational radio or television stations. [1991 c 38 § 6.]

19.25.810 Chapter not applicable to certain nonrecorded broadcast use. This chapter shall not be applicable to any recording that is received in the ordinary course of a broadcast by a commercial or educational radio or television station where no recording is made of the broadcast. [1991 c 38 § 7.]

19.25.820 Chapter not applicable to defined public record. This chapter shall not be applicable to any recording defined as a public record of any court, legislative body, or proceedings of any public body, whether or not a fee is charged or collected for copies. [1991 c 38 § 8.]

19.25.900 Severability—1974 ex.s. c 100. If any provision of this 1974 act, or its application to any person or

circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 100 § 5.]

19.25.901 Severability—1991 c 38. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 38 § 9.]

Chapter 19.27

STATE BUILDING CODE

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Building permits: RCW 36.21.070 and 36.21.080.

Counties

*adoption of building, plumbing, electrical codes, etc: RCW 36.32.120(7).
building codes: Chapter 36.43 RCW.*

Energy-related building standards: Chapter 19.27A RCW.

Underground storage tanks: RCW 90.76.020.

19.27.010 Short title. This chapter shall be known as the State Building Code Act. [1974 ex.s. c 96 § 1.]

19.27.015 Definitions. As used in this chapter:

- (1) "City" means a city or town;
- (2) "Multifamily residential building" means common wall residential buildings that consist of four or fewer units, that do not exceed two stories in height, that are less than five thousand square feet in area, and that have a one-hour fire-resistive occupancy separation between units; and
- (3) "Temporary growing structure" means a structure that has the sides and roof covered with polyethylene, polyvinyl, or similar flexible synthetic material and is used to provide plants with either frost protection or increased heat retention. [1996 c 157 § 1; 1985 c 360 § 1.]

Effective date—1996 c 157: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 157 § 3.]

19.27.020 Purposes—Objectives—Standards. The purpose of this chapter is to promote the health, safety and welfare of the occupants or users of buildings and structures and the general public by the provision of building codes throughout the state. Accordingly, this chapter is designed to effectuate the following purposes, objectives, and standards:

- (1) To require minimum performance standards and requirements for construction and construction materials, consistent with accepted standards of engineering, fire and life safety.
- (2) To require standards and requirements in terms of performance and nationally accepted standards.
- (3) To permit the use of modern technical methods, devices and improvements.
- (4) To eliminate restrictive, obsolete, conflicting, duplicating and unnecessary regulations and requirements which could unnecessarily increase construction costs or retard the use of new materials and methods of installation or provide unwarranted preferential treatment to types or classes of materials or products or methods of construction.
- (5) To provide for standards and specifications for making buildings and facilities accessible to and usable by physically disabled persons.
- (6) To consolidate within each authorized enforcement jurisdiction, the administration and enforcement of building codes. [1985 c 360 § 6; 1974 ex.s. c 96 § 2.]

19.27.031 State building code—Adoption—Conflicts—Opinions. Except as otherwise provided in this chapter, there shall be in effect in all counties and cities the state building code which shall consist of the following codes which are hereby adopted by reference:

- (1) Uniform Building Code and Uniform Building Code Standards, published by the International Conference of Building Officials;
- (2) Uniform Mechanical Code, including Chapter 13, Fuel Gas Piping, Appendix B, published by the International Conference of Building Officials;
- (3) The Uniform Fire Code and Uniform Fire Code Standards, published by the International Fire Code Institute:

PROVIDED, That, notwithstanding any wording in this code, participants in religious ceremonies shall not be precluded from carrying hand-held candles;

(4) Except as provided in RCW 19.27.170, the Uniform Plumbing Code and Uniform Plumbing Code Standards, published by the International Association of Plumbing and Mechanical Officials: PROVIDED, That chapters 11 and 12 of such code are not adopted; and

(5) The rules and regulations adopted by the council establishing standards for making buildings and facilities accessible to and usable by the physically handicapped or elderly persons as provided in RCW 70.92.100 through 70.92.160.

In case of conflict among the codes enumerated in subsections (1), (2), (3), and (4) of this section, the first named code shall govern over those following.

The codes enumerated in this section shall be adopted by the council as provided in RCW 19.27.074.

The council may issue opinions relating to the codes at the request of a local official charged with the duty to enforce the enumerated codes. [1995 c 343 § 1. Prior: 1989 c 348 § 9; 1989 c 266 § 1; 1985 c 360 § 5.]

Severability—1989 c 348: See note following RCW 90.54.020.

Rights not impaired—1989 c 348: See RCW 90.54.920.

19.27.035 Process for review. The building code council shall, within one year of July 23, 1989, adopt a process for the review of proposed state-wide amendments to the codes enumerated in RCW 19.27.031, and proposed or enacted local amendments to the codes enumerated in RCW 19.27.031 as amended and adopted by the state building code council. [1989 c 266 § 6.]

19.27.040 Cities and counties authorized to amend state building code—Limitations. The governing body of each county or city is authorized to amend the state building code as it applies within the jurisdiction of the county or city. The minimum performance standards of the codes and the objectives enumerated in RCW 19.27.020 shall not be diminished by any county or city amendments.

Nothing in this chapter shall authorize any modifications of the requirements of chapter 70.92 RCW. [1990 c 2 § 11; 1985 c 360 § 8; 1977 ex.s. c 14 § 12; 1974 ex.s. c 96 § 4.]

Effective dates—1990 c 2: "Sections 1 through 4, 6, 7, 9, and 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect March 1, 1990. Sections 11 and 12 of this act shall take effect January 1, 1991. Section 8 of this act shall take effect July 1, 1991." [1990 c 2 § 14.] For codification of this act [1990 c 2], see Codification Tables, Volume 0.

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

19.27.042 Cities and counties—Emergency exemptions for housing for indigent persons. (1) Effective January 1, 1992, the legislative authorities of cities and counties may adopt an ordinance or resolution to exempt from state building code requirements buildings whose character of use or occupancy has been changed in order to provide housing for indigent persons. The ordinance or resolution allowing the exemption shall include the following conditions:

(a) The exemption is limited to existing buildings located in this state;

(b) Any code deficiencies to be exempted pose no threat to human life, health, or safety;

(c) The building or buildings exempted under this section are owned or administered by a public agency or nonprofit corporation; and

(d) The exemption is authorized for no more than five years on any given building. An exemption for a building may be renewed if the requirements of this section are met for each renewal.

(2) By January 1, 1992, the state building code council shall adopt by rule, guidelines for cities and counties exempting buildings under subsection (1) of this section. [1991 c 139 § 1.]

19.27.050 Enforcement. The state building code required by this chapter shall be enforced by the counties and cities. Any county or city not having a building department shall contract with another county, city, or inspection agency approved by the county or city for enforcement of the state building code within its jurisdictional boundaries. [1985 c 360 § 9; 1974 ex.s. c 96 § 5.]

19.27.060 Local building regulations superseded—Exceptions. (1) The governing bodies of counties and cities may amend the codes enumerated in RCW 19.27.031 as amended and adopted by the state building code council as they apply within their respective jurisdictions, but the amendments shall not result in a code that is less than the minimum performance standards and objectives contained in the state building code.

(a) No amendment to a code enumerated in RCW 19.27.031 as amended and adopted by the state building code council that affects single family or multifamily residential buildings shall be effective unless the amendment is approved by the building code council under RCW 19.27.074(1)(b).

(b) Any county or city amendment to a code enumerated in RCW 19.27.031 which is approved under RCW 19.27.074(1)(b) shall continue to be effective after any action is taken under RCW 19.27.074(1)(a) without necessity of reapproval under RCW 19.27.074(1)(b) unless the amendment is declared null and void by the council at the time any action is taken under RCW 19.27.074(1)(a) because such action in any way altered the impact of the amendment.

(2) Except as permitted or provided otherwise under this section, the state building code shall be applicable to all buildings and structures including those owned by the state or by any governmental subdivision or unit of local government.

(3) The governing body of each county or city may limit the application of any portion of the state building code to exclude specified classes or types of buildings or structures according to use other than single family or multifamily residential buildings: PROVIDED, That in no event shall fruits or vegetables of the tree or vine stored in buildings or warehouses constitute combustible stock for the purposes of application of the uniform fire code.

(4) The provisions of this chapter shall not apply to any building four or more stories high with a B occupancy as

defined by the uniform building code, 1982 edition, and with a city fire insurance rating of 1, 2, or 3 as defined by a recognized fire rating bureau or organization.

(5) No provision of the uniform fire code concerning roadways shall be part of the state building code: PROVIDED, That this subsection shall not limit the authority of a county or city to adopt street, road, or access standards.

(6) The provisions of the state building code may be preempted by any city or county to the extent that the code provisions relating to the installation or use of sprinklers in jail cells conflict with the secure and humane operation of jails.

(7)(a) Effective one year after July 23, 1989, the governing bodies of counties and cities may adopt an ordinance or resolution to exempt from permit requirements certain construction or alteration of either group R, division 3, or group M, division 1 occupancies, or both, as defined in the uniform building code, 1988 edition, for which the total cost of fair market value of the construction or alteration does not exceed fifteen hundred dollars. The permit exemption shall not otherwise exempt the construction or alteration from the substantive standards of the codes enumerated in RCW 19.27.031, as amended and maintained by the state building code council under RCW 19.27.070.

(b) Prior to July 23, 1989, the state building code council shall adopt by rule, guidelines exempting from permit requirements certain construction and alteration activities under (a) of this subsection. [1989 c 266 § 2; 1989 c 246 § 1; 1987 c 462 § 12; 1986 c 118 § 15; 1985 c 360 § 10; 1981 2nd ex.s. c 12 § 5; 1980 c 64 § 1; 1975 1st ex.s. c 282 § 2; 1974 ex.s. c 96 § 6.]

Reviser's note: This section was amended by 1989 c 246 § 1 and by 1989 c 266 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—1987 c 462: See note following RCW 13.04.116.

19.27.065 Exemption—Temporary growing structures used for commercial production of horticultural plants. The provisions of this chapter do not apply to temporary growing structures used solely for the commercial production of horticultural plants including ornamental plants, flowers, vegetables, and fruits. A temporary growing structure is not considered a building for purposes of this chapter. [1996 c 157 § 2.]

Effective date—1996 c 157: See note following RCW 19.27.015.

19.27.070 State building code council—Established—Membership—Travel expenses—Administrative, clerical assistance. There is hereby established a state building code council to be appointed by the governor.

(1) The state building code council shall consist of fifteen members, two of whom shall be county elected legislative body members or elected executives and two of whom shall be city elected legislative body members or mayors. One of the members shall be a local government building code enforcement official and one of the members shall be a local government fire service official. Of the remaining nine members, one member shall represent general construction, specializing in commercial and industrial building construction; one member shall represent general

construction, specializing in residential and multifamily building construction; one member shall represent the architectural design profession; one member shall represent the structural engineering profession; one member shall represent the mechanical engineering profession; one member shall represent the construction building trades; one member shall represent manufacturers, installers, or suppliers of building materials and components; one member shall be a person with a physical disability and shall represent the disability community; and one member shall represent the general public. At least six of these fifteen members shall reside east of the crest of the Cascade mountains. The council shall include: Two members of the house of representatives appointed by the speaker of the house, one from each caucus; two members of the senate appointed by the president of the senate, one from each caucus; and an employee of the electrical division of the department of labor and industries, as ex officio, nonvoting members with all other privileges and rights of membership. Terms of office shall be for three years. The council shall elect a member to serve as chair of the council for one-year terms of office. Any member who is appointed by virtue of being an elected official or holding public employment shall be removed from the council if he or she ceases being such an elected official or holding such public employment. Before making any appointments to the building code council, the governor shall seek nominations from recognized organizations which represent the entities or interests listed in this subsection. Members serving on the council on July 28, 1985, may complete their terms of office. Any vacancy shall be filled by alternating appointments from governmental and nongovernmental entities or interests until the council is constituted as required by this subsection.

(2) Members shall not be compensated but shall receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(3) The department of community, trade, and economic development shall provide administrative and clerical assistance to the building code council. [1995 c 399 § 8; 1989 c 246 § 2; 1987 c 505 § 7; 1985 c 360 § 11; 1984 c 287 § 55; 1975-'76 2nd ex.s. c 34 § 59; 1974 ex.s. c 96 § 7.]

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

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

Polling places—Standards—Revision, when: RCW 29.57.030.

19.27.074 State building code council—Duties—Public meetings—Timing of code changes. (1) The state building code council shall:

(a) Adopt and maintain the codes to which reference is made in RCW 19.27.031 in a status which is consistent with the state's interest as set forth in RCW 19.27.020. In maintaining these codes, the council shall regularly review updated versions of the codes referred to in RCW 19.27.031 and other pertinent information and shall amend the codes as deemed appropriate by the council;

(b) Approve or deny all county or city amendments to any code referred to in RCW 19.27.031 to the degree the amendments apply to single family or multifamily residential buildings;

(c) As required by the legislature, develop and adopt any codes relating to buildings; and

(d) Propose a budget for the operation of the state building code council to be submitted to the office of financial management pursuant to RCW 43.88.090.

(2) The state building code council may:

(a) Appoint technical advisory committees which may include members of the council;

(b) Employ permanent and temporary staff and contract for services; and

(c) Conduct research into matters relating to any code or codes referred to in RCW 19.27.031 or any related matter.

All meetings of the state building code council shall be open to the public under the open public meetings act, chapter 42.30 RCW. All actions of the state building code council which adopt or amend any code of state-wide applicability shall be pursuant to the administrative procedure act, chapter 34.05 RCW.

All council decisions relating to the codes enumerated in RCW 19.27.031 shall require approval by at least a majority of the members of the council.

All decisions to adopt or amend codes of state-wide application shall be made prior to December 1 of any year and shall not take effect before the end of the regular legislative session in the next year. [1989 c 266 § 3; 1985 c 360 § 2.]

19.27.078 State building code council—Studies. (1)

The state building code council shall contract with a private entity to conduct a study and analysis of the codes referred to in RCW 19.27.031 and related regulations of state and local agencies to ascertain the amount and nature of any conflict and inconsistencies. The findings and proposed solutions resulting from this study and analysis shall be submitted to the state building code council no later than September 1, 1987. The state building code council shall consider these findings and proposed solutions when carrying out its responsibilities under RCW 19.27.074.

(2) The state building code council shall conduct a study of county and city enforcement of the requirements of the codes to which reference is made in RCW 19.27.031. In conducting the study, the council shall conduct public hearings at designated council meetings to seek input from interested individuals and organizations. The findings of the study shall be submitted in a report to the governor and the legislature no later than September 1, 1987.

(3) The study required under subsection (2) of this section shall include, but not be limited to, a review of the impact of discretionary building permit requirements imposed by local code enforcement personnel. This review shall be designed to determine the extent, if any, to which such discretionary requirements are based upon (a) the requirements of the state building code or (b) city or county amendments to the state building code.

(4) The state building code council shall conduct a study to identify and define stand-alone ordinances adopted by counties and cities that add or alter construction requirements to buildings and structures built under the codes enumerated in RCW 19.27.031, as adopted and amended by the state building code council. In conducting the study, the council shall consult with representatives from counties, cities, home

builders, architects, building officials, and fire officials. To aid in data collection, local governments shall submit fire suppression ordinances, as defined by the state building code council, in effect on March 31, 1989, to the state building code council. The findings of the study shall be submitted in a written report to the house of representatives committee on housing and the senate governmental operations committee no later than November 1, 1989.

(5) The study required under subsection (4) of this section shall include, but not be limited to, a review of ordinances or regulations adopted by counties and cities that add or alter construction requirements to buildings and structures built under the codes enumerated in RCW 19.27.031. [1989 c 266 § 4; 1985 c 360 § 3.]

19.27.080 Chapters of RCW not affected. Nothing in this chapter affects the provisions of chapters 19.28, 43.22, 70.77, 70.79, 70.87, 48.48, 18.20, 18.46, 18.51, 28A.305, 70.41, 70.62, 70.75, 70.108, 71.12, 74.15, 70.94, 76.04, 90.76 RCW, or RCW 28A.195.010, or grants rights to duplicate the authorities provided under chapters 70.94 or 76.04 RCW. [1990 c 33 § 555; 1989 c 346 § 19; 1975 1st ex.s. c 282 § 1; 1974 ex.s. c 96 § 8.]

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

Captions—Severability—Effective date—Expiration date—1989 c 346: See RCW 90.76.900 through 90.76.903.

19.27.085 Building code council account—Building permit fee. (1) There is hereby created the building code council account in the state treasury. Moneys deposited into the account shall be used by the building code council, after appropriation, to perform the purposes of the council.

(2) All moneys collected under subsection (3) of this section shall be deposited into the building code council account. Every four years the state treasurer shall report to the legislature on the balances in the account so that the legislature may adjust the charges imposed under subsection (3) of this section.

(3) There is imposed a fee of four dollars and fifty cents on each building permit issued by a county or a city, plus an additional surcharge of two dollars for each residential unit, but not including the first unit, on each building containing more than one residential unit. Quarterly each county and city shall remit moneys collected under this section to the state treasury; however, no remittance is required until a minimum of fifty dollars has accumulated pursuant to this subsection. [1989 c 256 § 1; 1985 c 360 § 4.]

19.27.090 Local jurisdictions reserved. Local land use and zoning requirements, building setbacks, side and rear-yard requirements, site development, property line requirements, requirements adopted by counties or cities pursuant to chapter 58.17 RCW, snow load requirements, wind load requirements, and local fire zones are specifically reserved to local jurisdictions notwithstanding any other provision of this chapter. [1989 c 266 § 5; 1974 ex.s. c 96 § 9.]

19.27.095 Building permit application—Consideration—Requirements. (1) A valid and fully

complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.

(2) The requirements for a fully completed application shall be defined by local ordinance but for any construction project costing more than five thousand dollars the application shall include, at a minimum:

(a) The legal description, or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor;

(b) The property owner's name, address, and phone number;

(c) The prime contractor's business name, address, phone number, current state contractor registration number; and

(d) Either:

(i) The name, address, and phone number of the office of the lender administering the interim construction financing, if any; or

(ii) The name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner, if the bond is for an amount not less than fifty percent of the total amount of the construction project.

(3) The information required on the building permit application by subsection (2)(a) through (d) of this section shall be set forth on the building permit document which is issued to the owner, and on the inspection record card which shall be posted at the construction site.

(4) The information required by subsection (2) of this section and information supplied by the applicant after the permit is issued under subsection (5) of this section shall be kept on record in the office where building permits are issued and made available to any person on request. If a copy is requested, a reasonable charge may be made.

(5) If any of the information required by subsection (2)(d) of this section is not available at the time the application is submitted, the applicant shall so state and the application shall be processed forthwith and the permit issued as if the information had been supplied, and the lack of the information shall not cause the application to be deemed incomplete for the purposes of vesting under subsection (1) of this section. However, the applicant shall provide the remaining information as soon as the applicant can reasonably obtain such information.

(6) The limitations imposed by this section shall not restrict conditions imposed under chapter 43.21C RCW. [1991 c 281 § 27; 1987 c 104 § 1.]

Liberal construction—Effective date, application—1991 c 281: See RCW 60.04.900 and 60.04.902.

19.27.097 Building permit application—Evidence of adequate water supply—Applicability—Exemption. (1) Each applicant for a building permit of a building necessitating potable water shall provide evidence of an adequate water supply for the intended use of the building. Evidence may be in the form of a water right permit from the department of ecology, a letter from an approved water purveyor [Title 19 RCW—page 30]

stating the ability to provide water, or another form sufficient to verify the existence of an adequate water supply. In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the existing system is willing and able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency. An application for a water right shall not be sufficient proof of an adequate water supply.

(2) Within counties not required or not choosing to plan pursuant to RCW 36.70A.040, the county and the state may mutually determine those areas in the county in which the requirements of subsection (1) of this section shall not apply. The departments of health and ecology shall coordinate on the implementation of this section. Should the county and the state fail to mutually determine those areas to be designated pursuant to this subsection, the county may petition the department of community, trade, and economic development to mediate or, if necessary, make the determination.

(3) Buildings that do not need potable water facilities are exempt from the provisions of this section. The department of ecology, after consultation with local governments, may adopt rules to implement this section, which may recognize differences between high-growth and low-growth counties. [1995 c 399 § 9; 1991 sp.s. c 32 § 28; 1990 1st ex.s. c 17 § 63.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

19.27.100 Cities, towns, counties may impose fees different from state building code. Nothing in this chapter shall prohibit a city, town, or county of the state from imposing fees different from those set forth in the state building code. [1975 1st ex.s. c 8 § 1.]

19.27.110 Uniform fire code—Administration and enforcement by counties, other political subdivisions and municipal corporations—Fees. Each county government shall administer and enforce the uniform fire code in the unincorporated areas of the county: PROVIDED, That any political subdivision or municipal corporation providing fire protection pursuant to RCW 14.08.120 shall, at its sole option, be responsible for administration and enforcement of the uniform fire code on its facility. Any fire protection district or political subdivision may, pursuant to chapter 39.34 RCW, the interlocal cooperation act, assume all or a portion of the administering responsibility and coordinate and cooperate with the county government in the enforcement of the uniform fire code.

It is not the intent of RCW 19.27.110 and 19.27.111 to preclude or limit the authority of any city, town, county, fire protection district, state agency, or political subdivision from engaging in those fire prevention activities with which they are charged.

It is not the intent of the legislature by adopting the state building code or RCW 19.27.110 and 19.27.111 to grant counties any more power to suppress or extinguish fires than counties currently possess under the Constitution or other statutes.

Each county is authorized to impose fees sufficient to pay the cost of inspections, administration, and enforcement pursuant to RCW 19.27.110 and 19.27.111. [1975-'76 2nd ex.s. c 37 § 1.]

19.27.111 RCW 19.27.080 not affected. Nothing in RCW 19.27.110 shall affect the provisions of RCW 19.27.080. [1975-'76 2nd ex.s. c 37 § 2.]

19.27.113 Fire extinguishers for certain school buildings. The building code council shall adopt rules by December 1, 1991, requiring that all buildings classed as E-1 occupancies, as defined in the state building code, except portable school classrooms, constructed after July 28, 1991, be provided with an automatic fire-extinguishing system. Rules adopted by the council shall consider applicable nationally recognized fire and building code standards and local conditions.

By December 15, 1991, the council shall transmit to the superintendent of public instruction, the state board of education, and the fire protection policy board copies of the rules as adopted. The superintendent of public instruction, the state board of education, and the fire protection policy board shall respond to the council by February 15, 1992, with any recommended changes to the rule. If changes are recommended the council shall immediately consider those changes to the rules through its rule-making procedures. The rules shall be effective on July 1, 1992. [1991 c 170 § 1.]

Schools—Standards for fire prevention and safety: RCW 48.48.045.

19.27.120 Buildings or structures having special historical or architectural significance—Exception. (1) Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, strengthening, or continued use of a building or structure may be made without conformance to all of the requirements of the codes adopted under RCW 19.27.031, when authorized by the appropriate building official under the rules adopted under subsection (2) of this section, provided:

(a) The building or structure: (i) Has been designated by official action of a legislative body as having special historical or architectural significance, or (ii) is an unreinforced masonry building or structure on the state or the national register of historic places, or is potentially eligible for placement on such registers; and

(b) The restored building or structure will be less hazardous, based on life and fire risk, than the existing building.

(2) The state building code council shall adopt rules, where appropriate, to provide alternative methods to those otherwise required under this chapter for repairs, alterations, and additions necessary for preservation, restoration, rehabilitation, strengthening, or continued use of buildings and structures identified under subsection (1) of this section. [1985 c 360 § 13; 1975-'76 2nd ex.s. c 11 § 1.]

19.27.140 Copy of permit to county assessor. A copy of any permit obtained under the state building code for construction or alteration work of a total cost or fair market value in excess of five hundred dollars, shall be

transmitted by the issuing authority to the county assessor of the county where the property on which the construction or alteration work is located. The building permit shall contain the county assessor's parcel number. [1989 c 246 § 5.]

19.27.150 Report to department of community, trade, and economic development. Every month a copy of the United States department of commerce, bureau of the census' "report of building or zoning permits issued and local public construction" or equivalent report shall be transmitted by the governing bodies of counties and cities to the department of community, trade, and economic development. [1995 c 399 § 10; 1989 c 246 § 6.]

19.27.160 Counties with populations of from five thousand to less than ten thousand—Ordinance reenactment. Any county with a population of from five thousand to less than ten thousand that had in effect on July 1, 1985, an ordinance or resolution authorizing and regulating the construction of owner-built residences may reenact such an ordinance or resolution if the ordinance or resolution is reenacted before September 30, 1989. After reenactment, the county shall transmit a copy of the ordinance or resolution to the state building code council. [1991 c 363 § 16; 1989 c 246 § 7.]

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

19.27.170 Water conservation performance standards—Testing and identifying fixtures that meet standards—Marking and labeling fixtures. (1) The state building code council shall adopt rules under chapter 34.05 RCW that implement and incorporate the water conservation performance standards in subsections (4) and (5) of this section. These standards shall apply to all new construction and all remodeling involving replacement of plumbing fixtures in all residential, hotel, motel, school, industrial, commercial use, or other occupancies determined by the council to use significant quantities of water.

(2) The legislature recognizes that a phasing-in approach to these new standards is appropriate. Therefore, standards in subsection (4) of this section shall take effect on July 1, 1990. The standards in subsection (5) of this section shall take effect July 1, 1993.

(3) No individual, public or private corporation, firm, political subdivision, government agency, or other legal entity may, for purposes of use in this state, distribute, sell, offer for sale, import, install, or approve for installation any plumbing fixtures unless the fixtures meet the standards as provided for in this section.

(4) Standards for water use efficiency effective July 1, 1990.

(a) Standards for waterclosets. The guideline for maximum water use allowed in gallons per flush (gpf) for any of the following waterclosets is the following:

- Tank-type toilets 3.5 gpf.
- Flushometer-valve toilets 3.5 gpf.
- Flushometer-tank toilets 3.5 gpf.
- Electromechanical hydraulic toilets 3.5 gpf.

(b) Standard for urinals. The guideline for maximum water use allowed for any urinal is 3.0 gallons per flush.

(c) Standard for showerheads. The guideline for maximum water use allowed for any showerhead is 3.0 gallons per minute.

(d) Standard for faucets. The guideline for maximum water use allowed in gallons per minute (gpm) for any of the following faucets and replacement aerators is the following:

- Bathroom faucets 3.0 gpm.
- Lavatory faucets 3.0 gpm.
- Kitchen faucets 3.0 gpm.
- Replacement aerators 3.0 gpm.

(e) Except where designed and installed for use by the physically handicapped, lavatory faucets located in restrooms intended for use by the general public must be equipped with a metering valve designed to close by spring or water pressure when left unattended (self-closing).

(f) No urinal or watercloset that operates on a continuous flow or continuous flush basis shall be permitted.

(5) Standards for water use efficiency effective July 1, 1993.

(a) Standards for waterclosets. The guideline for maximum water use allowed in gallons per flush (gpf) for any of the following waterclosets is the following:

- Tank-type toilets 1.6 gpf.
- Flushometer-tank toilets 1.6 gpf.
- Electromechanical hydraulic toilets 1.6 gpf.

(b) Standards for urinals. The guideline for maximum water use allowed for any urinal is 1.0 gallons per flush.

(c) Standards for showerheads. The guideline for maximum water use allowed for any showerhead is 2.5 gallons per minute.

(d) Standards for faucets. The guideline for maximum water use allowed in gallons per minute for any of the following faucets and replacement aerators is the following:

- Bathroom faucets 2.5 gpm.
- Lavatory faucets 2.5 gpm.
- Kitchen faucets 2.5 gpm.
- Replacement aerators 2.5 gpm.

(e) Except where designed and installed for use by the physically handicapped, lavatory faucets located in restrooms intended for use by the general public must be equipped with a metering valve designed to close by water pressure when unattended (self-closing).

(f) No urinal or watercloset that operates on a continuous flow or continuous basis shall be permitted.

(6) The building code council shall establish methods and procedures for testing and identifying fixtures that meet the standards established in subsection (5) of this section. The council shall use the testing standards designated as American national standards, written under American national standards institute procedures or other widely recognized national testing standards. The council shall either review test results from independent testing laboratories that are submitted by manufacturers of plumbing fixtures or accept data submitted to and evaluated by the international association of plumbing and mechanical officials. The council shall publish and widely distribute a current list of fixtures that meet the standards established in subsection (5) of this section.

(7) The building code council shall adopt rules for marking and labeling fixtures meeting the standards established in subsection (5) of this section.

(8) This section shall not apply to fixtures installed before July 28, 1991, that are removed and relocated to another room or area of the same building after July 28, 1991, nor shall it apply to fixtures, as determined by the council, that in order to perform a specialized function, cannot meet the standards specified in this section.

(9) The water conservation performance standards shall supersede all local government codes. After July 1, 1990, cities, towns, and counties shall not amend the code revisions and standards established under subsection (4) or (5) of this section. [1991 c 347 § 16; 1989 c 348 § 8.]

Purposes—1991 c 347: See note following RCW 90.42.005.

Severability—1991 c 347: See RCW 90.42.900.

Severability—1989 c 348: See note following RCW 90.54.020.

Rights not impaired—1989 c 348: See RCW 90.54.920.

19.27.175 Recycled materials—Study code and adopt changes. The state building code council, in consultation with the department of ecology and local governments, shall conduct a study of the state building code, and adopt changes as necessary to encourage greater use of recycled building materials from construction and building demolition debris, mixed waste paper, waste paint, waste plastics, and other waste materials. [1991 c 297 § 15.]

Captions not law—1991 c 297: See RCW 43.19A.900.

19.27.180 Residential buildings moved into a city or county—Applicability of building codes and electrical installation requirements. (1) Residential buildings or structures moved into or within a county or city are not required to comply with all of the requirements of the codes enumerated in chapters 19.27 and 19.27A RCW, as amended and maintained by the state building code council and chapter 19.28 RCW, if the original occupancy classification of the building or structure is not changed as a result of the move.

(2) This section shall not apply to residential structures or buildings that are substantially remodeled or rehabilitated, nor to any work performed on a new or existing foundation.

(3) For the purposes of determining whether a moved building or structure has been substantially remodeled or rebuilt, any cost relating to preparation, construction, or renovation of the foundation shall not be considered. [1992 c 79 § 1; 1989 c 313 § 2.]

Finding—1989 c 313: "The legislature finds that moved buildings or structures can provide affordable housing for many persons of lower income; that many of the moved structures or buildings were legally built to the construction standards of their day; and that requiring the moved building or structure to meet all new construction codes may limit their use as an affordable housing option for persons of lower income.

The legislature further finds that application of the new construction code standards to moved structures and buildings present unique difficulties and that it is the intent of the legislature that any moved structure or building that meets the codes at the time it was constructed does not need to comply with any updated state building code unless the structure is substantially remodeled or rebuilt." [1989 c 313 § 1.]

19.27.190 Indoor air quality—Interim and final requirements for maintenance. (1)(a) Not later than January 1, 1991, the state building code council, in consultation with the department of community, trade, and economic development, shall establish interim requirements for the maintenance of indoor air quality in newly constructed

residential buildings. In establishing the interim requirements, the council shall take into consideration differences in heating fuels and heating system types. These requirements shall be in effect July 1, 1991, through June 30, 1993.

(b) The interim requirements for new electrically space heated residential buildings shall include ventilation standards which provide for mechanical ventilation in areas of the residence where water vapor or cooking odors are produced. The ventilation shall be exhausted to the outside of the structure. The ventilation standards shall further provide for the capacity to supply outside air to each bedroom and the main living area through dedicated supply air inlet locations in walls, or in an equivalent manner. At least one exhaust fan in the home shall be controlled by a dehumidistat or clock timer to ensure that sufficient whole house ventilation is regularly provided as needed.

(c)(i) For new single family residences with electric space heating systems, zero lot line homes, each unit in a duplex, and each attached housing unit in a planned unit development, the ventilation standards shall include fifty cubic feet per minute of effective installed ventilation capacity in each bathroom and one hundred cubic feet per minute of effective installed ventilation capacity in each kitchen.

(ii) For other new residential units with electric space heating systems the ventilation standards may be satisfied by the installation of two exhaust fans with a combined effective installed ventilation capacity of two hundred cubic feet per minute.

(iii) Effective installed ventilation capacity means the capability to deliver the specified ventilation rates for the actual design of the ventilation system. Natural ventilation and infiltration shall not be considered acceptable substitutes for mechanical ventilation.

(d) For new residential buildings that are space heated with other than electric space heating systems, the interim standards shall be designed to result in indoor air quality equivalent to that achieved with the interim ventilation standards for electric space heated homes.

(e) The interim requirements for all newly constructed residential buildings shall include standards for indoor air quality pollutant source control, including the following requirements: All structural panel components of the residence shall comply with appropriate standards for the emission of formaldehyde; the back-drafting of combustion by-products from combustion appliances shall be minimized through the use of dampers, vents, outside combustion air sources, or other appropriate technologies; and, in areas of the state where monitored data indicate action is necessary to inhibit indoor radon gas concentrations from exceeding appropriate health standards, entry of radon gas into homes shall be minimized through appropriate foundation construction measures.

(2) No later than January 1, 1993, the state building code council, in consultation with the department of community, trade, and economic development, shall establish final requirements for the maintenance of indoor air quality in newly constructed residences to be in effect beginning July 1, 1993. For new electrically space heated residential buildings, these requirements shall maintain indoor air quality equivalent to that provided by the mechanical ventilation and indoor air pollutant source control requirements

included in the February 7, 1989, Bonneville power administration record of decision for the environmental impact statement on new energy efficient homes programs (DOE/EIS-0127F) built with electric space heating. In residential units other than single family, zero lot line, duplexes, and attached housing units in planned unit developments, ventilation requirements may be satisfied by the installation of two exhaust fans with a combined effective installed ventilation capacity of two hundred cubic feet per minute. For new residential buildings that are space heated with other than electric space heating systems, the standards shall be designed to result in indoor air quality equivalent to that achieved with the ventilation and source control standards for electric space heated homes. In establishing the final requirements, the council shall take into consideration differences in heating fuels and heating system types. [1996 c 186 § 501; 1990 c 2 § 7.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Effective dates—1990 c 2: See note following RCW 19.27.040.

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

19.27.470 Recyclable materials and solid waste—Multifamily residences. By July 1, 1992, the state building code council shall adopt rules to ensure that new multifamily residences have adequate and conveniently located space to store and dispose of recyclable materials and solid waste. [1991 c 298 § 5.]

Finding—1991 c 298: See note following RCW 70.95.030.

19.27.480 Recyclable materials and solid waste—Commercial facilities. By July 1, 1992, the state building code council shall adopt rules to ensure that new commercial facilities have adequate and conveniently located space to store and dispose of recyclable materials and solid waste. [1991 c 298 § 6.]

Finding—1991 c 298: See note following RCW 70.95.030.

Chapter 19.27A

ENERGY-RELATED BUILDING STANDARDS

Sections

- 19.27A.015 State energy code—Minimum and maximum energy code.
- 19.27A.020 State energy code—Adoption by state building code council—Standards—Preemption of local residential energy codes—Study of enforcement of energy codes—Purchase of energy under the Pacific Northwest electric power planning and conservation act—Expiration of subsection.
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- 19.27A.050 State building code advisory council—Construction—Inclusion of successor agency.
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 19.27A.090 Portable oil-fueled heaters—Sales and use—Approval required.
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 19.27A.120 Violations—Penalty.

State building code: Chapter 19.27 RCW.

19.27A.015 State energy code—Minimum and maximum energy code. Except as provided in RCW 19.27A.020(7), the Washington state energy code for residential buildings shall be the maximum and minimum energy code for residential buildings in each city, town, and county and shall be enforced by each city, town, and county no later than July 1, 1991. The Washington state energy code for nonresidential buildings shall be the minimum energy code for nonresidential buildings enforced by each city, town, and county. [1990 c 2 § 2.]

Findings—1990 c 2: "The legislature finds that using energy efficiently in housing is one of the lowest cost ways to meet consumer demand for energy; that using energy efficiently helps protect citizens of the state from negative impacts due to changes in energy supply and cost; that using energy efficiently will help mitigate negative environmental impacts of energy use and resource development; and that using energy efficiently will help stretch our present energy resources into the future. The legislature further finds that the electricity surplus in the Northwest is dwindling as the population increases and the economy expands, and that the region will eventually need new sources of electricity generation.

It is declared policy of the state of Washington that energy be used efficiently. It is the intent of this act to establish residential building standards that bring about the common use of energy efficient building methods, and to assure that such methods remain economically feasible and affordable to purchasers of newly constructed housing." [1990 c 2 § 1.] For codification of "this act" [1990 c 2], see Codification Tables, Volume 0.

Severability—1990 c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 2 § 13.]

Effective dates—1990 c 2: See note following RCW 19.27.040.

19.27A.020 State energy code—Adoption by state building code council—Standards—Preemption of local residential energy codes—Study of enforcement of energy codes—Purchase of energy under the Pacific Northwest electric power planning and conservation act—Expiration of subsection. (1) No later than January 1, 1991, the state building code council shall promulgate rules to be known as the Washington state energy code as part of the state building code.

(2) The council shall follow the legislature's standards set forth in this section to promulgate rules to be known as the Washington state energy code. The Washington state energy code shall be designed to require new buildings to meet a certain level of energy efficiency, but allow flexibility in building design, construction, and heating equipment efficiencies within that framework. The Washington state energy code shall be designed to allow space heating equipment efficiency to offset or substitute for building envelope thermal performance.

(3) The Washington state energy code shall take into account regional climatic conditions. Climate zone 1 shall include all counties not included in climate zone 2. Climate zone 2 includes: Adams, Chelan, Douglas, Ferry, Grant,

Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, and Whitman counties.

(4) The Washington state energy code for residential buildings shall require:

(a) New residential buildings that are space heated with electric resistance heating systems to achieve energy use equivalent to that used in typical buildings constructed with:

(i) Ceilings insulated to a level of R-38. The code shall contain an exception which permits single rafter or joist vaulted ceilings insulated to a level of R-30 (R value includes insulation only);

(ii) In zone 1, walls insulated to a level of R-19 (R value includes insulation only), or constructed with two by four members, R-13 insulation batts, R-3.2 insulated sheathing, and other normal assembly components; in zone 2 walls insulated to a level of R-24 (R value includes insulation only), or constructed with two by six members, R-22 insulation batts, R-3.2 insulated sheathing, and other normal construction assembly components; for the purpose of determining equivalent thermal performance, the wall U-value shall be 0.058 in zone 1 and 0.044 in zone 2;

(iii) Below grade walls, insulated on the interior side, to a level of R-19 or, if insulated on the exterior side, to a level of R-10 in zone 1 and R-12 in zone 2 (R value includes insulation only);

(iv) Floors over unheated spaces insulated to a level of R-30 (R value includes insulation only);

(v) Slab on grade floors insulated to a level of R-10 at the perimeter;

(vi) Double glazed windows with values not more than U-0.4;

(vii) In zone 1 the glazing area may be up to twenty-one percent of floor area and in zone 2 the glazing area may be up to seventeen percent of floor area where consideration of the thermal resistance values for other building components and solar heat gains through the glazing result in thermal performance equivalent to that achieved with thermal resistance values for other components determined in accordance with the equivalent thermal performance criteria of (a) of this subsection and glazing area equal to fifteen percent of the floor area. Throughout the state for the purposes of determining equivalent thermal performance, the maximum glazing area shall be fifteen percent of the floor area; and

(viii) Exterior doors insulated to a level of R-5; or an exterior wood door with a thermal resistance value of less than R-5 and values for other components determined in accordance with the equivalent thermal performance criteria of (a) of this subsection.

(b) New residential buildings which are space-heated with all other forms of space heating to achieve energy use equivalent to that used in typical buildings constructed with:

(i) Ceilings insulated to a level of R-30 in zone 1 and R-38 in zone 2 the code shall contain an exception which permits single rafter or joist vaulted ceilings insulated to a level of R-30 (R value includes insulation only);

(ii) Walls insulated to a level of R-19 (R value includes insulation only), or constructed with two by four members, R-13 insulation batts, R-3.2 insulated sheathing, and other normal assembly components;

(iii) Below grade walls, insulated on the interior side, to a level of R-19 or, if insulated on the exterior side, to a level

of R-10 in zone 1 and R-12 in zone 2 (R value includes insulation only);

(iv) Floors over unheated spaces insulated to a level of R-19 in zone 1 and R-30 in zone 2 (R value includes insulation only);

(v) Slab on grade floors insulated to a level of R-10 at the perimeter;

(vi) Heat pumps with a minimum heating season performance factor (HSPF) of 6.8 or with all other energy sources with a minimum annual fuel utilization efficiency (AFUE) of seventy-eight percent;

(vii) Double glazed windows with values not more than U-0.65 in zone 1 and U-0.60 in zone 2. The state building code council, in consultation with the department of community, trade, and economic development, shall review these U-values, and, if economically justified for consumers, shall amend the Washington state energy code to improve the U-values by December 1, 1993. The amendment shall not take effect until July 1, 1994; and

(viii) In zone 1, the maximum glazing area shall be twenty-one percent of the floor area. In zone 2 the maximum glazing area shall be seventeen percent of the floor area. Throughout the state for the purposes of determining equivalent thermal performance, the maximum glazing area shall be fifteen percent of the floor area.

(c) The requirements of (b)(ii) of this subsection do not apply to residences with log or solid timber walls with a minimum average thickness of three and one-half inches and with space heat other than electric resistance.

(d) The state building code council may approve an energy code for pilot projects of residential construction that use innovative energy efficiency technologies intended to result in savings that are greater than those realized in the levels specified in this section.

(5) U-values for glazing shall be determined using the area weighted average of all glazing in the building. U-values for vertical glazing shall be determined, certified, and labeled in accordance with the appropriate national fenestration rating council (NFRC) standard, as determined and adopted by the state building code council. Certification of U-values shall be conducted by a certified, independent agency licensed by the NFRC. The state building code council may develop and adopt alternative methods of determining, certifying, and labeling U-values for vertical glazing that may be used by fenestration manufacturers if determined to be appropriate by the council. The state building code council shall review and consider the adoption of the NFRC standards for determining, certifying, and labeling U-values for doors and skylights when developed and published by the NFRC. The state building code council may develop and adopt appropriate alternative methods for determining, certifying, and labeling U-values for doors and skylights. U-values for doors and skylights determined, certified, and labeled in accordance with the appropriate NFRC standard shall be acceptable for compliance with the state energy code. Sealed insulation glass, where used, shall conform to, or be in the process of being tested for, ASTM E-774-81 class A or better.

(6) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 1986 edition, as amended.

(7)(a) Except as provided in (b) of this subsection, the Washington state energy code for residential structures shall preempt the residential energy code of each city, town, and county in the state of Washington.

(b) The state energy code for residential structures does not preempt a city, town, or county's energy code for residential structures which exceeds the requirements of the state energy code and which was adopted by the city, town, or county prior to March 1, 1990. Such cities, towns, or counties may not subsequently amend their energy code for residential structures to exceed the requirements adopted prior to March 1, 1990.

(8) The state building code council shall consult with the department of community, trade, and economic development as provided in RCW 34.05.310 prior to publication of proposed rules. The department of community, trade, and economic development shall review the proposed rules for consistency with the guidelines adopted in subsection (4) of this section. The director of the department of community, trade, and economic development shall recommend to the state building code council any changes necessary to conform the proposed rules to the requirements of this section.

(9) The state building code council shall conduct a study of county and city enforcement of energy codes in the state. In conducting the study, the council shall conduct public hearings at designated council meetings to seek input from interested individuals and organizations, and to the extent possible, hold these meetings in conjunction with adopting rules under this section. The study shall include recommendations as to how code enforcement may be improved. The findings of the study shall be submitted in a report to the legislature no later than January 1, 1991.

(10) If any electric utility providing electric service to customers in the state of Washington purchases at least one percent of its firm energy load from a federal agency, pursuant to section 5.(b)(1) of the Pacific Northwest electric power planning and conservation act (P.L. 96-501), and such utility is unable to obtain from that agency at least fifty percent of the funds for payments required by RCW 19.27A.035, the amendments to this section by chapter 2, Laws of 1990 shall be null and void, and the 1986 state energy code shall be in effect, except that a city, town, or county may enforce a local energy code with more stringent energy requirements adopted prior to March 1, 1990. This subsection shall expire June 30, 1995. [1996 c 186 § 502; 1994 c 226 § 1; 1990 c 2 § 3; 1985 c 144 § 2; 1979 ex.s. c 76 § 3. Formerly RCW 19.27.075.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Effective date—1994 c 226: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 226 § 2.]

Effective dates—1990 c 2: See note following RCW 19.27.040.

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

Severability—1985 c 144: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 144 § 7.]

19.27A.025 Nonresidential buildings—Minimum standards—Amendments. (1) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 1986 edition, as amended. The state building code council may, by rule adopted pursuant to chapter 34.05 RCW, amend that code's requirements for new nonresidential buildings provided that:

(a) Such amendments increase the energy efficiency of typical newly constructed nonresidential buildings; and

(b) Any new measures, standards, or requirements adopted must be technically feasible, commercially available, and cost-effective to building owners and tenants.

(2) In considering amendments to the state energy code for nonresidential buildings, the state building code council shall establish and consult with a technical advisory committee including representatives of appropriate state agencies, local governments, general contractors, building owners and managers, design professionals, utilities, and other interested and affected parties.

(3) Decisions to amend the Washington state energy code for new nonresidential buildings shall be made prior to December 15th of any year and shall not take effect before the end of the regular legislative session in the next year. Any disputed provisions within an amendment presented to the legislature shall be approved by the legislature before going into effect. A disputed provision is one which was adopted by the state building code council with less than a two-thirds majority vote. Substantial amendments to the code shall be adopted no more frequently than every three years. [1991 c 122 § 3.]

Findings—Severability—1991 c 122: See notes following RCW 80.04.250.

19.27A.027 Personal wireless service facilities exempt from building envelope insulation requirements.

(1) The state building code council shall exempt equipment shelters of personal wireless service facilities from building envelope insulation requirements.

(2) For the purposes of this section, "personal wireless service facilities" means facilities for the provision of personal wireless services. [1996 c 323 § 4.]

Findings—1996 c 323: See note following RCW 43.70.600.

19.27A.035 Payments by electric utilities to owners of residential buildings—Recovery of expenses—Effect of Pacific Northwest electric power planning and conservation act—Expiration of subsections. (1) Electric utilities shall make payments to the owner at the time of construction of a newly constructed residential building with electric resistance space heat built in compliance with the requirements of the Washington state energy code adopted pursuant to RCW 19.27A.020 or a residential energy code in effect pursuant to RCW 19.27A.020(7). Payments made under this section are only required for residences in which the primary heat source is electric resistance space heat. All or a portion of the funds for payments may be accepted from federal agencies or other sources. Payments are required for residential buildings on which construction has begun on or after July 1, 1991, and prior to July 1, 1995. Payments in an amount equal to a fixed sum of at least nine hundred dollars per single family residence are required for such buildings so

constructed which are single family residences having two thousand square feet or less of finished floor area. Payments in an amount equal to a fixed sum of at least three hundred ninety dollars per multifamily residential unit, are required for such buildings so constructed which are multifamily residential units. For purposes of this section, a zero lot line home and each unit in a duplex and each attached housing unit in a planned unit development shall each be considered a single family residence.

(2) Electric utilities which provide electrical service in jurisdictions in which the local government has adopted an energy code not preempted by RCW 19.27A.020(7)(b) shall make payments as provided in subsection (1) of this section for residential buildings on which construction has begun on or after March 1, 1990, and prior to July 1, 1991.

(3) Nothing in this section shall prohibit an electric utility from providing incentives in excess of the payments required by this section or from providing additional incentives for energy efficiency measures in excess of those required under RCW 19.27A.020.

(4) This section is null and void if any electric utility providing electric service to its customers in the state of Washington purchases at least one percent of its firm energy load from a federal agency, pursuant to section 5.(b)(1) of the Pacific Northwest electric power planning and conservation act (P.L. 96-501), and if such electric utility is unable to obtain from the agency at least fifty percent of the funds to make the payments required by this section. This subsection shall expire June 30, 1995.

(5) The utilities and transportation commission shall provide an appropriate regulatory mechanism which allows a utility regulated by the commission to recover expenses incurred by the utility in making payments under this section.

(6) Subsections (1) through (3) of this section shall expire July 1, 1996. [1993 c 64 § 2; 1990 c 2 § 4.]

Findings—1993 c 64: "The legislature finds that when new energy-efficient residential building codes were enacted in 1990, payments to certain building owners were required in an effort to offset the higher costs of more stringent component levels of residences heated with electricity. The legislature further finds that through the code enacted by the state building code council it is possible for owners of residences with other primary heat sources to qualify for these payments even though the costs of these payments are borne by electricity ratepayers, and that this situation should be corrected." [1993 c 64 § 1.]

Effective date—1993 c 64: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 19, 1993]." [1993 c 64 § 3.]

Effective dates—1990 c 2: See note following RCW 19.27.040.

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

19.27A.045 Maintaining energy code for residential structures. The state building code council shall maintain the state energy code for residential structures in a status which is consistent with the state's interest as set forth in section 1, chapter 2, Laws of 1990. In maintaining the Washington state energy code for residential structures, beginning in 1996 the council shall review the Washington state energy code every three years. After January 1, 1996, by rule adopted pursuant to chapter 34.05 RCW, the council may amend any provisions of the Washington state energy

code to increase the energy efficiency of newly constructed residential buildings. Decisions to amend the Washington state energy code for residential structures shall be made prior to December 1 of any year and shall not take effect before the end of the regular legislative session in the next year. [1990 c 2 § 5.]

Findings—Severability—1990 c 2: See notes following RCW 19.27A.015.

19.27A.050 State building code advisory council—Construction—Inclusion of successor agency. As used in this chapter, references to the state building code advisory council shall be construed to include any successor agency. [1985 c 144 § 5.]

Reviser's note: The "state building code advisory council" was redesignated as the "state building code council" by 1985 c 360 § 11. See RCW 19.27.070.

Severability—1985 c 144: See note following RCW 19.27A.020.

19.27A.060 Hot water heaters—Temperature regulation. (1) "Hot water heater" means the primary source of hot water for a residence.

(2) The thermostat of a new water heater offered for sale or lease in this state for use in a residential unit, shall be preset by the manufacturer no higher than one hundred twenty degrees Fahrenheit (or forty-nine degrees Celsius) or the minimum setting on any water heater which cannot be set as low as that temperature. Water heating systems may utilize higher reservoir temperature if mixing valves are set or systems are designed to restrict the temperature of water to one hundred twenty degrees Fahrenheit.

(3) Upon occupancy of a new tenant in a residential unit leased or rented in this state, if hot water is supplied from an accessible, individual water heater, the water heater shall be set by the owner or agent at a temperature not higher than one hundred twenty degrees Fahrenheit (forty-nine degrees Celsius) or the minimum setting on any water heater which cannot be set as low as that temperature. Water heating systems may utilize higher reservoir temperature if mixing valves are set or systems are designed to restrict the temperature of water to one hundred twenty degrees Fahrenheit.

(4) Nothing in this section shall prohibit an owner of an owner-occupied residential unit or resident of a leased or rented residential unit from readjusting the temperature setting after occupancy. Any readjustment of the temperature setting by the resident relieves the owner or agent of an individual residential unit and the manufacturer of water heaters from liability for damages attributed to the readjustment by the resident.

(5) The utility providing energy for any water heater under this section shall at least annually, include in its billing a statement:

(a) Recommending that water heaters be set no higher than one hundred twenty degrees Fahrenheit or the minimum setting on a water heater which cannot be set as low as that temperature to prevent severe burns and reduce excessive energy consumption; and

(b) That the thermostat of an individual water heater furnished in a residential unit leased or rented in this state to new tenants shall be set no higher than one hundred twenty degrees Fahrenheit or the minimum setting on a water heater

which cannot be set as low as that temperature pursuant to chapter 19.27 RCW.

(6) The manufacturer of a water heater under this section which is offered for sale or installed after July 24, 1983, shall have a tag attached to the thermostat access plate or immediately adjacent to exposed thermostats. The tag shall state that the thermostat settings above the preset temperature may cause severe burns and consume excessive energy.

(7) Nothing in this section requires or permits any inspections other than those otherwise required or permitted by law.

(8) This section does not apply to multiple-unit residences supplied by central water heater systems. [1985 c 119 § 1; 1983 c 178 § 2. Formerly RCW 19.27.130.]

Findings—1983 c 178: "The legislature recognizes that unnecessarily hot tap or bath water creates an extreme risk of severe burns, especially among the elderly, children, and retarded persons. Annually, numerous persons suffer severe scald burns, some resulting in death, from tap or bath water which is inordinately hot. Excessive tap and bath water temperatures in residential usage is unnecessary for sanitary purposes. Regulation of the setting of water temperatures upon installation can virtually eliminate incidences of dangerous scalding. Further, the legislature finds that projected future shortages of energy in our state could be reduced or prevented by the efficient utilization of existing energy resources. Reducing the temperature settings on thermostats to one hundred twenty degrees Fahrenheit (or forty-nine degrees Celsius) would save energy that is now unnecessarily consumed, reduce homeowners' average utility costs, and promote home safety without any loss of comfort or health." [1983 c 178 § 1.]

19.27A.065 Study of state building code relating to energy by legislative committees on energy and utilities. See RCW 44.39.038.

19.27A.070 Intent. It is hereby declared that modern, efficient, safety-tested portable oil-fueled heaters may be offered for sale, sold, and used in this state. However, fire hazards and other dangers to the health, safety, and welfare of the inhabitants of this state may exist absent legislation to provide reasonable assurances that portable oil-fueled heaters offered for sale to, sold to, and used by the inhabitants of this state are modern, efficient, and safety-tested. It is the intent of the legislature to set forth standards for the sale and use of approved portable oil-fueled heaters. [1983 c 134 § 1. Formerly RCW 19.27.410.]

19.27A.080 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 19.27A.080 through 19.27A.120.

(1) "Portable oil-fueled heater" means any nonflue-connected, self-contained, self-supporting, oil-fueled, heating appliance equipped with an integral reservoir, designed to be carried from one location to another.

(2) "Oil" means any liquid fuel with a flash point of greater than one hundred degrees Fahrenheit, including but not limited to kerosene.

(3) "Listed" means any portable oil-fueled heater which has been evaluated in accordance with the Underwriters Laboratories, Inc. standard for portable oil-fueled heaters or an equivalent standard and with respect to reasonably foreseeable hazards to life and property by a nationally recognized testing or inspection agency, such as Underwriters Laboratories, Inc., and which has been authorized as

being reasonably safe for its specific purpose and shown in a list published by such agency and/or bears the mark, name, and/or symbol of such agency as indication that it has been so authorized. Such evaluation shall include but not be limited to evaluation of the requirements hereinafter set forth.

(4) "Approved" means any listed portable oil-fueled heater which is deemed approved if it satisfies the requirements set forth herein or adopted under RCW 19.27A.080 through 19.27A.120 and if the supplier certifies to the authority having jurisdiction over the sale and use of the heater that it is listed and in compliance with RCW 19.27A.080 through 19.27A.120.

(5) "Structure" means any building or completed construction of any kind included in state building code groups M, R-1, R-3, B, F, S-1, S-2, and U occupancies, except sleeping rooms and bathrooms: PROVIDED, HOWEVER, That in B, M, and S-1 occupancies, approved portable oil-fueled heaters shall only be used under permit of the fire chief.

(6) "Supplier" means any party offering to sell to retailers or to the general public approved portable oil-fueled heaters. [1995 c 343 § 2; 1985 c 360 § 15; 1983 c 134 § 2. Formerly RCW 19.27.420.]

19.27A.090 Portable oil-fueled heaters—Sales and use—Approval required. Notwithstanding any other section of the state building code, chapter 19.27 RCW, or any other code adopted by reference in chapter 19.27 RCW, approved portable oil-fueled heaters may be offered for sale, sold, and used as a supplemental heat source in structures in the state. Portable oil-fueled heaters which are not approved may not be offered for sale, sold, or used in this state. Any approved portable oil-fueled heater may be offered for sale, sold, and used in locations other than structures unless specifically prohibited by laws of this state. [1983 c 134 § 3. Formerly RCW 19.27.430.]

19.27A.100 Portable oil-fueled heaters—Requirements for approval. Approved portable oil-fueled heaters must adhere to the following requirements:

(1) Labeling must be affixed to the heater to caution and inform the user concerning:

(a) The necessity for an adequate source of ventilation when the heater is operating;

(b) The use of suitable fuel;

(c) The proper manner of refueling;

(d) The proper placement and handling of the heater when in operation; and

(e) The proper procedures for lighting, flame regulation, and extinguishing the heater.

(2) Packaging must include instructions that will inform the purchaser of proper maintenance and operation.

(3) Approved portable oil-fueled heaters must be constructed with a low center of gravity and minimum tipping angle of thirty-three degrees from the vertical with an empty reservoir.

(4) Approved portable oil-fueled heaters must have an automatic safety shut-off device or inherent design feature which eliminates fire hazards in the event of tipover and

must otherwise conform with the standards set forth in National Fire Protection Association (NFPA) No. 31.

(5) Approved portable oil-fueled heaters must not produce carbon monoxide at rates creating a hazard when operated as intended and instructed. [1983 c 134 § 4. Formerly RCW 19.27.440.]

19.27A.110 Portable oil-fueled heaters—Jurisdiction over approval—Sale and use governed exclusively. The chief of the Washington state patrol, through the director of fire protection, is the only authority having jurisdiction over the approval of portable oil-fueled heaters. The sale and use of portable oil-fueled heaters is governed exclusively by RCW 19.27A.080 through 19.27A.120: PROVIDED, That cities and counties may adopt local standards as provided in RCW 19.27.040. [1995 c 369 § 8; 1986 c 266 § 85; 1985 c 360 § 16; 1983 c 134 § 5. Formerly RCW 19.27.450.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

19.27A.120 Violations—Penalty. The penalty for failure to comply with RCW 19.27A.080 through 19.27A.120 is a misdemeanor. [1985 c 360 § 17; 1983 c 134 § 6. Formerly RCW 19.27.460.]

Chapter 19.28

ELECTRICIANS AND ELECTRICAL INSTALLATIONS

Sections

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Electrical construction: Chapter 19.29 RCW.

State building code: Chapter 19.27 RCW.

19.28.005 Definitions. The definitions in this section apply throughout this chapter.

(1) "Administrator" means a person designated by an electrical contractor to supervise electrical work and electricians in accordance with the rules adopted under this chapter.

(2) "Board" means the electrical board under RCW 19.28.065.

(3) "Chapter" means chapter 19.28 RCW.

(4) "Department" means the department of labor and industries.

(5) "Director" means the director of the department or the director's designee.

(6) "Electrical construction trade" includes but is not limited to installing or maintaining electrical wires and equipment that are used for light, heat, or power and installing and maintaining remote control, signaling, power limited, or communication circuits or systems.

(7) "Electrical contractor" means a person, firm, partnership, corporation, or other entity that offers to undertake, undertakes, submits a bid for, or does the work of installing or maintaining wires or equipment that convey electrical current.

(8) "Equipment" means any equipment or apparatus that directly uses, conducts, or is operated by electricity but does not mean plug-in household appliances.

(9) "Industrial control panel" means a factory-wired or user-wired assembly of industrial control equipment such as motor controllers, switches, relays, power supplies, computers, cathode ray tubes, transducers, and auxiliary devices. The panel may include disconnect means and motor branch circuit protective devices.

(10) "Journeyman electrician" means a person who has been issued a journeyman electrician certificate of competency by the department.

(11) "Specialty electrician" means a person who has been issued a specialty electrician certificate of competency

by the department. [1993 c 275 § 1; 1988 c 81 § 1; 1986 c 156 § 1; 1983 c 206 § 1.]

19.28.010 Electrical wiring requirements—General—Exceptions. (1) All wires and equipment, and installations thereof, that convey electric current and installations of equipment to be operated by electric current, in, on, or about buildings or structures, except for telephone, telegraph, radio, and television wires and equipment, and television antenna installations, signal strength amplifiers, and coaxial installations pertaining thereto shall be in strict conformity with this chapter, the statutes of the state of Washington, and the rules issued by the department, and shall be in conformity with approved methods of construction for safety to life and property. All wires and equipment that fall within section 90.2(b)(5) of the National Electrical Code, 1981 edition, are exempt from the requirements of this chapter. The regulations and articles in the National Electrical Code, the national electrical safety code, and other installation and safety regulations approved by the national fire protection association, as modified or supplemented by rules issued by the department in furtherance of safety to life and property under authority hereby granted, shall be prima facie evidence of the approved methods of construction. All materials, devices, appliances, and equipment used in such installations shall be of a type that conforms to applicable standards or be indicated as acceptable by the established standards of any electrical product testing laboratory which is accredited by the department. Industrial control panels, utilization equipment, and their components do not need to be listed, labeled, or otherwise indicated as acceptable by an accredited electrical product testing laboratory unless specifically required by the National Electrical Code, 1993 edition.

(2) Residential buildings or structures moved into or within a county, city, or town are not required to comply with all of the requirements of this chapter, if the original occupancy classification of the building or structure is not changed as a result of the move. This subsection shall not apply to residential buildings or structures that are substantially remodeled or rehabilitated.

(3) This chapter shall not limit the authority or power of any city or town to enact and enforce under authority given by law, any ordinance, rule, or regulation requiring an equal, higher, or better standard of construction and an equal, higher, or better standard of materials, devices, appliances, and equipment than that required by this chapter. A city or town shall require that its electrical inspectors meet the qualifications provided for state electrical inspectors in accordance with RCW 19.28.070. In a city or town having an equal, higher, or better standard the installations, materials, devices, appliances, and equipment shall be in accordance with the ordinance, rule, or regulation of the city or town. Electrical equipment associated with spas, hot tubs, swimming pools, and hydromassage bathtubs shall not be offered for sale or exchange unless the electrical equipment is certified as being in compliance with the applicable product safety standard by bearing the certification mark of an approved electrical products testing laboratory.

(4) Nothing in this chapter may be construed as permitting the connection of any conductor of any electric circuit with a pipe that is connected with or designed to be connect-

ed with a waterworks piping system, without the consent of the person or persons legally responsible for the operation and maintenance of the waterworks piping system. [1993 c 275 § 2; 1992 c 79 § 2. Prior: 1986 c 263 § 1; 1986 c 156 § 2; 1983 c 206 § 2; 1965 ex.s. c 117 § 1; 1963 c 207 § 1; 1935 c 169 § 1; RRS § 8307-1. Formerly RCW 19.28.010 through 19.28.050.]

19.28.015 Disputes regarding local regulations—Arbitration—Appeal. Disputes arising under *RCW 19.28.010(2) regarding whether the city or town's electrical rules, regulations, or ordinances are equal to the rules adopted by the department shall be resolved by arbitration. The department shall appoint two members of the board to serve on the arbitration panel, and the city or town shall appoint two persons to serve on the arbitration panel. These four persons shall choose a fifth person to serve. If the four persons cannot agree on a fifth person, the presiding judge of the superior court of the county in which the city or town is located shall choose a fifth person. A decision of the arbitration panel may be appealed to the superior court of the county in which the city or town is located within thirty days after the date the panel issues its final decision. [1988 c 81 § 2; 1983 c 206 § 3.]

*Reviser's note: RCW 19.28.010 was reenacted and amended by 1992 c 79 § 2, changing subsection (2) to subsection (3).

19.28.060 Rules, regulations, and standards. (1) Prior to January 1st of each year, the director shall obtain an authentic copy of the national electrical code, latest revision. The department, after consulting with the board and receiving the board's recommendations, shall adopt reasonable rules in furtherance of safety to life and property. All rules shall be kept on file by the department. Compliance with the rules shall be prima facie evidence of compliance with this chapter. The department upon request shall deliver to all persons, firms, partnerships, corporations, or other entities licensed under this chapter a copy of the rules.

(2) The department shall also obtain and keep on file an authentic copy of any applicable regulations and standards of any electrical product testing laboratory which is accredited by the department prescribing rules, regulations, and standards for electrical materials, devices, appliances, and equipment, including any modifications and changes that have been made during the previous year. [1993 c 275 § 3; 1988 c 81 § 3; 1986 c 156 § 3; 1983 c 206 § 4; 1965 ex.s. c 117 § 2; 1935 c 169 § 10; RRS § 8307-10.]

19.28.065 Electrical board. There is hereby created an electrical board, consisting of ten members to be appointed by the governor with the advice of the director of labor and industries as herein provided. It shall be the purpose and function of the board to advise the director on all matters pertaining to the enforcement of this chapter including, but not limited to standards of electrical installation, minimum inspection procedures, and the adoption of rules and regulations pertaining to the electrical inspection division: PROVIDED, HOWEVER, That no rules or regulations shall be amended or repealed until the electrical board has first had an opportunity to consider any proposed amendments or repeals and had an opportunity to make

recommendations to the director relative thereto. The members of the electrical board shall be selected and appointed as follows: One member shall be an employee or officer of a corporation or public agency generating or distributing electric power; three members shall be licensed electrical contractors: PROVIDED, That one of these members may be a representative of a trade association in the electrical industry; one member shall be an employee, or officer, or representative of a corporation or firm engaged in the business of manufacturing or distributing electrical materials, equipment, or devices; one member shall be a person with knowledge of the electrical industry, not related to the electrical industry, to represent the public; three members shall be certified electricians; and one member shall be a licensed professional electrical engineer qualified to do business in the state of Washington. The regular term of each member shall be four years: PROVIDED, HOWEVER, The original board shall be appointed on June 9, 1988, for the following terms: The first term of the member representing a corporation or public agency generating or distributing electric power shall serve four years; two members representing licensed electrical contractors shall serve three years; the member representing a manufacturer or distributor of electrical equipment or devices shall serve three years; the member representing the public and one member representing licensed electrical contractors shall serve two years; the three members selected as certified electricians shall serve for terms of one, two, and three years, respectively; the member selected as the licensed professional electrical engineer shall serve for one year. In appointing the original board, the governor shall give due consideration to the value of continuity in membership from predecessor boards. Thereafter, the governor shall appoint or reappoint board members for terms of four years and to fill vacancies created by the completion of the terms of the original members. The governor shall also fill vacancies caused by death, resignation, or otherwise for the unexpired term of such members by appointing their successors from the same business classification. The same procedure shall be followed in making such subsequent appointments as is provided for the original appointments. The board, at this first meeting shall elect one of its members to serve as chairman. Any person acting as the chief electrical inspector shall serve as secretary of the board during his tenure as chief state inspector. Meetings of the board shall be held at least quarterly in accordance with a schedule established by the board. Each member of the board shall receive compensation in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 which shall be paid out of the electrical license fund, upon vouchers approved by the director of labor and industries. [1988 c 81 § 4; 1984 c 287 § 56; 1975-'76 2nd ex.s. c 34 § 60; 1969 ex.s. c 71 § 1; 1963 c 207 § 5.]

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

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

19.28.070 Enforcement—State electrical inspectors—Qualifications—Salaries and expenses. The director of labor and industries of the state of Washington and the

officials of all incorporated cities and towns where electrical inspections are required by local ordinances shall have power and it shall be their duty to enforce the provisions of this chapter in their respective jurisdictions. The director of labor and industries shall have power to appoint an electrical inspector, and such assistant inspectors as he shall deem necessary to assist him in the performance of his duties. All electrical inspectors appointed by the director of labor and industries shall have not less than four years experience as journeyman electricians in installing and maintaining electrical equipment, or two years electrical training in a college of electrical engineering of recognized standing and four years continuous practical electrical experience in installation work, or four years of electrical training in a college of electrical engineering of recognized standing and two years continuous practical electrical experience in electrical installation work. Such state inspectors shall be paid such salary as the director of labor and industries shall determine, together with their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. The expenses of the director of labor and industries and the salaries and expenses of state inspectors incurred in carrying out the provisions of this chapter shall be paid entirely out of the electrical license fund, upon vouchers approved by the director of labor and industries. [1986 c 156 § 4; 1975-'76 2nd ex.s. c 34 § 61; 1967 c 88 § 1; 1935 c 169 § 3; RRS § 8307-3. Formerly RCW 19.28.070 through 19.28.110.]

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

19.28.120 License required—General or specialty licenses—Fees—Application—Bond—Cash deposit in lieu of bond. (1) It is unlawful for any person, firm, partnership, corporation, or other entity to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to convey electric current, or installing or maintaining equipment to be operated by electric current as it pertains to the electrical industry, without having an unrevoked, unsuspended, and unexpired electrical contractor license, issued by the department in accordance with this chapter. All electrical contractor licenses expire twenty-four calendar months following the day of their issue. The department may issue an electrical contractors license for a period of less than twenty-four months only for the purpose of equalizing the number of electrical contractor licenses which expire each month. Application for an electrical contractor license shall be made in writing to the department, accompanied by the required fee. The application shall state:

(a) The name and address of the applicant; in case of firms or partnerships, the names of the individuals composing the firm or partnership; in case of corporations, the names of the managing officials thereof;

(b) The location of the place of business of the applicant and the name under which the business is conducted;

(c) Employer social security number;

(d) As applicable: (i) The industrial insurance account number covering employees domiciled in Washington; and (ii) evidence of workers' compensation coverage in the applicant's state of domicile for the applicant's employees working in Washington who are not domiciled in Washington;

(e) Employment security department number;

(f) State excise tax registration number;

(g) Unified business identifier (UBI) account number may be substituted for the information required by (d), (e), and (f) of this subsection; and

(h) Whether a general or specialty electrical contractor license is sought and, if the latter, the type of specialty. Electrical contractor specialties include, but are not limited to: Residential, domestic appliances, pump and irrigation, limited energy system, signs, nonresidential maintenance, and a combination specialty. A general electrical contractor license shall grant to the holder the right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electric current, and installing or maintaining equipment, or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current, in the state of Washington. A specialty electrical contractor license shall grant to the holder a limited right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electrical current, and installing or maintaining equipment; or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current in the state of Washington as expressly allowed by the license.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)(d) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3) The application for a contractor license shall be accompanied by a bond in the sum of four thousand dollars with the state of Washington named as obligee in the bond, with good and sufficient surety, to be approved by the department. The bond shall at all times be kept in full force and effect, and any cancellation or revocation thereof, or withdrawal of the surety therefrom, suspends the license issued to the principal until a new bond has been filed and approved as provided in this section. Upon approval of a bond, the department shall on the next business day deposit the fee accompanying the application in the electrical license fund and shall file the bond in the office. The department shall upon request furnish to any person, firm, partnership, corporation, or other entity a certified copy of the bond upon the payment of a fee that the department shall set by rule. The fee shall cover but not exceed the cost of furnishing the certified copy. The bond shall be conditioned that in any installation or maintenance of wires or equipment to convey electrical current, and equipment to be operated by electrical current, the principal will comply with the provisions of this chapter and with any electrical ordinance, building code, or regulation of a city or town adopted pursuant to *RCW 19.28.010(2) that is in effect at the time of entering into a contract. The bond shall be conditioned further that the principal will pay for all labor, including employee benefits, and material furnished or used upon the work, taxes and contributions to the state of Washington, and all damages that may be sustained by any person, firm, partnership, corporation, or other entity due to a failure of the principal to make the installation or maintenance in accordance with

this chapter or any applicable ordinance, building code, or regulation of a city or town adopted pursuant to *RCW 19.28.010(2). In lieu of the surety bond required by this section the license applicant may file with the department a cash deposit or other negotiable security acceptable to the department. If the license applicant has filed a cash deposit, the department shall deposit the funds in a special trust savings account in a commercial bank, mutual savings bank, or savings and loan association and shall pay annually to the depositor the interest derived from the account.

(4) The department shall issue general or specialty electrical contractor licenses to applicants meeting all of the requirements of this chapter. The provisions of this chapter relating to the licensing of any person, firm, partnership, corporation, or other entity including the requirement of a bond with the state of Washington named as obligee therein and the collection of a fee therefor, are exclusive, and no political subdivision of the state of Washington may require or issue any licenses or bonds or charge any fee for the same or a similar purpose. No person, firm, partnership, corporation, or other entity holding more than one specialty contractor license under this chapter may be required to pay an annual fee for more than one such license or to post more than one four thousand dollar bond, equivalent cash deposit, or other negotiable security.

(5) To obtain a general or specialty electrical contractor license the applicant must designate an individual who currently possesses an administrator's certificate as a general electrical contractor administrator or as a specialty electrical contractor administrator in the specialty for which application has been made. Administrator certificate specialties include but are not limited to: Residential, domestic, appliance, pump and irrigation, limited energy system, signs, nonresidential maintenance, and combination specialty. To obtain an administrator's certificate an individual must pass an examination as set forth in RCW 19.28.123 unless the applicant was a licensed electrical contractor at any time during 1974. Applicants who were electrical contractors licensed by the state of Washington at any time during 1974 are entitled to receive a general electrical contractor administrator's certificate without examination if the applicants apply prior to January 1, 1984. The board of electrical examiners shall certify to the department the names of all persons who are entitled to either a general or specialty electrical contractor administrator's certificate. [1992 c 217 § 2; 1986 c 156 § 5; 1983 c 206 § 5; 1975 1st ex.s. c 195 § 1; 1975 1st ex.s. c 92 § 1; 1974 ex.s. c 188 § 1; 1971 ex.s. c 129 § 1; 1969 ex.s. c 71 § 2; 1969 c 30 § 1. Prior: 1967 ex.s. c 15 § 1; 1967 c 88 § 2; 1965 ex.s. c 117 § 3; 1963 c 207 § 2; 1959 c 325 § 1; 1935 c 169 § 4; RRS § 8307-4; prior: 1919 c 204 §§ 1, 2. Formerly RCW 19.28.120 through 19.28.170.]

*Reviser's note: Adoption of building codes, etc. by cities and towns is authorized by RCW 19.28.010(3), as amended by 1992 c 79 § 2.

Severability—1975 1st ex.s. c 195; 1975 1st ex.s. c 92: "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 195 § 4; 1975 1st ex.s. c 92 § 4.]

Effective date—1974 ex.s. c 188: "The effective date of this 1974 amendatory act is July 1, 1974." [1974 ex.s. c 188 § 6.]

Severability—1974 ex.s. c 188: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held

invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 188 § 5.]

The above two annotations apply to 1974 ex.s. c 188. For codification of that act, see Codification Tables, Volume 0.

Effective date—1971 ex.s. c 129: "The effective date of this 1971 amendatory act shall be December 1, 1971." [1971 ex.s. c 129 § 3.]

19.28.123 Examinations—Fees. It shall be the purpose and function of the board to establish, in addition to a general electrical contractors' license, such classifications of specialty electrical contractors' licenses as it deems appropriate with regard to individual sections pertaining to state adopted codes in this chapter. In addition, it shall be the purpose and function of the board to establish and administer written examinations for general electrical administrators' certificates and the various specialty electrical administrators' certificates. Examinations shall be designed to reasonably insure that general and specialty electrical administrators' certificate holders are competent to engage in and supervise the work covered by this statute and their respective licenses. The examinations shall include questions from the following categories to assure proper safety and protection for the general public: (1) Safety, (2) state electrical code, and (3) electrical theory. The department with the consent of the board shall be permitted to enter into a contract with a professional testing agency to develop, administer, and score these examinations. The fee for the examination may be set by the department in its contract with the professional testing agency. The department may direct that the applicant pay the fee to the professional testing agency. The fee shall cover but not exceed the costs of preparing and administering the examination. It shall be the further purpose and function of this board to advise the director as to the need of additional electrical inspectors and compliance officers to be utilized by the director on either a full-time or part-time employment basis and to carry out the duties enumerated in RCW 19.28.510 through 19.28.620 as well as generally advise the department on all matters relative to RCW 19.28.510 through 19.28.620. [1996 c 147 § 6; 1988 c 81 § 5; 1986 c 156 § 6; 1984 c 287 § 57; 1977 ex.s. c 79 § 1; 1975-'76 2nd ex.s. c 34 § 62; 1975 1st ex.s. c 195 § 2; 1975 1st ex.s. c 92 § 2; 1974 ex.s. c 188 § 2.]

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

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

Severability—1975 1st ex.s. c 195; 1975 1st ex.s. c 92: See note following RCW 19.28.120.

Effective date—Severability—1974 ex.s. c 188: See notes following RCW 19.28.120.

19.28.125 Electrical contractors—Designee of firm to take administrator's examination—Certificate duration, denial, renewal, nontransferable—Administrator's duties. (1) Each applicant for an electrical contractor's license, other than an individual, shall designate a supervisory employee or member of the firm to take the required administrator's examination. Effective July 1, 1987, a supervisory employee designated as the administrator shall be a full-time supervisory employee. This person shall be designated as administrator under the license. No person may qualify as administrator for more than one contractor.

If the relationship of the administrator with the electrical contractor is terminated, the contractor's license is void within ninety days unless another administrator is qualified by the board. However, if the administrator dies, the contractor's license is void within one hundred eighty days unless another administrator is qualified by the board. A certificate issued under this section is valid for two years from the nearest birthdate of the administrator, unless revoked or suspended, and further is nontransferable. The department may deny an application for an administrator's certificate for up to two years if the applicant's previous administrator's certificate has been revoked for a serious violation and all appeals concerning the revocation have been exhausted. For the purposes of this section only, a serious violation is a violation that presents imminent danger to the public. The certificate may be renewed for a two-year period without examination by appropriate application unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date. If the certificate is not renewed before the expiration date, the individual shall pay twice the usual fee. An individual holding more than one administrator's certificate under this chapter shall not be required to pay annual fees for more than one certificate. A person may take the administrator's test as many times as necessary without limit.

(2) The administrator shall:

(a) Be a member of the firm or a supervisory employee and shall be available during working hours to carry out the duties of an administrator under this section;

(b) Ensure that all electrical work complies with the electrical installation laws and rules of the state;

(c) Ensure that the proper electrical safety procedures are used;

(d) Ensure that all electrical labels, permits, and licenses required to perform electrical work are used;

(e) See that corrective notices issued by an inspecting authority are complied with; and

(f) Notify the department in writing within ten days if the administrator terminates the relationship with the electrical contractor.

(3) The department shall not by rule change the administrator's duties under subsection (2) of this section. [1996 c 241 § 3; 1988 c 81 § 6; 1986 c 156 § 7; 1983 c 206 § 6; 1975 1st ex.s. c 195 § 3; 1975 1st ex.s. c 92 § 3; 1974 ex.s. c 188 § 4.]

Severability—1975 1st ex.s. c 195; 1975 1st ex.s. c 92: See note following RCW 19.28.120.

Effective date—Severability—1974 ex.s. c 188: See notes following RCW 19.28.120.

19.28.180 Licensee's bond—Action on—Priorities—Cash deposit, payment from. Any person, firm, or corporation sustaining any damage or injury by reason of the principal's breach of the conditions of the bond required under RCW 19.28.120 may bring an action against the surety named therein, joining in the action the principal named in the bond; the action shall be brought in the superior court of any county in which the principal on the bond resides or transacts business, or in the county in which the work was performed as a result of which the breach is alleged to have occurred; the action shall be maintained and prosecuted as other civil actions. Claims or actions against the surety on

the bond shall be paid in full in the following order of priority: (1) Labor, including employee benefits, (2) materials and equipment used upon such work, (3) taxes and contributions due to the state, (4) damages sustained by any person, firm or corporation due to the failure of the principal to make the installation in accordance with the provisions of chapter 19.28 RCW, or any ordinance, building code, or regulation applicable thereto: PROVIDED, That the total liability of the surety on any bond shall not exceed the sum of four thousand dollars and the surety on the bond shall not be liable for monetary penalties; and any action shall be brought within one year from the completion of the work in the performance of which the breach is alleged to have occurred. The surety shall mail a conformed copy of the judgment against the bond to the department within seven days.

In the event that a cash or securities deposit has been made in lieu of the surety bond, and in the event of a judgment being entered against such depositor and deposit, the director shall upon receipt of a certified copy of a final judgment, pay said judgment from such deposit. [1986 c 156 § 8; 1969 ex.s. c 71 § 3; 1965 ex.s. c 117 § 4; 1935 c 169 § 5; RRS § 8307-5. Prior: 1919 c 204 § 4.]

19.28.190 Actions—Local permits—Proof of licensure. No person, firm or corporation engaging in, conducting or carrying on the business of installing wires or equipment to convey electric current, or installing apparatus to be operated by said current, shall be entitled to commence or maintain any suit or action in any court of this state pertaining to any such work or business, without alleging and proving that such person, firm or corporation held, at the time of commencing and performing such work, an unexpired, unrevoked and unsuspended license issued under the provisions of this chapter; and no city or town requiring by ordinance or regulation a permit for inspection or installation of such electrical work, shall issue such permit to any person, firm or corporation not holding such license. [1986 c 156 § 9; 1935 c 169 § 6; RRS § 8307-6.]

19.28.200 Licensing—Exemptions. (1) No license under the provision of this chapter shall be required from any utility or any person, firm, partnership, corporation, or other entity employed by a utility because of work in connection with the installation, repair, or maintenance of lines, wires, apparatus, or equipment owned by or under the control of a utility and used for transmission or distribution of electricity from the source of supply to the point of contact at the premises and/or property to be supplied and service connections and meters and other apparatus or appliances used in the measurement of the consumption of electricity by the customer.

(2) No license under the provisions of this chapter shall be required from any utility because of work in connection with the installation, repair, or maintenance of the following:

(a) Lines, wires, apparatus, or equipment used in the lighting of streets, alleys, ways, or public areas or squares;

(b) Lines, wires, apparatus, or equipment owned by a commercial, industrial, or public institution customer that are an integral part of a transmission or distribution system, either overhead or underground, providing service to such

customer and located outside the building or structure: PROVIDED, That a utility does not initiate the sale of services to perform such work;

(c) Lines and wires, together with ancillary apparatus, and equipment, owned by a customer that is an independent power producer who has entered into an agreement for the sale of electricity to a utility and that are used in transmitting electricity from an electrical generating unit located on premises used by such customer to the point of interconnection with the utility's system.

(3) Any person, firm, partnership, corporation, or other entity licensed under RCW 19.28.120 may enter into a contract with a utility for the performance of work under subsection (2) of this section.

(4) No license under the provisions of this chapter shall be required from any person, firm, partnership, corporation, or other entity because of the work of installing and repairing ignition or lighting systems for motor vehicles.

(5) No license under the provisions of this chapter shall be required from any person, firm, partnership, corporation, or other entity because of work in connection with the installation, repair, or maintenance of wires and equipment, and installations thereof, exempted in RCW 19.28.010. [1992 c 240 § 1; 1980 c 30 § 15; 1935 c 169 § 11; RR'S § 8307-11.]

19.28.210 Inspections—Notice to repair and change—Disconnection—Entry—Concealment—Accessibility—Connection to utility—Permits, fees—Limitation. (1) The director shall cause an inspector to inspect all wiring, appliances, devices, and equipment to which this chapter applies. Nothing contained in this chapter may be construed as providing any authority for any subdivision of government to adopt by ordinance any provisions contained or provided for in this chapter except those pertaining to cities and towns pursuant to RCW 19.28.010(3).

(2) Upon request, electrical inspections will be made by the department within forty-eight hours, excluding holidays, Saturdays, and Sundays. If, upon written request, the electrical inspector fails to make an electrical inspection within twenty-four hours, the serving utility may immediately connect electrical power to the installation if the necessary electrical work permit is displayed: PROVIDED, That if the request is for an electrical inspection that relates to a mobile home installation, the applicant shall provide proof of a current building permit issued by the local government agency authorized to issue such permits as a prerequisite for inspection approval or connection of electrical power to the mobile home.

(3) Whenever the installation of any wiring, device, appliance, or equipment is not in accordance with this chapter, or is in such a condition as to be dangerous to life or property, the person, firm, partnership, corporation, or other entity owning, using, or operating it shall be notified by the department and shall within fifteen days, or such further reasonable time as may upon request be granted, make such repairs and changes as are required to remove the danger to life or property and to make it conform to this chapter. The director, through the inspector, is hereby empowered to disconnect or order the discontinuance of

electrical service to conductors or equipment that are found to be in a dangerous or unsafe condition and not in accordance with this chapter. Upon making a disconnection the inspector shall attach a notice stating that the conductors have been found dangerous to life or property and are not in accordance with this chapter. It is unlawful for any person to reconnect such defective conductors or equipment without the approval of the department, and until the conductors and equipment have been placed in a safe and secure condition, and in a condition that complies with this chapter.

(4) The director, through the electrical inspector, has the right during reasonable hours to enter into and upon any building or premises in the discharge of his or her official duties for the purpose of making any inspection or test of the installation of new construction or altered electrical wiring, electrical devices, equipment, or material contained in or on the buildings or premises. No electrical wiring or equipment subject to this chapter may be concealed until it has been approved by the inspector making the inspection. At the time of the inspection, electrical wiring or equipment subject to this chapter must be sufficiently accessible to permit the inspector to employ any testing methods that will verify conformance with the national electrical code and any other requirements of this chapter.

(5) Persons, firms, partnerships, corporations, or other entities making electrical installations shall obtain inspection and approval from an authorized representative of the department as required by this chapter before requesting the electric utility to connect to the installations. Electric utilities may connect to the installations if approval is clearly indicated by certification of the electrical work permit required to be affixed to each installation or by equivalent means, except that increased or relocated services may be reconnected immediately at the discretion of the utility before approval if an electrical work permit is displayed. The permits shall be furnished upon payment of the fee to the department.

(6) The director, subject to the recommendations and approval of the board, shall set by rule a schedule of license and electrical work permit fees that will cover the costs of administration and enforcement of this chapter. The rules shall be adopted in accordance with the administrative procedure act, chapter 34.05 RCW. No fee may be charged for plug-in mobile homes, recreational vehicles, or portable appliances.

(7) Nothing in this chapter shall authorize the inspection of any wiring, appliance, device, or equipment, or installations thereof, by any utility or by any person, firm, partnership, corporation, or other entity employed by a utility in connection with the installation, repair, or maintenance of lines, wires, apparatus, or equipment owned by or under the control of the utility. All work covered by the national electric code not exempted by the 1981 edition of the national electric code 90-2(B)(5) shall be inspected by the department. [1996 c 241 § 4; 1992 c 240 § 2; 1989 c 344 § 1; 1988 c 81 § 7; 1983 c 206 § 7; 1971 ex.s. c 129 § 2; 1969 ex.s. c 71 § 4; 1967 c 88 § 3; 1965 ex.s. c 117 § 5; 1963 c 207 § 3; 1959 c 325 § 2; 1935 c 169 § 8; RRS § 8307-8. Formerly RCW 19.28.210 through 19.28.240.]

Effective date—1971 ex.s. c 129: See note following RCW 19.28.120.
Adoption of certain regulations proscribed: RCW 36.32.125.

RCW 19.28.210 inapplicable in certain cities, towns, electricity supply agency service areas, and rights of way of state highways: RCW 19.28.360.

19.28.250 Inspection reports. If any inspection made under this chapter requires any correction or change in the work inspected, a written report of the inspection shall be made by the inspector, in which report the corrections or changes required shall be plainly stated. A copy of the report shall be furnished to the person, firm, partnership, corporation, or other entity doing the installation work, and a copy shall be filed with the department. [1983 c 206 § 8; 1935 c 169 § 9; RRS § 8307-9.]

19.28.260 Nonconforming installations—Disputes—Reference to board. It is unlawful for any person, firm, partnership, corporation, or other entity to install or maintain any electrical wiring, appliances, devices, or equipment not in accordance with this chapter. In cases where the interpretation and application of the installation or maintenance standards prescribed in this chapter is in dispute or in doubt, the board shall, upon application of any interested person, firm, partnership, corporation, or other entity, determine the methods of installation or maintenance or the materials, devices, appliances, or equipment to be used in the particular case submitted for its decision. [1988 c 81 § 8; 1983 c 206 § 9; 1935 c 169 § 2; RRS § 8307-2.]

19.28.300 Board—Request for ruling—Fee—Costs. Any person, firm, partnership, corporation, or other entity desiring a decision of the board pursuant to RCW 19.28.260 shall, in writing, notify the director of such desire and shall accompany the notice with a certified check payable to the department in the sum of two hundred dollars. The notice shall specify the ruling or interpretation desired and the contention of the person, firm, partnership, corporation, or other entity as to the proper interpretation or application on the question on which a decision is desired. If the board determines that the contention of the applicant for a decision was proper, the two hundred dollars shall be returned to the applicant; otherwise it shall be used in paying the expenses and per diem of the members of the board in connection with the matter. Any portion of the two hundred dollars not used in paying the per diem and expenses of the board in the case shall be paid into the electrical license fund. [1988 c 81 § 9; 1983 c 206 § 10; 1935 c 169 § 13; RRS § 8307-13.]

19.28.310 Revocation or suspension of license—Grounds—Appeal to board—Fee—Costs. The department has the power, in case of serious noncompliance with the provisions of this chapter, to revoke or suspend for such a period as it determines, any electrical contractor license or electrical contractor administrator certificate issued under this chapter. The department shall notify the holder of the license or certificate of the revocation or suspension by certified mail. A revocation or suspension is effective twenty days after the holder receives the notice. Any revocation or suspension is subject to review by an appeal to the board. The filing of an appeal stays the effect of a revocation or suspension until the board makes its decision. The appeal shall be filed within twenty days after notice of

the revocation or suspension is given by certified mail sent to the address of the holder of the license or certificate as shown on the application for the license or certificate, and shall be effected by filing a written notice of appeal with the department, accompanied by a certified check for two hundred dollars, which shall be returned to the holder of the license or certificate if the decision of the department is not sustained by the board. The hearing shall be conducted in accordance with chapter 34.05 RCW. If the board sustains the decision of the department, the two hundred dollars shall be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any balance remaining after payment of per diem and expenses shall be paid into the electrical license fund. [1996 c 241 § 5; 1988 c 81 § 10; 1986 c 156 § 10; 1983 c 206 § 11; 1935 c 169 § 7; RRS § 8307-7. Formerly RCW 19.28.310 and 19.28.320.]

19.28.330 Electrical license fund. All sums received from licenses, permit fees, or other sources, herein shall be paid to the state treasurer and placed in a special fund designated as the "electrical license fund," and by him paid out upon vouchers duly and regularly issued therefor and approved by the director of labor and industries or the director's designee following determination by the board that the sums are necessary to accomplish the intent of chapter 19.28 RCW. The treasurer shall keep an accurate record of payments into, or receipts of, said fund, and of all disbursements therefrom. [1988 c 81 § 11; 1979 ex.s. c 67 § 1; 1935 c 169 § 18; RRS § 8307-18.]

Severability—1979 ex.s. c 67: "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 67 § 22.]

19.28.340 Liability for injury or damage. Nothing contained in this chapter will be construed to relieve from or lessen the responsibility or liability of any person for injury or damage to person or property caused by or resulting from any defect of any nature in any electrical work performed by said person or in any electrical equipment owned, controlled, installed, operated or used by him; nor shall the state of Washington, or any officer, agent, or employee thereof incur or be held as assuming any liability by reason or in consequence of any permission, certificate of inspection, inspection or approval authorized herein, or issued or given as herein provided, or by reason of consequence of any things done or acts performed pursuant to any provision of this chapter. [1935 c 169 § 16; RRS § 8307-16.]

19.28.350 Violations of RCW 19.28.010 through 19.28.360—Schedule of penalties—Appeal. Any person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through 19.28.360 shall be assessed a penalty of not less than fifty dollars or more than ten thousand dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.010 through 19.28.360. The department shall notify the person, firm, partnership, corporation, or other entity violating any of the provisions of RCW 19.28.010 through 19.28.360 of the amount of the penalty and of the specific violation by

certified mail, return receipt requested, sent to the last known address of the assessed party. Any penalty is subject to review by an appeal to the board. The filing of an appeal stays the effect of the penalty until the board makes its decision. The appeal shall be filed within twenty days after notice of the penalty is given to the assessed party by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. The notice shall be accompanied by a certified check for two hundred dollars, which shall be returned to the assessed party if the decision of the department is not sustained by the board. If the board sustains the decision of the department, the two hundred dollars shall be applied by the department to the payment of the per diem and expenses of the members of the board incurred in the matter, and any balance remaining after payment of per diem and expenses shall be paid into the electrical license fund. The hearing and review procedures shall be conducted in accordance with chapter 34.05 RCW. The board shall assign its hearings to an administrative law judge to conduct the hearing and issue a proposed decision and order. The board shall be allowed a minimum of twenty days to review a proposed decision and shall issue its decision no later than the next regularly scheduled board meeting. [1996 c 147 § 7; 1988 c 81 § 12; 1986 c 156 § 11; 1983 c 206 § 12; 1980 c 30 § 16; 1935 c 169 § 14; RRS § 8307-14.]

19.28.360 RCW 19.28.210 inapplicable in certain cities and towns, electricity supply agency service areas, and rights of way of state highways. The provisions of RCW 19.28.210 shall not apply:

(1) Within the corporate limits of any incorporated city or town which has heretofore adopted and enforced or subsequently adopts and enforces an ordinance requiring an equal, higher or better standard of construction and of materials, devices, appliances and equipment than is required by this chapter.

(2) Within the service area of an electricity supply agency owned and operated by a city or town which is supplying electricity and enforcing a standard of construction and materials outside its corporate limits at the time this act takes effect: PROVIDED, That such city, town or agency shall henceforth enforce by inspection within its service area outside its corporate limits the same standards of construction and of materials, devices, appliances and equipment as is enforced by the department of labor and industries under the authority of this chapter: PROVIDED FURTHER, That fees charged henceforth in connection with such enforcement shall not exceed those established in RCW 19.28.210.

(3) Within the rights of way of state highways, provided the state department of transportation maintains and enforces an equal, higher or better standard of construction and of materials, devices, appliances and equipment than is required by RCW 19.28.010 through 19.28.360. [1986 c 156 § 12; 1967 ex.s. c 97 § 1; 1963 c 207 § 4; 1959 c 325 § 3.]

Effective date—1963 c 207: See RCW 19.28.910.

19.28.370 RCW 19.28.010 through *19.28.380 inapplicable to telegraph or telephone companies exercising certain functions. The provisions of RCW 19.28.010

through *19.28.380 shall not apply to the work of installing, maintaining or repairing any and all electrical wires, apparatus, installations or equipment used or to be used by a telegraph company or a telephone company in the exercise of its functions and located outdoors or in a building or buildings used exclusively for that purpose. [1980 c 30 § 17; 1959 c 325 § 4.]

*Reviser's note: RCW 19.28.380 was repealed by 1986 c 156 § 18. See RCW 19.28.360.

19.28.390 Devices for diagnosis or treatment of disease or injury—Compliance with chapter. Any device used or useful in the diagnosis or treatment of disease or injury which is not in violation of the Medical Device Amendments of 1976, Public Law No. 94-295, 90 Stat. 539, as amended from time to time, and as interpreted by the Food and Drug Administration of the United States Department of Health and Human Services or its successor, shall be deemed to be in compliance with all requirements imposed by this chapter. [1981 c 57 § 1.]

19.28.510 Certificate of competency required—Electrical training certificate—Fee—Verification and attestation of training hours. (1) No person may engage in the electrical construction trade without having a current journeyman electrician certificate of competency or a current specialty electrician certificate of competency issued by the department in accordance with this chapter. Electrician certificate of competency specialties include, but are not limited to: Residential, domestic appliances, pump and irrigation, limited energy system, signs, and nonresidential maintenance.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade or who is learning the electrical construction trade may work in the electrical construction trade if supervised by a certified journeyman electrician or a certified specialty electrician in that electrician's specialty. All apprentices and individuals learning the electrical construction trade shall obtain an electrical training certificate from the department. The certificate shall authorize the holder to learn the electrical construction trade while under the direct supervision of a journeyman electrician or a specialty electrician working in his or her specialty. The holder of the electrical training certificate shall renew the certificate annually. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the electrical construction industry for the previous year and the number of hours worked for each employer. An annual fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter. Apprentices and individuals learning the electrical construction trade shall have their electrical training certificates in their possession at all times that they are performing electrical work. They shall show their certificates to an authorized representative of the department at the representative's request.

(3) Any person who has been issued an electrical training certificate under this chapter may work if that

person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a journeyman electrician or an appropriate specialty electrician who has an applicable certificate of competency issued under this chapter. Either a journeyman electrician or an appropriate specialty electrician shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter. The ratio of noncertified individuals to certified journeymen or specialty electricians working on a job site shall be:

(a) From September 1, 1979, through December 31, 1982, not more than three noncertified electricians working on any one job site for every certified journeyman or specialty electrician;

(b) Effective January 1, 1983, not more than two noncertified individuals working on any one job site for every specialty electrician or journeyman electrician working as a specialty electrician;

(c) Effective January 1, 1983, not more than one noncertified individual working on any one job site for every certified journeyman electrician.

The ratio requirements do not apply to a trade school program in the electrical construction trade established during 1946.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in a technical school program in the electrical construction trade in a school approved by the *commission for vocational education, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(4) The electrical contractor shall accurately verify and attest to the electrical trainee hours worked by electrical trainees on behalf of the electrical contractor. [1996 c 241 § 6; 1983 c 206 § 13; 1980 c 30 § 2.]

***Reviser's note:** The commission on vocational education and its powers and duties, under the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1986, and repealed June 30, 1987. See 1983 c 197 §§ 17 and 43.

19.28.515 Electrical trainee hours—Audit—Rules—Confidentiality. The department may audit the records of an electrical contractor that has verified the hours of experience submitted by an electrical trainee to the department under RCW 19.28.510(2) in the following circumstances: Excessive hours were reported; hours reported outside the normal course of the contractor's business; the type of hours reported do not reasonably match the type of permits purchased; or for other similar circumstances in which the department demonstrates a likelihood of excessive hours being reported. The department shall limit the audit to records necessary to verify hours. The department shall adopt rules implementing audit procedures. Information obtained from an electrical contractor under the provisions of this section is confidential and is not open to public inspection under chapter 42.17 RCW. [1996 c 241 § 2.]

19.28.520 Application for certificate of competency. Any person desiring to be issued a certificate of competency as provided in this chapter shall deliver evidence in a form

prescribed by the department affirming that said person has met the qualifications required under RCW 19.28.530, as now or hereafter amended. [1980 c 30 § 3.]

19.28.530 Certificate of competency—Eligibility for examination—Rules. (1) Upon receipt of the application, the department shall review the application and determine whether the applicant is eligible to take an examination for the journeyman or specialty certificate of competency. To be eligible to take the examination for a journeyman certificate the applicant must have worked in the electrical construction trade for a minimum of four years employed full time, of which two years shall be in industrial or commercial electrical installation under the supervision of a journeyman electrician certified under this chapter and not more than a total of two years in all specialties under the supervision of a journeyman electrician certified under this chapter or an appropriate specialty electrician certified under this chapter or have successfully completed an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade. To be eligible to take the examination to become a specialty electrician the applicant shall have worked in that specialty of the electrical construction trade, under the supervision of a journeyman electrician certified under this chapter or an appropriate specialty electrician certified under this chapter, for a minimum of two years employed full time, or have successfully completed an approved apprenticeship program under chapter 49.04 RCW for the applicant's specialty in the electrical construction trade. Before January 1, 1984, applicants for nonresidential maintenance specialty licenses are eligible to become nonresidential maintenance specialists upon certification to the department that they have the equivalent of two years full-time experience in that specialty field. Persons applying before January 1, 1984, for a journeyman certificate are eligible to take the examination to become journeymen until July 1, 1984, upon certification to the department that they have the equivalent of five years full-time experience in nonresidential maintenance, of which two years shall be in industrial electrical installation. Any applicant who has successfully completed a two-year technical school program in the electrical construction trade in a school that is approved by the *commission for vocational education may substitute up to two years of the technical school program for two years of work experience under a journeyman electrician. The applicant shall obtain the additional two years of work experience required in industrial or commercial electrical installation prior to the beginning, or after the completion, of the technical school program. Any applicant who has received training in the electrical construction trade in the armed service of the United States may be eligible to take the examination for the certificate of competency. Any applicant who is a graduate of a trade school program in the electrical construction trade that was established during 1946 is eligible to take the examination for the certificate of competency. No other requirement for eligibility may be imposed.

(2) The department shall establish reasonable rules for the examinations to be given applicants for certificates of competency. In establishing the rules, the department shall consult with the board. Upon determination that the appli-

cant is eligible to take the examination, the department shall so notify the applicant, indicating the time and place for taking the examination. [1988 c 81 § 13; 1983 c 206 § 14; 1980 c 30 § 4.]

***Reviser's note:** The commission on vocational education and its powers and duties, under the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1986, and repealed June 30, 1987. See 1983 c 197 §§ 17 and 43.

19.28.540 Examination—Contents—Times—Fees—Certification of results. The department, in coordination with the board, shall prepare an examination to be administered to applicants for journeyman and specialty certificates of competency. The examination shall be constructed to determine:

(1) Whether the applicant possesses varied general knowledge of the technical information and practical procedures that are identified with the status of journeyman electrician or specialty electrician; and

(2) Whether the applicant is sufficiently familiar with the applicable electrical codes and the rules of the department pertaining to electrical installations and electricians.

The department shall, at least four times annually, administer the examination to persons eligible to take it under RCW 19.28.530. A person may take the journeyman or specialty test as many times as necessary without limit. All applicants shall, before taking the examination, pay the required examination fee to the agency administering the examination. The fee shall cover but not exceed the costs of preparing and administering the examination.

The department shall certify the results of the examination upon such terms and after such a period of time as the department, in cooperation with the board, deems necessary and proper.

(3) The department upon the consent of the board may enter into a contract with a professional testing agency to develop, administer, and score journeyman and/or specialty electrician certification examinations. The department may set the examination fee by contract with the professional testing agency. [1996 c 147 § 8; 1988 c 81 § 14; 1986 c 156 § 13; 1983 c 206 § 15; 1980 c 30 § 5.]

19.28.550 Certificate of competency—Issuance—Renewal—Continuing education—Fees—Effect. (1) The department shall issue a certificate of competency to all applicants who have passed the examination provided in RCW 19.28.540, and who have complied with RCW 19.28.510 through 19.28.620 and the rules adopted under this chapter. The certificate shall bear the date of issuance, and shall expire on the holder's birthday. The certificate shall be renewed every three years, upon application, on or before the holder's birthdate. A fee shall be assessed for each certificate and for each annual renewal.

(2) If the certificate holder demonstrates to the department that he or she has satisfactorily completed an annual eight-hour continuing education course, the certificate may be renewed without examination by appropriate application unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date.

(a) The contents and requirements for satisfactory completion of the continuing education course shall be determined by the director and approved by the board.

(b) The department shall accept proof of a certificate holder's satisfactory completion of a continuing education course offered in another state as meeting the requirements for maintaining a current Washington state certificate of competency if the department is satisfied the course is comparable in nature to that required in Washington state for maintaining a current certificate of competency.

(3) If the certificate is not renewed before the expiration date, the individual shall pay twice the usual fee. The department shall set the fees by rule for issuance and renewal of a certificate of competency. The fees shall cover but not exceed the costs of issuing the certificates and of administering and enforcing the electrician certification requirements of this chapter.

(4) The certificates of competency and temporary permits provided for in this chapter grant the holder the right to work in the electrical construction trade as a journeyman electrician or specialty electrician in accordance with their provisions throughout the state and within any of its political subdivisions without additional proof of competency or any other license, permit, or fee to engage in such work. [1996 c 241 § 7; 1993 c 192 § 1; 1986 c 156 § 14; 1983 c 206 § 16; 1980 c 30 § 6.]

19.28.560 Persons engaged in trade or business on July 16, 1973. No examination shall be required of any applicant for a certificate of competency who, on July 16, 1973, was engaged in a bona fide business or trade as a journeyman electrician in the state of Washington. Applicants qualifying under this section shall be issued a certificate by the department upon making an application as provided in RCW 19.28.520 and paying the fee required under RCW 19.28.540: PROVIDED, That no applicant under this section shall be required to furnish such evidence as required by RCW 19.28.520. [1980 c 30 § 7.]

19.28.570 Temporary permits. The department is authorized to grant and issue temporary permits in lieu of certificates of competency whenever an electrician coming into the state of Washington from another state requests the department for a temporary permit to engage in the electrical construction trade as an electrician during the period of time between filing of an application for a certificate as provided in RCW 19.28.520 and the date the results of taking the examination provided for in RCW 19.28.540 are furnished to the applicant. The department is authorized to enter into reciprocal agreements with other states providing for the acceptance of such states' journeyman and speciality electrician certificate of competency or its equivalent when such states requirements are equal to the standards set by this chapter. No temporary permit shall be issued to:

(1) Any person who has failed to pass the examination for a certificate of competency, except that any person who has failed the examination for competency under this section shall be entitled to continue to work under a temporary permit for ninety days if the person is enrolled in a journeyman electrician refresher course and shows evidence to the department that he or she has not missed any classes. The person, after completing the journeyman electrician refresher course, shall be eligible to retake the examination for competency at the next scheduled time.

(2) Any applicant under this section who has not furnished the department with such evidence required under RCW 19.28.520.

(3) To any apprentice electrician. [1986 c 156 § 15; 1983 c 206 § 17; 1980 c 30 § 8.]

19.28.580 Revocation of certificate of competency—Grounds—Procedure. (1) The department may revoke any certificate of competency upon the following grounds:

(a) The certificate was obtained through error or fraud;

(b) The holder thereof is judged to be incompetent to work in the electrical construction trade as a journeyman electrician or specialty electrician;

(c) The holder thereof has violated any of the provisions of RCW 19.28.510 through 19.28.620 or any rule adopted under this chapter.

(2) Before any certificate of competency shall be revoked, the holder shall be given written notice of the department's intention to do so, mailed by registered mail, return receipt requested, to the holder's last known address. The notice shall enumerate the allegations against the holder, and shall give the holder the opportunity to request a hearing before the board. At the hearing, the department and the holder may produce witnesses and give testimony. The hearing shall be conducted in accordance with chapter 34.05 RCW. The board shall render its decision based upon the testimony and evidence presented, and shall notify the parties immediately upon reaching its decision. A majority of the board shall be necessary to render a decision. [1988 c 81 § 15; 1983 c 206 § 18; 1980 c 30 § 9.]

19.28.600 Powers and duties of director—Administration of RCW 19.28.510 through 19.28.620 by the department. The director may promulgate rules, make specific decisions, orders, and rulings, including demands and findings, and take other necessary action for the implementation and enforcement of RCW 19.28.510 through 19.28.620. In the administration of RCW 19.28.510 through 19.28.620 the department shall not enter any controversy arising over work assignments with respect to the trades involved in the construction industry. [1983 c 206 § 20; 1980 c 30 § 11.]

19.28.610 Exemptions from RCW 19.28.510 through 19.28.620. Nothing in RCW 19.28.510 through 19.28.620 shall be construed to require that a person obtain a license or a certified electrician in order to do electrical work at his or her residence or farm or place of business or on other property owned by him or her unless the electrical work is on the construction of a new building intended for rent, sale, or lease. However, if the construction is of a new residential building with up to four units intended for rent, sale, or lease, the owner may receive an exemption from the requirement to obtain a license or use a certified electrician if he or she provides a signed affidavit to the department stating that he or she will be performing the work and will occupy one of the units as his or her principal residence. The owner shall apply to the department for this exemption and may only receive an exemption once every twenty-four months. It is intended that the owner receiving this exemption shall occupy the unit as his or her principal residence for twenty-

four months after completion of the units. Nothing in RCW 19.28.510 through 19.28.620 shall be intended to derogate from or dispense with the requirements of any valid electrical code enacted by a city or town pursuant to RCW 19.28.010(3), except that no code shall require the holder of a certificate of competency to demonstrate any additional proof of competency or obtain any other license or pay any fee in order to engage in the electrical construction trade. RCW 19.28.510 through 19.28.620 shall not apply to common carriers subject to Part I of the Interstate Commerce Act, nor to their officers and employees. Nothing in RCW 19.28.510 through 19.28.620 shall be deemed to apply to the installation or maintenance of telephone, telegraph, radio, or television wires and equipment; nor to any electrical utility or its employees in the installation, repair, and maintenance of electrical wiring, circuits, and equipment by or for the utility, or comprising a part of its plants, lines or systems. The licensing provisions of RCW 19.28.510 through 19.28.620 shall not apply to:

(1) Persons making electrical installations on their own property or to regularly employed employees working on the premises of their employer, unless the electrical work is on the construction of a new building intended for rent, sale, or lease; or

(2) Employees of an employer while the employer is performing utility type work of the nature described in RCW 19.28.200 so long as such employees have registered in the state of Washington with or graduated from a state-approved outside lineman apprenticeship course that is recognized by the department and that qualifies a person to perform such work.

Nothing in RCW 19.28.510 through 19.28.620 shall be construed to restrict the right of any householder to assist or receive assistance from a friend, neighbor, relative or other person when none of the individuals doing the electrical installation hold themselves out as engaged in the trade or business of electrical installations. Nothing precludes any person who is exempt from the licensing requirements of this chapter under this section from obtaining a journeyman or specialty certificate of competency if they otherwise meet the requirements of this chapter. [1994 c 157 § 1; 1992 c 240 § 3; 1986 c 156 § 16; 1983 c 206 § 21; 1980 c 30 § 12.]

19.28.620 Violations of RCW 19.28.510 through 19.28.620—Schedule of penalties—Appeal. (1) It is unlawful for any person, firm, partnership, corporation, or other entity to employ an individual for purposes of RCW 19.28.510 through 19.28.620 who has not been issued a certificate of competency or a training certificate. It is unlawful for any individual to engage in the electrical construction trade or to maintain or install any electrical equipment or conductors without having in his or her possession a certificate of competency or a training certificate under RCW 19.28.510 through 19.28.620. Any person, firm, partnership, corporation, or other entity found in violation of RCW 19.28.510 through 19.28.620 shall be assessed a penalty of not less than fifty dollars or more than five hundred dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.510 through 19.28.620. An appeal may be made to the board as is provided in RCW 19.28.350. The appeal shall be filed

within twenty days after the notice of the penalty is given to the assessed party by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. Any equipment maintained or installed by any person who does not possess a certificate of competency under RCW 19.28.510 through 19.28.620 shall not receive an electrical work permit and electrical service shall not be connected or maintained to operate the equipment. Each day that a person, firm, partnership, corporation, or other entity violates RCW 19.28.510 through 19.28.620 is a separate violation.

(2) A civil penalty shall be collected in a civil action brought by the attorney general in the county wherein the alleged violation arose at the request of the department if any of RCW 19.28.510 through 19.28.620 or any rules adopted under RCW 19.28.510 through 19.28.620 are violated. [1996 c 147 § 9; 1988 c 81 § 16; 1986 c 156 § 17; 1983 c 206 § 22; 1980 c 30 § 13.]

19.28.630 Denial of renewal of certificate or license for outstanding penalties—Notice—Appeal—Hearing. The department may deny renewal of a certificate or license issued under this chapter, if the applicant for renewal owes outstanding penalties for a final judgment under this chapter. The department shall notify the applicant of the denial by registered mail, return receipt requested, to the address on the application. The applicant may appeal the denial within twenty days by filing a notice of appeal with the department accompanied by a certified check for two hundred dollars which shall be returned to the applicant if the decision of the department is not upheld by the board. The office of administrative hearings shall conduct the hearing under chapter 34.05 RCW. The electrical board shall review the proposed decision at the next regularly scheduled board meeting. If the board sustains the decision of the department, the two hundred dollars must be applied to the cost of the hearing. [1996 c 241 § 1.]

19.28.900 Severability—1935 c 169. If any section or part of this chapter shall be held and adjudged to be void or unconstitutional such adjudication shall not affect any other section or part of this chapter not adjudged to be void or unconstitutional. [1935 c 169 § 17.]

19.28.910 Effective date—1963 c 207. This act shall take effect on July 1, 1963. [1963 c 207 § 6.]

19.28.911 Severability—1983 c 206. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 206 § 24.]

Chapter 19.29

ELECTRICAL CONSTRUCTION

Sections

- 19.29.010 Rules for use of electrical apparatus or construction.
 - 19.29.020 Copy of chapter to be posted.
 - 19.29.030 Time for compliance.
 - 19.29.040 Enforcement by director of labor and industries—Change of rules—Violation.
 - 19.29.050 Violation of rules by public service company or political subdivision—Penalty.
 - 19.29.060 Violation of rules by agent, employee or officer—Penalty.
- Electricians, licensing, etc.: Chapter 19.28 RCW.*

19.29.010 Rules for use of electrical apparatus or construction. It shall be unlawful from and after the passage of this chapter for any officer, agent, or employee of the state of Washington, or of any county, city or other political subdivision thereof, or for any other person, firm or corporation, or its officers, agents or employees, to run, place, erect, maintain, or use any electrical apparatus or construction, except as provided in the rules of this chapter.

Rule 1. No wire or cable, except the neutral, carrying a current of less than seven hundred fifty volts of electricity within the corporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is less than thirteen inches from the center line of any pole. And no such wire, except the neutral, shall be run past any pole to which it is not attached at a distance of less than thirteen inches from the center line thereof. This rule shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture as between it and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure and the point of attachment to such building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole; nor to bridle or jumper wires on any pole which are attached to or connected with signal wires on the same pole; nor to any aerial cable as between such cable and any pole upon which it originates or terminates; nor to exclusive telephone or telegraph toll lines; nor to aerial cables containing telephone, telegraph, or signal wires, or wires continuing from same, where the cable is attached to poles on which no wires or cables other than the wires continuing from said cable are maintained, provided, that electric light or power wires or cables are in no case maintained on the same side of the street or highway on which said aerial cable is placed.

Rule 2. No wire or cable used to carry a current of over seven hundred fifty volts of electricity within the incorporate limits of any city or town shall be run, placed, erected, maintained or used on any insulator the center of which is nearer than twenty-four inches to the center line of any pole. And no such wire or cable shall be run past any pole to which it is not attached at a distance of less than twenty-four inches from the center line thereof: PROVIDED, That this shall not apply to any wire or cable where the same is run from under ground and placed vertically on the pole; nor to any wire or cable where the same is attached to the top of the pole; nor to a pole top fixture, as between it

and the same pole; nor to any wire or cable between the points where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with transformers or other appliances on the same pole: PROVIDED FURTHER, That where said wire or cable is run vertically, it shall be rigidly supported and where possible run on the ends of the cross-arms.

Rule 3. No wire or cable carrying a current of more than seven hundred fifty volts, and less than seventy-five hundred volts of electricity, shall be run, placed, erected, maintained or used within three feet of any wire or cable carrying a current of seven hundred fifty volts or less of electricity; and no wire or cable carrying a current of more than seventy-five hundred volts of electricity shall be run, placed, erected, maintained, or used within seven feet of any wire or cable carrying less than seventy-five hundred volts: PROVIDED, That the foregoing provisions of this paragraph shall not apply to any wire or cable within buildings or other structures; nor where the same are run from under ground and placed vertically upon the pole; nor to any service wire or cable where the same is made to leave any pole or fixture thereon for the purpose of entering any building or other structure, and the point of attachment to said building or structure; nor to any jumper wire or cable carrying a current or connected with a transformer or other appliance on the same pole: PROVIDED, That where run vertically, wires or cables shall be rigidly supported, and where possible run on the ends of the cross-arms: PROVIDED FURTHER, That as between any two wires or cables mentioned in Rules 1, 2 and 3 of this section, only the wires or cables last in point of time so run, placed, erected or maintained, shall be held to be in violation of the provisions thereof.

Rule 4. No wire or cable used for telephone, telegraph, district messenger, or call bell circuit, fire or burglar alarm, or any other similar system, shall be run, placed, erected, maintained or used on any pole at a distance of less than three feet from any wire or cable carrying a current of over three hundred volts of electricity; and in all cases (except those mentioned in exceptions to Rules 1, 2 and 3) where such wires or cables are run, above or below, or cross over or under electric light or power wires, or a trolley wire, a suitable method of construction, or insulation or protection to prevent contact shall be maintained as between such wire or cable and such electric light, power or trolley wire; and said methods of construction, insulation or protection shall be installed by, or at the expense of the person owning the wire last placed in point of time: PROVIDED, That telephone, telegraph or signal wires or cables operated for private use and not furnishing service to the public, may be placed less than three feet from any line carrying a voltage of less than seven hundred and fifty volts.

Rule 5. Transformers, either single or in bank, that exceed a total capacity of over ten K.W. shall be supported by a double cross-arm, or some fixture equally as strong. No transformer shall be placed, erected, maintained or used on any cross-arm or other appliance on a pole upon which is placed a series electric arc lamp or arc light: PROVIDED, This shall not apply to a span wire supporting a lamp only. All aerial and underground transformers used for low potential distribution shall be subjected to an insulation test

in accordance with the standardized rules of the American Institute of Electrical Engineers. In addition to this each transformer shall be tested at rated line voltage prior to each installation and shall have attached to it a tag showing the date on which the test was made, and the name of the person making the test.

Rule 6. No wire or cable, other than ground wires, used to conduct or carry electricity, shall be placed, run, erected, maintained or used vertically on any pole without causing such wire or cable to be at all times sufficiently insulated the full length thereof to insure the protection of anyone coming in contact with said wire or cable.

Rule 7. The neutral point or wire of all transformer secondaries strung or erected for use in low potential distributing systems shall be grounded in all cases where the normal maximum difference of potential between the ground and any point in the secondary circuit will not exceed one hundred and fifty volts. When no neutral point or wire is accessible one side of the secondary circuit shall be grounded in the case of single phase transformers, and any one common point in the case of interconnected polyphase bank or banks of transformers. Where the maximum difference of potential between the ground and any point in the secondary circuit will, when grounded, exceed one hundred fifty volts, grounding shall be permitted. Such grounding shall be done in the manner provided in Rule 30.

Rule 8. In all cases where a wire or cable larger than No. 14 B.W.G. originates or terminates on insulators attached to any pin or other appliance, said wire or cable shall be attached to at least two insulators: PROVIDED HOWEVER, That this section shall not apply to service wires to buildings; nor to wires run vertically on a pole; nor to wires originating or terminating on strain insulators or circuit breakers; nor to telephone, telegraph or signal wires outside the limits of any incorporated city or town.

Rule 9. Fixtures placed or erected for the support of wires on the roofs of buildings shall be of sufficient strength to withstand all strains to which they may be subjected, due to the breaking of all wires on one side thereof, and except where insulated wires or cables are held close to fire walls by straps or rings, shall be of such height and so placed that all of the wires supported by such fixtures shall be at least seven feet above any point of roofs less than one-quarter pitch over which they pass or may be attached, and no roof fixtures or wire shall be so placed that they will interfere with the free passage of persons upon, over, to or from the roofs.

Rule 10. No guy wire or cable shall be placed, run, erected, maintained or used within the incorporate limits of any city or town on any pole or appliance to which is attached any wire or cable used to conduct electricity without causing said guy wire or cable to be efficiently insulated with circuit breakers at all times at a distance of not less than eight feet nor more than ten feet measured along the line of said guy wire or cable from each end thereof: PROVIDED, No circuit breaker shall be required at the lower end of the guy wire or cable where the same is attached to a ground anchor, nor shall any circuit breaker be required where said guy wire or cable runs direct from a grounded messenger wire to a grounded anchor rod.

Rule 11. In all span wires used for the purpose of supporting trolley wires or series arc lamps there shall be at

least two circuit breakers, one of which shall at all times be maintained no less than four feet nor more than six feet distant from the trolley wire or series arc lamp, and in cases where the same is supported by a building or metallic pole, the other circuit breaker shall be maintained at the building or at the pole: PROVIDED, That in span wires which support two or more trolley wires no circuit breaker shall be required in the span wire between any two of the trolley wires: PROVIDED FURTHER, That in span wires supporting trolley wires attached to wooden poles only the circuit breaker adjacent to the trolley wire shall be required.

Rule 12. At all points where in case of a breakdown of trolley span wires, the trolley wire would be liable to drop within seven feet of the ground, there shall be double span wires and hangers placed at such points.

Rule 13. All energized wires or appliances installed inside of any building or vault, for the distribution of electrical energy, shall be sufficiently insulated, or so guarded, located, or arranged as to protect any person from injury.

Rule 14. The secondary circuit of current transformers, the casings of all potential regulators and arc light transformers, all metal frames of all switch boards, metal oil tanks used on oil switches except where the tank is part of the conducting system, all motor and generator frames, the entire frame of the crane and the tracks of all traveling cranes and hoisting devices, shall be thoroughly grounded, as provided in Rule 30.

Rule 15. All generators and motors having a potential of more than three hundred volts shall be provided with a suitable insulated platform or mat so arranged as to permit the attendant to stand upon such platform or mat when working upon the live parts of such generators or motors.

Rule 16. Suitable insulated platforms or mats shall be provided for the use of all persons while working on any live part of switchboards on which any wire or appliance carries a potential in excess of three hundred volts.

Rule 17. Every generator, motor, transformer, switch or other similar piece of apparatus and device used in the generation, transmission or distribution of electrical energy in stations or substations, shall be either provided with a name plate giving the capacity in volts and amperes, or have this information stamped thereon in such a manner as to be clearly legible.

Rule 18. When lines of seven hundred fifty volts or over are cut out at the station or substation to allow employees to work upon them, they shall be short-circuited and grounded at the station, and shall in addition, if the line wires are bare, be short-circuited, and where possible grounded at the place where the work is being done.

Rule 19. All switches installed with overload protection devices, and all automatic overload circuit breakers must have the trip coils so adjusted as to afford complete protection against overloads and short circuits, and the same must be so arranged that no pole can be opened manually without opening all the poles, and the trip coils shall be instantly operative upon closing.

Rule 20. All feeders for electric railways must, before leaving the plant or substation, be protected by an approved circuit breaker which will cut off the circuit in case of an accidental ground or short circuit.

Rule 21. There shall be provided in all distributing stations a ground detecting device.

Rule 22. There shall be provided in all stations, plants, and buildings herein specified warning cards printed on red cardboard not less than two and one-quarter by four and one-half inches in size, which shall be attached to all switches opened for the purpose of linemen or other employees working on the wires. The person opening any line switch shall enter upon said card the name of the person ordering the switch opened, the time opened, the time line was reported clear and by whom, and shall sign his own name.

Rule 23. No manhole containing any wire carrying a current of over three hundred volts shall be less than six feet from floor to inside of roof; if circular in shape it shall not be less than six feet in diameter; if square it shall be six feet from wall to wall: PROVIDED HOWEVER, That this paragraph shall not apply to any manhole in which it shall not be required that any person enter to perform work: PROVIDED FURTHER, That the foregoing provisions of this paragraph shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with this law within the space or location designated by the proper authorities.

Rule 24. All manholes containing any wires or appliances carrying electrical current shall be kept in a sanitary condition, free from stagnant water or seepage or other drainage which is offensive or dangerous to health, either by sewer connection or otherwise, while any person is working in the same.

Rule 25. No manhole shall have an opening to the outer air of less than twenty-six inches in diameter, and the cover of same shall be provided with vent hole or holes equivalent to three square inches in area.

Rule 26. No manhole shall have an opening which is, at the surface of the ground, within a distance of three feet at any point from any rail of any railway or street car track: PROVIDED, That this shall not apply where satisfactory proof shall be submitted to the proper authorities that it is impracticable or physically impossible to comply with the provisions of this paragraph: PROVIDED, That in complying with the provisions of this rule only the construction last in point of time performed, placed or erected shall be held to be in violation thereof.

Rule 27. Whenever persons are working in any manhole whose opening to the outer air is less than three feet from the rail of any railway or street car track, a watchman or attendant shall be stationed on the surface at the entrance of such manhole at all times while work is being performed therein.

Rule 28. All persons employed in manholes shall be furnished with insulated platforms so as to protect the workers while at work in the manholes: PROVIDED, That this paragraph shall not apply to manholes containing only telephone, telegraph or signal wires or cables.

Rule 29. No work shall be permitted to be done on any live wire, cable or appliance carrying more than seven hundred fifty volts of electricity by less than two competent and experienced persons, who, at all times while performing such work shall be in the same room, chamber, manhole or other place in which, or on the same pole on which, such work is being done: PROVIDED, That in districts where only one competent and experienced person is regularly

employed, and a second competent and experienced person cannot be obtained without delay at prevailing rate of pay in said district, such work shall be permitted to be done by one competent and experienced person and a helper who need not be on the same pole on which said work is being done.

No work shall be permitted to be done in any manhole or subway on any live wire, cable or appliance carrying more than three hundred volts of electricity by less than two competent and experienced persons, who at all times while performing such work shall be in the same manhole or subway in which such work is being done.

Rule 30. The grounding provided for in these rules shall be done in the following manner: By connecting a wire or wires not less than No. 6 B.&S. gauge to a water pipe of a metallic system outside of the meter, if there is one, or to a copper plate one-sixteenth inch thick and not less than three feet by six feet area buried in coke below the permanent moisture level, or to other device equally as efficient. The ground wire or wires of a direct current system of three or more wires shall not be smaller than the neutral wire at the central station, and not smaller than a No. 6 B.&S. gauge elsewhere: **PROVIDED**, That the maximum cross section area of any ground wire or wires at the central station need not exceed one million circular mils. The ground wires shall be carried in as nearly a straight line as possible, and kinks, coils and short bends shall be avoided: **PROVIDED**, That the provisions of this rule shall not apply as to size to ground wires run from instrument transformers or meters. [1989 c 12 § 3; 1987 c 79 § 1; 1965 ex.s. c 65 § 1; 1913 c 130 § 1; RRS § 5435.] [1954 SLC-RO 29.]

19.29.020 Copy of chapter to be posted. A copy of this chapter printed in a legible manner shall be kept posted in a conspicuous place in all electric plants, stations and storerooms. [1913 c 130 § 2; RRS § 5436.] [1954 SLC-RO-29.]

19.29.030 Time for compliance. All wires, cables, poles, electric fixtures and appliances of every kind being used or operated at the time of the passage of this chapter, shall be changed, and made to conform to the provisions of this chapter, on or before the 1st day of July, 1940: **PROVIDED HOWEVER**, That the director of labor and industries of Washington shall have power, upon reasonable notice, to order and require the erection of all guards, protective devices, and methods of protection which in the judgment of the director are necessary and should be constructed previous to the expiration of the time fixed in this section: **PROVIDED FURTHER**, That nothing in this chapter shall apply to manholes already constructed, except the provisions for guards, sanitary conditions, drainage and safety appliances specified in rules 20, 24, 26, 29, 30, 31 and 32. [1937 c 105 § 1; 1931 c 24 § 1; 1921 c 20 § 1; 1917 c 41 § 1; 1913 c 130 § 3; RRS § 5437.] [1954 SLC-RO-29.]

19.29.040 Enforcement by director of labor and industries—Change of rules—Violation. It shall be the duty of the director of labor and industries of Washington to enforce all the provisions and rules of this chapter and the director is hereby empowered upon hearing to amend, alter

and change any and all rules herein contained, or any part thereof, and to supplement the same by additional rules and requirements, after first giving reasonable public notice and a reasonable opportunity to be heard to all affected thereby: **PROVIDED**, That no rule amending, altering or changing any rule supplementary to the rules herein contained shall provide a less measure of safety than that provided by the rule amended, altered or changed.

A violation of any rule herein contained or of any rule or requirement made by the director of labor and industries which it is hereby permitted to make shall be deemed a violation of this chapter. [1983 c 4 § 2; 1913 c 130 § 4; RRS § 5438.] [1954 SLC-RO-29.]

19.29.050 Violation of rules by public service company or political subdivision—Penalty. Every public service company, county, city, or other political subdivision of the state of Washington, and all officers, agents and employees of any public service company, county, city, or other political subdivision of the state of Washington, shall obey, observe and comply with every order, rule, direction or requirement made by the commission [director of labor and industries] under authority of this chapter, so long as the same shall be and remain in force. Any public service company, county, city, or other political subdivision of the state of Washington, which shall violate or fail to comply with any provision of this chapter, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission [director of labor and industries], pursuant to this chapter, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this chapter shall be a separate and distinct offense, and in case of a continued violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense. [1913 c 130 § 5; RRS § 5439.] [1954 SLC-RO-29.]

Reviser's note: (1) Duties of the public service commission devolved on director of labor and industries. 1921 c 7 § 80 subdivision (5) relating to powers and duties of the director of labor and industries reads: "(5) To exercise all the powers and perform all the duties in relation to the enforcement, amendment, alteration, change, and making additions to rules and regulations concerning the operation, placing, erection, maintenance, and use of electrical apparatus, and the construction thereof, now vested in, and required to be performed by, the public service commission;". See also RCW 43.22.050(3).

(2) Name of "public service commission" changed to "utilities and transportation commission" by 1961 c 290 § 1.

19.29.060 Violation of rules by agent, employee or officer—Penalty. Every officer, agent or employee of any public service company, the state of Washington, or any county, city, or other political subdivision of the state of Washington, who shall violate or fail to comply with, or who procures, aids or abets any violation by any public service company, the state of Washington, or any county, city or other political subdivision of the state of Washington, of any provision of this chapter, or who shall fail to obey, observe or comply with any order of the commission [director of labor and industries], pursuant to this chapter, or any provision of any order of the commission [director of labor and industries], or who procures, aids or abets any such public service company, the state of Washington, or any county,

city, or other political subdivision of the state of Washington, in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor. [1913 c 130 § 6; RRS § 5440.] [1954 SLC-RO-29.]

Reviser's note: See note following RCW 19.29.050.

Chapter 19.30

FARM LABOR CONTRACTORS

Sections

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19.30.900	Severability—1955 c 392.
19.30.901	Severability—1985 c 280.
19.30.902	Effective date—1985 c 280.

19.30.010 Definitions. As used in this chapter:

(1) "Person" includes any individual, firm, partnership, association, corporation, or unit or agency of state or local government.

(2) "Farm labor contractor" means any person, or his or her agent or subcontractor, who, for a fee, performs any farm labor contracting activity.

(3) "Farm labor contracting activity" means recruiting, soliciting, employing, supplying, transporting, or hiring agricultural employees.

(4) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes but is not limited to the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash, the harvest of Christmas trees, and other related activities.

(5) "Agricultural employee" means any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity.

(6) This chapter shall not apply to employees of the employment security department acting in their official capacity or their agents, nor to any common carrier or full time regular employees thereof while transporting agricultural employees, nor to any person who performs any of the services enumerated in subsection (3) of this section only within the scope of his or her regular employment for one agricultural employer on whose behalf he or she is so acting, unless he or she is receiving a commission or fee, which

commission or fee is determined by the number of workers recruited, or to a nonprofit corporation or organization which performs the same functions for its members. Such nonprofit corporation or organization shall be one in which:

(a) None of its directors, officers, or employees are deriving any profit beyond a reasonable salary for services performed in its behalf.

(b) Membership dues and fees are used solely for the maintenance of the association or corporation.

(7) "Fee" means:

(a) Any money or other valuable consideration paid or promised to be paid for services rendered or to be rendered by a farm labor contractor.

(b) Any valuable consideration received or to be received by a farm labor contractor for or in connection with any of the services described in subsection (3) of this section, and shall include the difference between any amount received or to be received by him, and the amount paid out by him for or in connection with the rendering of such services.

(8) "Director" as used in this chapter means the director of the department of labor and industries of the state of Washington. [1985 c 280 § 1; 1955 c 392 § 1.]

19.30.020 License required—Duplicates. No person shall act as a farm labor contractor until a license to do so has been issued to him or her by the director, and unless such license is in full force and effect and is in the contractor's possession. The director shall, by regulation, provide a means of issuing duplicate licenses in case of loss of the original license or any other appropriate instances. The director shall issue, on a monthly basis, a list of currently licensed farm labor contractors. [1985 c 280 § 2; 1955 c 392 § 2.]

19.30.030 Applicants—Qualifications—Fee—Liability insurance. The director shall not issue to any person a license to act as a farm labor contractor until:

(1) Such person has executed a written application on a form prescribed by the director, subscribed and sworn to by the applicant, and containing (a) a statement by the applicant of all facts required by the director concerning the applicant's character, competency, responsibility, and the manner and method by which he or she proposes to conduct operations as a farm labor contractor if such license is issued, and (b) the names and addresses of all persons financially interested, either as partners, stockholders, associates, profit sharers, or providers of board or lodging to agricultural employees in the proposed operation as a labor contractor, together with the amount of their respective interests;

(2) The director, after investigation, is satisfied as to the character, competency, and responsibility of the applicant;

(3) The applicant has paid to the director a license fee of: (1) Thirty-five dollars in the case of a farm labor contractor not engaged in forestation or reforestation, or (2) one hundred dollars in the case of a farm labor contractor engaged in forestation or reforestation or such other sum as the director finds necessary, and adopts by rule, for the administrative costs of evaluating applications;

(4) The applicant has filed proof satisfactory to the director of the existence of a policy of insurance with any insurance carrier authorized to do business in the state of Washington in an amount satisfactory to the director, which insures the contractor against liability for damage to persons or property arising out of the contractor's operation of, or ownership of, any vehicle or vehicles for the transportation of individuals in connection with the contractor's business, activities, or operations as a farm labor contractor;

(5) The applicant has filed a surety bond or other security which meets the requirements set forth in RCW 19.30.040;

(6) The applicant executes a written statement which shall be subscribed and sworn to and shall contain the following declaration:

"With regards to any action filed against me concerning my activities as a farm labor contractor, I appoint the director of the Washington department of labor and industries as my lawful agent to accept service of summons when I am not present in the jurisdiction in which the action is commenced or have in any other way become unavailable to accept service"; and

(7) The applicant has stated on his or her application whether or not his or her contractor's license or the license of any of his or her agents, partners, associates, stockholders, or profit sharers has ever been suspended, revoked, or denied by any state or federal agency, and whether or not there are any outstanding judgments against him or her or any of his or her agents, partners, associates, stockholders, or profit sharers in any state or federal court arising out of activities as a farm labor contractor. [1985 c 280 § 3; 1955 c 392 § 3.]

19.30.040 Surety bond—Security. (1) The director shall require the deposit of a surety bond by any person acting as a farm labor contractor under this chapter to insure compliance with the provisions of this chapter. Such bond shall be in an amount specified by the director in accordance with such criteria as the director adopts by rule but shall not be less than five thousand dollars. The bond shall be payable to the state of Washington and be conditioned on payment of sums legally owing under contract to an agricultural employee. The aggregate liability of the surety upon such bond for all claims which may arise thereunder shall not exceed the face amount of the bond.

(2) The amount of the bond may be raised or additional security required by the director, upon his or her own motion or upon petition to the director by any person, when it is shown that the security or bond is insufficient to satisfy the contractor's potential liability for the licensed period.

(3) No surety insurer may provide any bond, undertaking, recognizance, or other obligation for the purpose of securing or guaranteeing any act, duty, or obligation, or the refraining from any act with respect to a contract using the services of a farm labor contractor unless the farm labor contractor has made application for or has a valid license issued under RCW 19.30.030 at the time of issuance of the bond, undertaking, recognizance, or other obligation.

(4) Surety bonds may not be canceled or terminated during the period in which the bond is executed unless thirty days' notice is provided by the surety to the department.

The bond is written for a one-year term and may be renewed or extended by continuation certification at the option of the surety.

(5) In lieu of the surety bond required by this section, the contractor may file with the director a deposit consisting of cash or other security acceptable to the director. The deposit shall not be less than five thousand dollars in value. The security deposited with the director in lieu of the surety bond shall be returned to the contractor at the expiration of three years after the farm labor contractor's license has expired or been revoked if no legal action has been instituted against the contractor or on the security deposit at the expiration of the three years.

(6) If a contractor has deposited a bond with the director and has failed to comply with the conditions of the bond as provided by this section, and has departed from this state, service may be made upon the surety as prescribed in RCW 4.28.090. [1987 c 216 § 1; 1986 c 197 § 15; 1985 c 280 § 4; 1955 c 392 § 4.]

19.30.045 Claim for wages—Action upon surety bond or security. (1) Any person, having a claim for wages pursuant to this chapter may bring suit upon the surety bond or security deposit filed by the contractor pursuant to RCW 19.30.040, in any court of competent jurisdiction of the county in which the claim arose, or in which either the claimant or contractor resides.

(2) The right of action is assignable in the name of the director or any other person. [1987 c 216 § 2; 1986 c 197 § 19.]

19.30.050 License—Grounds for denying. A license to operate as a farm labor contractor shall be denied:

(1) To any person who sells or proposes to sell intoxicating liquors in a building or on premises where he or she operates or proposes to operate as a farm labor contractor, or

(2) To a person whose license has been revoked within three years from the date of application. [1985 c 280 § 5; 1955 c 392 § 5.]

19.30.060 License—Revocation, suspension, refusal to issue or renew. Any person may protest the grant or renewal of a license under this section. The director may revoke, suspend, or refuse to issue or renew any license when it is shown that:

(1) The farm labor contractor or any agent of the contractor has violated or failed to comply with any of the provisions of this chapter;

(2) The farm labor contractor has made any misrepresentations or false statements in his or her application for a license;

(3) The conditions under which the license was issued have changed or no longer exist;

(4) The farm labor contractor, or any agent of the contractor, has violated or wilfully aided or abetted any person in the violation of, or failed to comply with, any law of the state of Washington regulating employment in agriculture, the payment of wages to farm employees, or the conditions, terms, or places of employment affecting the health and safety of farm employees, which is applicable to

the business activities, or operations of the contractor in his or her capacity as a farm labor contractor;

(5) The farm labor contractor or any agent of the contractor has in recruiting farm labor solicited or induced the violation of any then existing contract of employment of such laborers; or

(6) The farm labor contractor or any agent of the contractor has an unsatisfied judgment against him or her in any state or federal court, arising out of his or her farm labor contracting activities. [1985 c 280 § 6; 1955 c 392 § 6.]

19.30.070 License—Contents. Each license shall contain, on the face thereof:

(1) The name and address of the licensee and the fact that he or she is licensed to act as a farm labor contractor for the period upon the face of the license only;

(2) The number, date of issuance, and date of expiration of the license;

(3) The amount of the surety bond deposited by the licensee;

(4) The fact that the license may not be transferred or assigned; and

(5) A statement that the licensee is or is not licensed to transport workers. [1985 c 280 § 7; 1955 c 392 § 7.]

19.30.081 License—Duration—Renewal. Farm labor contractors may hold either a one-year license or a two-year license, at the director's discretion.

The one-year license shall run to and include the 31st day of December next following the date thereof unless sooner revoked by the director. A license may be renewed each year upon the payment of the annual license fee, but the director shall require that evidence of a renewed bond be submitted and that the contractor have a bond in full force and effect.

The two-year license shall run to and include the 31st day of December of the year following the year of issuance unless sooner revoked by the director. This license may be renewed every two years under the same terms as the one-year license, except that a farm labor contractor possessing a two-year license shall have evidence of a bond in full force and effect, and file an application on which he or she shall disclose all information required by RCW 19.30.030 (1)(b), (4), and (7). [1987 c 216 § 3; 1986 c 197 § 16; 1985 c 280 § 8.]

19.30.090 License—Application for renewal. All applications for renewal shall state the names and addresses of all persons financially interested either as partners, associates or profit sharers in the operation as a farm labor contractor. [1955 c 392 § 9.]

19.30.110 Farm labor contractor—Duties. Every person acting as a farm labor contractor shall:

(1) Carry a current farm labor contractor's license at all times and exhibit it to all persons with whom the contractor intends to deal in the capacity of a farm labor contractor prior to so dealing.

(2) Disclose to every person with whom he or she deals in the capacity of a farm labor contractor the amount of his

or her bond and the existence and amount of any claims against the bond.

(3) File at the United States post office serving the address of the contractor, as noted on the face of the farm labor contractor's license, a correct change of address immediately upon each occasion the contractor permanently moves his or her address, and notify the director within ten days after an address change is made.

(4) Promptly when due, pay or distribute to the individuals entitled thereto all moneys or other things of value entrusted to the contractor by any third person for such purpose.

(5) Comply with the terms and provisions of all legal and valid agreements and contracts entered into between the contractor in the capacity of a farm labor contractor and third persons.

(6) File information regarding work offers with the nearest employment service office, such information to include wages and work to be performed and any other information prescribed by the director.

(7) On a form prescribed by the director, furnish to each worker, at the time of hiring, recruiting, soliciting, or supplying, whichever occurs first, a written statement in English and any other language common to workers who are not fluent or literate in English that contains a description of:

(a) The compensation to be paid and the method of computing the rate of compensation;

(b) The terms and conditions of any bonus offered, including the manner of determining when the bonus is earned;

(c) The terms and conditions of any loan made to the worker;

(d) The conditions of any transportation, housing, board, health, and day care services or any other employee benefit to be provided by the farm labor contractor or by his or her agents, and the costs to be charged for each of them;

(e) The terms and conditions of employment, including the approximate length of season or period of employment and the approximate starting and ending dates thereof, and the crops on which and kinds of activities in which the worker may be employed;

(f) The terms and conditions under which the worker is furnished clothing or equipment;

(g) The place of employment;

(h) The name and address of the owner of all operations, or the owner's agent, where the worker will be working as a result of being recruited, solicited, supplied, or employed by the farm labor contractor;

(i) The existence of a labor dispute at the worksite;

(j) The name and address of the farm labor contractor;

(k) The existence of any arrangements with any owner or agent of any establishment at the place of employment under which the farm labor contractor is to receive a fee or any other benefit resulting from any sales by such establishment to the workers; and

(1) The name and address of the surety on the contractor's bond and the workers' right to claim against the bond.

(8) Furnish to the worker each time the worker receives a compensation payment from the farm labor contractor, a written statement itemizing the total payment and the amount and purpose of each deduction therefrom, hours worked, rate

of pay, and pieces done if the work is done on a piece rate basis, and if the work is done under the Service Contract Act (41 U.S.C. Secs. 351 through 401) or related federal or state law, a written statement of any applicable prevailing wage.

(9) With respect to each worker recruited, solicited, employed, supplied, or hired by the farm labor contractor:

(a) Make, keep, and preserve for three years a record of the following information:

(i) The basis on which wages are paid;

(ii) The number of piecework units earned, if paid on a piecework basis;

(iii) The number of hours worked;

(iv) The total pay period earnings;

(v) The specific sums withheld and the purpose of each sum withheld; and

(vi) The net pay; and

(b) Provide to any other farm labor contractor and to any user of farm labor for whom he or she recruits, solicits, supplies, hires, or employs workers copies of all records, with respect to each such worker, which the contractor is required by this chapter to make, keep, and preserve. The recipient of such records shall keep them for a period of three years from the end of the period of employment. When necessary to administer this chapter, the director may require that any farm labor contractor provide the director with certified copies of his or her payroll records for any payment period.

The record-keeping requirements of this chapter shall be met if either the farm labor contractor or any user of the contractor's services makes, keeps, and preserves for the requisite time period the records required under this section, and so long as each worker receives the written statements specified in subsection (8) of this section. [1985 c 280 § 9; 1955 c 392 § 11.]

19.30.120 Farm labor contractor—Prohibited acts.

No person acting as a farm labor contractor shall:

(1) Make any misrepresentation or false statement in an application for a license.

(2) Make or cause to be made, to any person, any false, fraudulent, or misleading representation, or publish or circulate or cause to be published or circulated any false, fraudulent, or misleading information concerning the terms or conditions or existence of employment at any place or places, or by any person or persons, or of any individual or individuals.

(3) Send or transport any worker to any place where the farm labor contractor knows a strike or lockout exists.

(4) Do any act in the capacity of a farm labor contractor, or cause any act to be done, which constitutes a crime involving moral turpitude under any law of the state of Washington. [1985 c 280 § 10; 1955 c 392 § 12.]

19.30.130 Rules—Adjustment of controversies.

(1) The director shall adopt rules not inconsistent with this chapter for the purpose of enforcing and administering this chapter.

(2) The director shall investigate and attempt to adjust equitably controversies between farm labor contractors and their workers with respect to claims arising under this chapter. [1985 c 280 § 11; 1955 c 392 § 14.]

19.30.150 Penalties. Any person who violates any provisions of this chapter, or who causes or induces another to violate any provisions of this chapter, shall be guilty of a misdemeanor punishable by a fine of not more than five thousand dollars, or imprisonment in the county jail for not more than six months, or both. [1955 c 392 § 13.]

19.30.160 Civil penalty—Hearing—Court action.

(1) In addition to any criminal penalty imposed under RCW 19.30.150, the director may assess against any person who violates this chapter, or any rule adopted under this chapter, a civil penalty of not more than one thousand dollars for each violation.

(2) The person shall be afforded the opportunity for a hearing, upon request to the director made within thirty days after the date of issuance of the notice of assessment. The hearing shall be conducted in accordance with chapter 34.05 RCW.

(3) If any person fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the agency, the director shall refer the matter to the state attorney general, who shall recover the amount assessed by action in the appropriate superior court. In such action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review.

(4) Without regard to other remedies provided in this chapter, the department may bring suit upon the surety bond filed by the farm labor contractor on behalf of a worker whose rights under this chapter have been violated by the contractor. The action may be commenced in any court of competent jurisdiction. In any such action, there shall be compliance with the notice and service requirements set forth in RCW 19.30.170. [1987 c 216 § 4; 1986 c 197 § 17; 1985 c 280 § 15.]

19.30.170 Civil actions—Damages, costs, attorney's fees—Actions upon bond or security deposit.

(1) After filing a notice of a claim with the director, in addition to any other penalty provided by law, any person aggrieved by a violation of this chapter or any rule adopted under this chapter may bring suit in any court of competent jurisdiction of the county in which the claim arose, or in which either the plaintiff or respondent resides, without regard to the amount in controversy and without regard to exhaustion of any alternative administrative remedies provided in this chapter. No such action may be commenced later than three years after the date of the violation giving rise to the right of action. In any such action the court may award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees at trial and appeal.

(2) In any action under subsection (1) of this section, if the court finds that the respondent has violated this chapter or any rule adopted under this chapter, it may award damages up to and including an amount equal to the amount of actual damages, or statutory damages of five hundred dollars per plaintiff per violation, whichever is greater, or other equitable relief.

(3) Without regard to other remedies provided in this chapter, a person having a claim against the farm labor contractor for any violation of this chapter may bring suit

against the farm labor contractor and the surety bond or security deposit filed by the contractor pursuant to RCW 19.30.040, in any court of competent jurisdiction of the county in which the claim arose, or in which either the claimant or contractor resides.

(4) An action upon the bond or security deposit shall be commenced by serving and filing the summons and complaint within three years from the date of expiration or cancellation of the bond or expiration or cancellation of the license, whichever is sooner, or in the case of a security deposit, within three years of the date of expiration or revocation of the license.

(5) A copy of the summons and complaint in any such action shall be served upon the director at the time of commencement of the action and the director shall maintain a record, available for public inspection, of all suits so commenced. Such service shall constitute service on the farm labor contractor and the surety for suit upon the bond and the director shall transmit the complaint or a copy thereof to the contractor at the address listed in his or her application and to the surety within forty-eight hours after it has been received.

(6) The surety upon the bond may, upon notice to the director and the parties, tender to the clerk of the court having jurisdiction of the action an amount equal to the claims or the amount of the bond less the amount of judgments, if any, previously satisfied therefrom and to the extent of such tender the surety upon the bond shall be exonerated.

(7) If the actions commenced and pending at any one time exceed the amount of the bond then unimpaired, the claims shall be satisfied from the bond in the following order:

- (a) Wages, including employee benefits;
- (b) Other contractual damage owed to the employee;
- (c) Any costs and attorneys' fees the claimant may be entitled to recover by contract or statute.

(8) If any final judgment impairs the bond so furnished so that there is not in effect a bond undertaking in the full amount prescribed by the director, the director shall suspend the license of the contractor until the bond liability in the required amount unimpaired by unsatisfied judgment claims has been furnished. If such bond becomes fully impaired, a new bond must be furnished.

(9) A claimant against a security deposit shall be entitled to damages under subsection (2) of this section. If the farm labor contractor has filed other security with the director in lieu of a surety bond, any person having an unsatisfied final judgment against the contractor for any violation of this chapter may execute upon the security deposit held by the director by serving a certified copy of the unsatisfied final judgment by registered or certified mail upon the director. Upon the receipt of service of such certified copy, the director shall pay or order paid from the deposit, through the registry of the court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the director shall be the order of receipt by the director, but the director shall have no liability for payment in excess of the amount of the deposit. [1987 c 216 § 5; 1986 c 197 § 18; 1985 c 280 § 16.]

19.30.180 Injunctions—Costs—Attorney fee. The director or any other person may bring suit in any court of competent jurisdiction to enjoin any person from using the services of an unlicensed farm labor contractor or to enjoin any person acting as a farm labor contractor in violation of this chapter, or any rule adopted under this chapter, from committing future violations. The court may award to the prevailing party costs and disbursements and a reasonable attorney fee. [1985 c 280 § 12.]

19.30.190 Retaliation against employee prohibited. No farm labor contractor or agricultural employer may discharge or in any other manner discriminate against any employee because:

(1) The employee has made a claim against the farm labor contractor or agricultural employer for compensation for the employee's personal services.

(2) The employee has caused to be instituted any proceedings under or related to RCW 19.30.180.

(3) The employee has testified or is about to testify in any such proceedings.

(4) The employee has discussed or consulted with anyone concerning the employee's rights under this chapter. [1985 c 280 § 13.]

19.30.200 Unlicensed farm labor contractors—Liability for services. Any person who knowingly uses the services of an unlicensed farm labor contractor shall be personally, jointly, and severally liable with the person acting as a farm labor contractor to the same extent and in the same manner as provided in this chapter. In making determinations under this subsection [section], any user may rely upon either the license issued by the director to the farm labor contractor under RCW 19.30.030 or the director's representation that such contractor is licensed as required by this chapter. [1985 c 280 § 14.]

19.30.900 Severability—1955 c 392. If any section, sentence, clause or word of this chapter shall be held unconstitutional, the invalidity of such section, sentence, clause or word shall not affect the validity of any other portion of this chapter, it being the intent of this legislative assembly to enact the remainder of this chapter notwithstanding such part so declared unconstitutional should or may be so declared. [1955 c 392 § 17.]

19.30.901 Severability—1985 c 280. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 280 § 18.]

19.30.902 Effective date—1985 c 280. This 1985 act shall take effect January 1, 1986. [1985 c 280 § 19.]

Chapter 19.31
EMPLOYMENT AGENCIES

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19.31.900	Severability—1969 ex.s. c 228.
19.31.910	Effective date—1969 ex.s. c 228.

19.31.010 Short title. This chapter shall be known and cited as "The Employment Agency Act". [1969 ex.s. c 228 § 1.]

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

(1) "Employment agency" is synonymous with "agency" and shall mean any business in which any part of the business gross or net income is derived from a fee received from applicants, and in which any of the following activities are engaged in:

(a) The offering, promising, procuring, or attempting to procure employment for applicants;

(b) The giving of information regarding where and from whom employment may be obtained; or

(c) The sale of a list of jobs or a list of names of persons or companies accepting applications for specific positions, in any form.

In addition the term "employment agency" shall mean and include any person, bureau, employment listing service, employment directory, organization, or school which for profit, by advertisement or otherwise, offers, as one of its main objects or purposes, to procure employment for any person who pays for its services, or which collects tuition, or

charges for service of any nature, where the main object of the person paying the same is to secure employment. It also includes any business that provides a resume to an individual and provides that person with a list of names to whom the resume may be sent or provides that person with preaddressed envelopes to be mailed by the individual or by the business itself, if the list of names or the preaddressed envelopes have been compiled and are represented by the business as having job openings. The term "employment agency" shall not include labor union organizations, temporary service contractors, proprietary schools, nonprofit schools and colleges, career guidance and counseling services, employment directories that are sold in a manner that allows the applicant to examine the directory before purchase, theatrical agencies, farm labor contractors, or the Washington state employment agency.

(2) "Temporary service contractors" shall mean any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part time or temporary help basis to others.

(3) "Theatrical agency" means any person who, for a fee or commission, procures or attempts to procure on behalf of an individual or individuals, employment or engagements for circus, vaudeville, the variety field, the legitimate theater, motion pictures, radio, television, phonograph recordings, transcriptions, opera, concert, ballet, modeling, or other entertainments, exhibitions, or performances.

(4) "Farm labor contractor" means any person, or his agent, who, for a fee, employs workers to render personal services in connection with the production of any farm products, to, for, or under the direction of an employer engaged in the growing, producing, or harvesting of farm products, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing, producing, or harvesting of farm products or who provides in connection with recruiting, soliciting, supplying, or hiring workers engaged in the growing, producing, or harvesting of farm products, one or more of the following services: Furnishes board, lodging, or transportation for such workers, supervises, times, checks, counts, sizes, or otherwise directs or measures their work; or disburses wage payments to such persons.

(5) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(6) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(7) "Person" includes any individual, firm, corporation, partnership, association, company, society, manager, contractor, subcontractor, bureau, agency, service, office, or an agent or employee of any of the foregoing.

(8) "Director" shall mean the director of licensing.

(9) "Resume" means a document of the applicant's employment history that is approved, received, and paid for by the applicant.

(10) "Fee" means anything of value. The term includes money or other valuable consideration or services or the promise of money or other valuable consideration or services, received directly or indirectly by an employment agency from a person seeking employment, in payment for the service.

(11) "Employment listing service" means any business operated by any person that provides in any form, including written or verbal, lists of specified positions of employment available with any employer other than itself or that holds itself out to applicants as able to provide information about specific positions of employment available with any employer other than itself, and that charges a fee to the applicant for its services and does not set up interviews or otherwise intercede between employer and applicant.

(12) "Employment directory" means any business operated by any person that provides in any form, including written or verbal, lists of employers, does not provide lists of specified positions of employment, that holds itself out to applicants as able to provide information on employment in specific industries or geographical areas, and that charges a fee to the applicant for its services.

(13) "Career guidance and counseling service" means any person, firm, association, or corporation conducting a business that engages in any of the following activities:

(a) Career assessment, planning, or testing through individual counseling or group seminars, classes, or workshops;

(b) Skills analysis, resume writing, and preparation through individual counseling or group seminars, classes, or workshops;

(c) Training in job search or interviewing skills through individual counseling or group seminars, classes, or workshops: PROVIDED, That the career guidance and counseling service does not engage in any of the following activities:

(i) Contacts employers on behalf of an applicant or in any way intercedes between employer and applicant;

(ii) Provides information on specific job openings;

(iii) Holds itself out as able to provide referrals to specific companies or individuals who have specific job openings. [1993 c 499 § 1; 1990 c 70 § 1; 1979 c 158 § 82; 1977 ex.s. c 51 § 1; 1969 ex.s. c 228 § 2.]

19.31.030 Records. Each employment agency shall keep records of all services rendered employers and applicants. These records shall contain the name and address of the employer by whom the services were solicited; the name and address of the applicant; kind of position ordered by the employer; dates job orders or job listings are obtained; subsequent dates job orders or job listings are verified as still being current; kind of position accepted by the applicant; probable duration of the employment, if known; rate of wage or salary to be paid the applicant; amount of the employment agency's fee; dates and amounts of refund if any, and reason for such refund; and the contract agreed to between the agency and applicant. An employment listing service need not keep records pertaining to the kind of position accepted by applicant and probable duration of employment.

An employment directory shall keep records of all services rendered to applicants. These records shall contain:

The name and address of the applicant; amount of the employment directory's fee; dates and amounts of refund if any, and reason for the refund; the contract agreed to between the employment directory and applicant; and the dates of contact with employers made pursuant to RCW 19.31.190(11).

The director shall have authority to demand and to examine, at the employment agency's regular place of business, all books, documents, and records in its possession for inspection. Unless otherwise provided by rules or regulation adopted by the director, such records shall be maintained for a period of three years from the date in which they are made. [1993 c 499 § 2; 1969 ex.s. c 228 § 3.]

19.31.040 Contract between agency and applicant—Contents—Notice. An employment agency shall provide each applicant with a copy of the contract between the applicant and employment agency which shall have printed on it or attached to it a copy of RCW 19.31.170 as now or hereafter amended. Such contract shall contain the following:

(1) The name, address, and telephone number of the employment agency;

(2) Trade name if any;

(3) The date of the contract;

(4) The name of the applicant;

(5) The amount of the fee to be charged the applicant, or the method of computation of the fee, and the time and method of payments: PROVIDED, HOWEVER, That if the provisions of the contract come within the definition of a "retail installment transaction", as defined in RCW 63.14.010, the contract shall conform to the requirements of chapter 63.14 RCW, as now or hereafter amended;

(6) A notice in eight-point bold face type or larger directly above the space reserved in the contract for the signature of the buyer. The caption, "NOTICE TO APPLICANT—READ BEFORE SIGNING" shall precede the body of the notice and shall be in ten-point bold face type or larger. The notice shall read as follows:

"This is a contract. If you accept employment with any employer through [name of employment agency] you will be liable for the payment of the fee as set out above. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You must be given a copy of this contract at the time you sign it."

The notice for an employment listing service shall read as follows:

"This is a contract. You understand [the employment listing service] provides information on bona fide job listings but does not guarantee you will be offered a job. You also understand you are liable for the payment of the fee when you receive the list or referral. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You must be given a copy of this contract at the time you sign it."

The notice for an employment directory shall read as follows if the directory is sold in person:

"This is a contract. You understand [the employment directory] provides information on possible employers along with general employment, industry, and geographical information to assist you, but does not list actual job

openings or guarantee you will obtain employment through its services. You also understand you are liable for the payment of the fee when you receive the directory. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You must be given a copy of this contract at the time you sign it."

A verbal notice for an employment directory shall be as follows before accepting a fee if the directory is sold over the telephone:

"You understand [the employment directory] provides information on possible employers along with general employment, industry, and geographical information to assist you, but does not list actual job openings or guarantee you will obtain employment through its services. You also understand you are liable for the payment of the fee when you order the directory."

A copy of the contract must be sent to all applicants ordering by telephone and must specify the following information:

- (a) Name, address, and phone number of employment directory;
- (b) Name, address, and phone number of applicant;
- (c) Date of order;
- (d) Date verbal notice was read to applicant along with a printed statement to read as follows:

"On [date verbal notice was read] and prior to placing this order the following statement was read to you: "You understand [the employment directory] provides information on possible employers along with general employment, industry, and geographical information to assist you, but does not list actual job openings or guarantee you will be offered a job. You also understand you are liable for the payment of the fee when you order the directory."; and

- (e) Signature of employment directory representative. [1993 c 499 § 3; 1985 c 7 § 83; 1977 ex.s. c 51 § 2; 1969 ex.s. c 228 § 4.]

19.31.050 Approval of contract, fee schedule. Prior to using any contract or fee schedule in the transaction of its business with applicants, each employment agency shall obtain the director's approval for the use of such contract or fee schedule. [1969 ex.s. c 228 § 5.]

19.31.060 Request from employer for interview required—Information to be furnished applicant. No employment agency shall send any applicant on an interview with a prospective employer without having first obtained, either orally or in writing, a bona fide request from such employer for the interview: PROVIDED, HOWEVER, That, it shall be the duty of every employment agency to give to each applicant for employment, orally or in writing, before being sent on an interview, information as to the name and address of the person to whom the applicant is to apply for such employment, the kind of service to be performed, the anticipated rate of wages or compensation, the agency's fee based on such anticipated wages or compensation, whether such employment is permanent or temporary, and the name and address of the natural person authorizing the interviewing of such applicant. [1977 ex.s. c 51 § 3; 1969 ex.s. c 228 § 6.]

19.31.070 Administration of chapter—Rules—Subpoenas—Investigations—Inspections. (1) The director shall administer the provisions of this chapter and shall issue from time to time reasonable rules and regulations for enforcing and carrying out the provisions and purposes of this chapter.

(2) The director shall have power to compel the attendance of witnesses by the issuance of subpoenas, to administer oaths, and to take testimony and proofs concerning all matters pertaining to the administration of this chapter.

(3) The director shall have supervisory and investigative authority over all employment agencies. Upon receiving a complaint against any employment agency, the director shall have the right to examine all books, documents, or records in its possession. In addition, the director may examine the office or offices where business is or shall be conducted by such agency. [1969 ex.s. c 228 § 7.]

19.31.080 License required—Penalty. It shall be a misdemeanor for any person to conduct an employment agency business in this state unless he has an employment agency license issued pursuant to the provisions of this chapter. [1969 ex.s. c 228 § 8.]

19.31.090 Bond—Cash deposit—Action on bond or deposit—Procedure—Judgment. (1) Before conducting any business as an employment agency each licensee shall file with the director a surety bond in the sum of two thousand dollars running to the state of Washington, for the benefit of any person injured or damaged as a result of any violation by the licensee or his agent of any of the provisions of this chapter or of any rule or regulation adopted by the director pursuant to RCW 19.31.070(1).

(2) In lieu of the surety bond required by this section the license applicant may file with the director a cash deposit or other negotiable security acceptable to the director: PROVIDED, HOWEVER, If the license applicant has filed a cash deposit, the director shall deposit such funds with the state treasurer. If the license applicant has deposited cash or other negotiable security with the director, the same shall be returned to the licensee at the expiration of one year after the employment agency's license has expired or been revoked, if no legal action has been instituted against the licensee or the surety deposit at the expiration of the year.

(3) Any person having a claim against an employment agency for any violation of the provisions of this chapter or any rule or regulation promulgated thereunder may bring suit upon such bond or deposit in an appropriate court of the county where the office of the employment agency is located or of any county in which jurisdiction of the employment agency may be had. Action upon such bond or deposit shall be commenced by serving and filing of the complaint within one year from the date of expiration of the employment agency license in force at the time the act for which the suit is brought occurred. A copy of the complaint shall be served by registered or certified mail upon the director at the time the suit is started, and the director shall maintain a record, available for public inspection, of all suits so commenced. Such service on the director shall constitute service on the surety and the director shall transmit the complaint or a copy thereof to the surety within five busi-

ness days after it shall have been received. The surety upon the bond shall not be liable in an aggregate amount in excess of the amount named in the bond, but in case claims pending at any one time exceed the amount of the bond, claims shall be satisfied in the order of judgment rendered. In the event that any final judgment shall impair the liability of the surety upon bond so furnished or the amount of the deposit so that there shall not be in effect a bond undertaking or deposit in the full amount prescribed in this section, the director shall suspend the license of such employment agency until the bond undertaking or deposit in the required amount, unimpaired by unsatisfied judgment claims, shall have been furnished.

(4) In the event of a final judgment being entered against the deposit or security referred to in subsection (2) of this section, the director shall, upon receipt of a certified copy of the final judgment, order said judgment to be paid from the amount of the deposit or security. [1977 ex.s. c 51 § 4; 1969 ex.s. c 228 § 9.]

19.31.100 Application—Contents—Filing—Qualifications of applicants and licensees—Waiver—Exceptions.

(1) Every applicant for an employment agency's license or a renewal thereof shall file with the director a written application stating the name and address of the applicant; the street and number of the building in which the business of the employment agency is to be conducted; the name of the person who is to have the general management of the office; the name under which the business of the office is to be carried on; whether or not the applicant is pecuniarily interested in the business to be carried on under the license; shall be signed by the applicant and sworn to before a notary public; and shall identify anyone holding over twenty percent interest in the agency. If the applicant is a corporation, the application shall state the names and addresses of the officers and directors of the corporation, and shall be signed and sworn to by the president and secretary thereof. If the applicant is a partnership, the application shall also state the names and addresses of all partners therein, and shall be signed and sworn to by all of them. The application shall also state whether or not the applicant is, at the time of making the application, or has at any previous time been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(2) The application shall require a certification that no officer or holder of more than twenty percent interest in the business has been convicted of a felony within ten years of the application which directly relates to the business for which the license is sought, or had any judgment entered against such person in any civil action involving fraud, misrepresentation, or conversion.

(3) All applications for employment agency licenses shall be accompanied by a copy of the form of contract and fee schedule to be used between the employment agency and the applicant.

(4) No license to operate an employment agency in this state shall be issued, transferred, renewed, or remain in effect, unless the person who has or is to have the general management of the office has qualified pursuant to this section. The director may, for good cause shown, waive the

requirement imposed by this section for a period not to exceed one hundred and twenty days. Persons who have been previously licensed or who have operated to the satisfaction of the director for at least one year prior to September 21, 1977 as a general manager shall be entitled to operate for up to one year from such date before being required to qualify under this section. In order to qualify, such person shall, through testing procedures developed by the director, show that such person has a knowledge of this law, pertinent labor laws, and laws against discrimination in employment in this state and of the United States. Said examination shall be given at least once each quarter and a fee for such examination shall be established by the director. Nothing in this chapter shall be construed to preclude any one natural person from being designated as the person who is to have the general management of up to three offices operated by any one licensee.

While employment directories may at the director's discretion be required to show that the person has a knowledge of this chapter, employment directories are exempt from testing on pertinent labor laws, and laws against discrimination in employment in this state and of the United States.

(5) Employment directories shall register with the department and meet all applicable requirements of this chapter but shall not be required to be licensed by the department or pay a licensing fee. [1993 c 499 § 4; 1982 c 227 § 14; 1977 ex.s. c 51 § 5; 1969 ex.s. c 228 § 10.]

Effective date—1982 c 227: See note following RCW 19.09.100.

19.31.110 Expiration date of license—Reinstatement. An employment agency license shall expire June 30th. Any such license not renewed may be reinstated if the employment agency can show good cause to the director for renewal of the license and present proof of intent to continue to act as an employment agency: PROVIDED, That no license shall be issued upon such application for reinstatement until all fees and penalties previously accrued under this chapter have been paid. [1977 ex.s. c 51 § 6; 1969 ex.s. c 228 § 11.]

19.31.120 Transfer of license. No license granted pursuant to this chapter shall be transferable without the consent of the director. No employment agency shall permit any person not mentioned in the license application to become connected with the business as an owner, member, officer, or director without the consent of the director. Consent may be withheld for any reason for which an original application for a license might have been rejected, if the person in question had been mentioned therein. [1969 ex.s. c 228 § 12.]

19.31.130 Denial, suspension or revocation of license—Grounds. In accordance with the provisions of chapter 34.05 RCW as now or as hereafter amended, the director may by order deny, suspend or revoke the license of any employment agency if he finds that the applicant or licensee:

(1) Was previously the holder of a license issued under this chapter, which was revoked for cause and never reissued

by the director, or which license was suspended for cause and the terms of the suspension have not been fulfilled;

(2) Has been found guilty of any felony within the past five years involving moral turpitude, or for any misdemeanor concerning fraud or conversion, or suffering any judgment in any civil action involving wilful fraud, misrepresentation or conversion;

(3) Has made a false statement of a material fact in his application or in any data attached thereto;

(4) Has violated any provisions of this chapter, or failed to comply with any rule or regulation issued by the director pursuant to this chapter. [1969 ex.s. c 228 § 13.]

19.31.140 Fees for licensees. The director shall determine the fees, as provided in RCW 43.24.086, charged to those parties licensed as employment agencies for original applications, renewal per year, branch license, both original and renewal, transfer of license, and approval of amended or new contracts and/or fee schedules. [1985 c 7 § 84; 1975 1st ex.s. c 30 § 92; 1969 ex.s. c 228 § 14.]

19.31.150 Employment condition precedent to charging fee—Exceptions. (1) Except as otherwise provided in subsections (2) and (3) of this section, no employment agency shall charge or accept a fee or other consideration from an applicant without complying with the terms of a written contract as specified in RCW 19.31.040, and then only after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer.

(2) Employment listing services may charge or accept a fee when they provide the applicant with the job listing or the referral.

(3) An employment directory may charge or accept a fee when it provides the applicant with the directory. [1993 c 499 § 5; 1969 ex.s. c 228 § 15.]

19.31.160 Charging fee or payment contrary to chapter—Return of excess. Any employment agency which collects, receives, or retains a fee or other payment contrary to the provisions of this chapter or to the rules and regulations adopted pursuant to this chapter shall return the excessive portion of the fee within seven days after receiving a demand therefor from the director. [1969 ex.s. c 228 § 16.]

19.31.170 Limitations on fee amounts—Refunds—Exceptions. (1) If an applicant accepts employment by agreement with an employer and thereafter never reports for work, the gross fee charged to the applicant shall not exceed: (a) Ten percent of what the first month's gross salary or wages would be, if known; or (b) ten percent of the first month's drawing account. If the employment was to have been on a commission basis without any drawing account, then no fee may be charged in the event that the applicant never reports for work.

(2) If an applicant accepts employment on a commission basis without any drawing account, then the gross fee charged such applicant shall be a percentage of commissions actually earned.

(3) If an applicant accepts employment and if within sixty days of his reporting for work the employment is terminated, then the gross fee charged such applicant shall not exceed twenty percent of the gross salary, wages or commission received by him.

(4) If an applicant accepts temporary employment as a domestic, household employee, baby sitter, agricultural worker, or day laborer, then the gross fee charged such applicant shall not be in excess of twenty-five percent of the first full month's gross salary or wages: PROVIDED, That where an applicant accepts employment as a domestic or household employee for a period of less than one month, then the gross fee charged such applicant shall not exceed twenty-five percent of the gross salary or wages paid.

(5) Any applicant requesting a refund of a fee paid to an employment agency in accordance with the terms of the approved fee schedule of the employment agency pursuant to this section shall file with the employment agency a form requesting such refund on which shall be set forth information reasonably needed and requested by the employment agency, including but not limited to the following: Circumstances under which employment was terminated, dates of employment, and gross earnings of the applicant.

(6) Refund requests which are not in dispute shall be made by the employment agency within thirty days of receipt.

(7) Subsections (1) through (6) of this section do not apply to employment listing services or employment directories. [1993 c 499 § 6; 1977 ex.s. c 51 § 7; 1969 ex.s. c 228 § 17.]

19.31.180 Posting of fee limitation and remedy provisions. Each licensee shall post the following in a conspicuous place in each office in which it conducts business: (1) The substance of RCW 19.31.150 through 19.31.170; and (2) a name and address provided by the director, in a form prescribed by him, of a person to whom complaints concerning possible violation of this chapter may be made. All words required to be posted pursuant to this section shall be printed in ten point bold face type. [1969 ex.s. c 228 § 18.]

19.31.190 Rules of conduct—Complaints. In addition to the other provisions of this chapter the following rules shall govern each and every employment agency:

(1) Every license or a verified copy thereof shall be displayed in a conspicuous place in each office of the employment agency;

(2) No fee shall be solicited or accepted as an application or registration fee by any employment agency solely for the purpose of being registered as an applicant for employment;

(3) No licensee or agent of the licensee shall solicit, persuade, or induce an employee to leave any employment in which the licensee or agent of the licensee has placed the employee; nor shall any licensee or agent of the licensee persuade or induce or solicit any employer to discharge any employee;

(4) No employment agency shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for obtaining work or employment. All advertising by

a licensee shall signify that it is an employment agency solicitation except an employment listing service shall advertise it is an employment listing service;

(5) An employment directory shall include the following on all advertisements:

"Directory provides information on possible employers and general employment information but does not list actual job openings.";

(6) No licensee shall fail to state in any advertisement, proposal or contract for employment that there is a strike or lockout at the place of proposed employment, if he has knowledge that such condition exists;

(7) No licensee or agent of a licensee shall directly or indirectly split, divide, or share with an employer any fee, charge, or compensation received from any applicant who has obtained employment with such employer or with any other person connected with the business of such employer;

(8) When an applicant is referred to the same employer by two licensees, the fee shall be paid to the licensee who first contacted the applicant concerning the position for that applicant: PROVIDED, That the licensee has given the name of the employer to the applicant and has within five working days arranged an interview with the employer and the applicant was hired as the result of that interview;

(9) No licensee shall require in any manner that a potential employee or an employee of an employer make any contract with any lending agency for the purpose of fulfilling a financial obligation to the licensee;

(10) All job listings must be bona fide job listings. To qualify as a bona fide job listing the following conditions must be met:

(a) A bona fide job listing must be obtained from a representative of the employer that reflects an actual current job opening;

(b) A representative of the employer must be aware of the fact that the job listing will be made available to applicants by the employment listing service and that applicants will be applying for the job listing;

(c) All job listings and referrals must be current. To qualify as a current job listing the employment listing service shall contact the employer and verify the availability of the job listing no less than once per week;

(11) All listings for employers listed in employment directories shall be current. To qualify as a current employer, the employment directory must contact the employer at least once per month and verify that the employer is currently hiring;

(12) Any aggrieved person, firm, corporation, or public officer may submit a written complaint to the director charging the holder of an employment agency license with violation of this chapter and/or the rules and regulations adopted pursuant to this chapter. [1993 c 499 § 7; 1977 ex.s. c 51 § 8; 1969 ex.s. c 228 § 19.]

19.31.210 Enforcement. The director may refer such evidence as may be available to him concerning violations of this chapter or of any rule or regulation adopted hereunder to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose, who may, in their discretion, with or without such a reference, in addition to any other action they might commence, bring an action in

the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter: PROVIDED, That this chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, as now or hereafter amended, and the powers and duties of the attorney general and the prosecuting attorney as they may appear in the aforementioned chapters, shall apply against all persons subject to this chapter. [1969 ex.s. c 228 § 21.]

19.31.220 Assurance of discontinuance of violation. In the enforcement of this chapter, the attorney general and/or any said prosecuting attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this chapter. Any such assurance shall be in writing and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. [1969 ex.s. c 228 § 22.]

19.31.230 Civil penalty. Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this chapter, shall forfeit and pay a civil penalty of not more than five thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general and/or the prosecuting attorney acting in the name of the state may petition for the recovery of civil penalties. [1969 ex.s. c 228 § 23.]

19.31.240 Service of process outside state. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which conduct has had impact in this state which this chapter reprehends. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185, as now or hereafter amended. [1969 ex.s. c 228 § 24.]

19.31.245 Registration or licensing prerequisite to suit by employment agency—Action against unregistered or unlicensed employment agency. (1) No employment agency may bring or maintain a cause of action in any court of this state for compensation for, or seeking equitable relief in regard to, services rendered employers and applicants, unless such agency shall allege and prove that at the time of rendering the services in question, or making the contract therefor, it was registered with the department or the holder of a valid license issued under this chapter.

(2) Any person who shall give consideration of any kind to any employment agency for the performance of employment services in this state when said employment agency shall not be registered with the department or be the holder of a valid license issued under this chapter shall have a cause of action against the employment agency. Any court having jurisdiction may enter judgment therein for treble the amount of such consideration so paid, plus reasonable attorney's fees and costs.

(3) A person performing the services of an employment agency, employment listing service, or employment directory without being registered with the department or holding a

valid license shall cease operations or immediately apply for a valid license or register with the department. If the person continues to operate in violation of this chapter the director or the attorney general has a cause of action in any court having jurisdiction for the return of any consideration paid by any person to the agency. The court may enter judgment in the action for treble the amount of the consideration so paid, plus reasonable attorney's fees and costs. [1993 c 499 § 8; 1990 c 70 § 2; 1977 ex.s. c 51 § 10.]

19.31.250 Chapter provisions exclusive—Authority of political subdivisions not affected. (1) The provisions of this chapter relating to the regulation of private employment agencies shall be exclusive.

(2) This chapter shall not be construed to affect or reduce the authority of any political subdivision of the state of Washington to provide for the licensing of private employment agencies solely for revenue purposes. [1969 ex.s. c 228 § 25.]

19.31.260 Administrative procedure act to govern administration. The administration of this chapter shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW, as now or hereafter amended. [1969 ex.s. c 228 § 26.]

19.31.900 Severability—1969 ex.s. c 228. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1969 ex.s. c 228 § 27.]

19.31.910 Effective date—1969 ex.s. c 228. This act shall become effective July 1, 1969. [1969 ex.s. c 228 § 28.]

**Chapter 19.32
FOOD LOCKERS**

Sections

- 19.32.005 Transfer of duties to the department of health.
- 19.32.010 Declaration of police power.
- 19.32.020 Definitions.
- 19.32.030 Director—Duties.
- 19.32.040 Licensing required—Application.
- 19.32.050 License fees—Expiration—Annual renewal fees.
- 19.32.055 Stipulated license fee to replace existent charges.
- 19.32.060 Revocation or suspension of licenses—Grounds—Notice—Review.
- 19.32.090 Revocation or suspension of licenses—Witnesses—Evidence.
- 19.32.100 Equipment—Operation—Controls—Temperatures.
- 19.32.110 Diseased persons not to be employed—Health certificates.
- 19.32.150 Inspection of lockers and vehicles.
- 19.32.160 Liability for loss of goods.
- 19.32.165 Owners or operators not warehousemen.
- 19.32.170 Operator's lien—Liability for game law violations.
- 19.32.180 Violations—Penalty.
- 19.32.900 Severability—1943 c 117.

19.32.005 Transfer of duties to the department of health. The powers and duties of the department of social

and health services under this chapter shall be performed by the department of health. [1989 1st ex.s. c 9 § 238.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

19.32.010 Declaration of police power. This chapter is in exercise of the police powers of the state for the protection of the safety, health and welfare of the people of the state. It hereby is found and declared that the public welfare requires control and regulation of the operation of refrigerated lockers and of the sale, handling and processing of articles of human food in connection therewith, and the control, inspection and regulation of persons engaged therein, in order to prevent or eliminate unsanitary, unhealthful, fraudulent, and unfair or uneconomic practices and conditions in connection with the refrigerated locker business, which practices and conditions endanger public health, defraud customers, jeopardize the public source of supply and storage facilities of essential food products, and adversely affect an important and growing industry. It is further found and declared that the regulation of the refrigerated locker business, as above outlined, is in the interest of the economic and social well-being and the health and safety of the state and all of its people. [1943 c 117 § 1; Rem. Supp. 1943 § 6294-125.]

19.32.020 Definitions. Except where the context indicates a different meaning, terms used in this chapter shall be defined as follows:

(1) "Refrigerated locker" or "locker" means any place, premises or establishment where facilities for the cold storage and preservation of human food in separate and individual compartments are offered to the public upon a rental or other basis providing compensation to the person offering such services.

(2) "Person" includes any individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaging in the business of operating or owning or offering the services of refrigerated lockers as above defined.

(3) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement. [1982 c 182 § 31; 1943 c 117 § 2; Rem. Supp. 1943 § 6294-126.]

Severability—1982 c 182: See RCW 19.02.901.

19.32.030 Director—Duties. The director of agriculture is hereby empowered to prescribe and to enforce such rules and regulations and to make such definitions, and to prescribe such procedure with regard to hearings, as he may deem necessary to carry into effect the full intent and meaning of this chapter. [1943 c 117 § 7; Rem. Supp. 1943 § 6294-131.]

19.32.040 Licensing required—Application. No person hereafter shall engage within this state in the business of owning, operating or offering the services of any refrigerated locker or lockers without having obtained a license for

each such place of business. Application for such license shall be made through the master license system. Such licenses shall be granted as a matter of right unless conditions exist which are grounds for a cancellation or revocation of a license as hereinafter set forth. [1982 c 182 § 32; 1943 c 117 § 3; Rem. Supp. 1943 § 6294-127.]

Severability—1982 c 182: See RCW 19.02.901.

Master license system

defined: RCW 19.32.020(3).

existing licenses or permits registered under, when: RCW 19.02.810.
to include additional licenses: RCW 19.02.110.

19.32.050 License fees—Expiration—Annual renewal fees. (1) An annual fee of ten dollars shall accompany each application for a refrigerated locker license or renewal of the license. All such license and renewal fees shall be deposited in the state's general fund.

(2) Each such license shall expire on the master license expiration date unless sooner revoked for cause. Renewal may be obtained annually by paying the required annual license fee. Such license fee shall not be transferable to any person nor be applicable to any location other than that for which originally issued. [1982 c 182 § 33; 1967 c 240 § 39; 1943 c 117 § 4; Rem. Supp. 1943 § 6294-128.]

Severability—1982 c 182: See RCW 19.02.901.

Severability—1967 c 240: See note following RCW 43.23.010.

Master license system

existing licenses or permits registered under, when: RCW 19.02.810.
license expiration date: RCW 19.02.090.

19.32.055 Stipulated license fee to replace existent charges. Payment of the license fee stipulated herein shall be accepted in lieu of any and all existing fees and charges for like purposes or intent which may be existent prior to the adoption of this chapter. [1943 c 117 § 15; Rem. Supp. 1943 § 6294-139.]

19.32.060 Revocation or suspension of licenses—Grounds—Notice—Review. (1) The director of agriculture may cancel or suspend any such license if he finds after proper investigation that (a) the licensee has violated any provision of this chapter or of any other law of this state relating to the operation of refrigerated lockers or of the sale of any human food in connection therewith, or any regulation effective under any act the administration of which is in the charge of the department of agriculture, or (b) the licensed refrigerated locker premises or any equipment used therein or in connection therewith is in an unsanitary condition and the licensee has failed or refused to remedy the same within ten days after receipt from the director of agriculture of written notice to do so.

(2) No license shall be revoked or suspended by the director without delivery to the licensee of a written statement of the charge involved and an opportunity to answer such charge within ten days from the date of such notice.

(3) Any order made by the director suspending or revoking any license may be reviewed by certiorari in the superior court of the county in which the licensed premises are located, within ten days from the date notice in writing of the director's order revoking or suspending such license has been served upon him. [1943 c 117 § 5; Rem. Supp.

1943 § 6294-129. Formerly RCW 19.32.060 through 19.32.080.]

19.32.090 Revocation or suspension of licenses—Witnesses—Evidence. In any proceeding under this chapter the director of agriculture may administer oaths and issue subpoenas, summon witnesses and take testimony of any person within the state of Washington. [1943 c 117 § 10; Rem. Supp. 1943 § 6294-134.]

19.32.100 Equipment—Operation—Controls—Temperatures. Every operator of a refrigerated locker plant shall provide a complete refrigeration system with adequate capacity and accurate and reliable controls for the maintenance of the following uniform temperatures of the various refrigerated rooms if provided, under extreme conditions of outside temperatures and under peak load conditions in the normal operation of the plant. The temperatures of the following rooms shall not exceed:

(1) Chill room, temperatures within two degrees (Fahrenheit) plus or minus of thirty-five degrees (Fahrenheit) with a tolerance of ten degrees (Fahrenheit) after fresh food is put in for chilling;

(2) Sharp freeze room, sharp freeze compartments, temperatures of minus ten degrees (Fahrenheit) or lower, or temperatures of zero degrees (Fahrenheit) or lower when forced air circulation is employed, with a tolerance of ten degrees (Fahrenheit) for either type of installation after fresh food is put in for freezing;

(3) Locker room temperatures of zero degrees (Fahrenheit) with a tolerance of twelve degrees (Fahrenheit) plus. [1943 c 117 § 9; Rem. Supp. 1943 § 6294-133.]

19.32.110 Diseased persons not to be employed—Health certificates. (1) No person afflicted with any contagious or infectious disease shall work or be permitted to work in or about any refrigerated locker, nor in the handling, dealing nor processing of any human food in connection therewith.

(2) No person shall work or be permitted to work in or about any refrigerated locker in the handling, processing or dealing in any human food or any ingredient thereof without holding a certificate from a physician, duly accredited for that purpose by the department of health, certifying that such person has been examined and found free from any contagious or infectious disease. The department of health may fix a maximum fee, not exceeding two dollars which may be charged by a physician for such examination. Such certificate shall be effective for a period of six months and thereafter must be renewed following proper physical examination as aforesaid. Where such certificate is required and provided under municipal ordinance upon examination deemed adequate by the department, certificates issued thereunder shall be sufficient under this chapter.

(3) Any such certificate shall be revoked by the department of health at any time the holder thereof is found, after proper physical examination, to be afflicted with any communicable or infectious disease. Refusal of any person employed in such premises to submit to proper and reasonable physical examination upon written demand by the department of health or of the director of agriculture shall be

cause for revocation of that person's health certificate. [1991 c 3 § 287; 1985 c 213 § 11; 1943 c 117 § 6; Rem. Supp. 1943 § 6294-130. Formerly RCW 19.32.110 through 19.32.140.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

19.32.150 Inspection of lockers and vehicles. The director of agriculture shall cause to be made periodically a thorough inspection of each establishment licensed under this chapter to determine whether or not the premises are constructed, equipped and operated in accordance with the requirements of this chapter and of all other laws of this state applicable to the operation either of refrigerated lockers or of the handling of human food in connection therewith, and of all regulations effective under this chapter relative to such operation. Such inspection shall also be made of each vehicle used by [an] operator of refrigerated lockers or of an establishment handling human food in connection therewith, when such vehicle is used in transporting or distributing human food products to or from refrigerated lockers within this state. [1943 c 117 § 8; Rem. Supp. 1943 § 6294-132.]

19.32.160 Liability for loss of goods. The liability of the owner or operator of refrigerated lockers for loss of goods in lockers or in operator's care shall be limited to negligence of operation or of employees. [1943 c 117 § 12; Rem. Supp. 1943 § 6294-136. FORMER PARTS OF SECTION: (i) 1943 c 117 § 14; Rem. Supp. 1943 § 6294-138, now codified as RCW 19.32.165. (ii) 1943 c 117 § 13, part; Rem. Supp. 1943 § 6294-137, part, now codified in RCW 19.32.170.]

19.32.165 Owners or operators not warehousemen. Persons who own or operate refrigerated locker plants shall not be construed to be warehousemen, nor shall receipts or other instruments issued by such persons in the ordinary conduct of their business be construed to be negotiable warehouse receipts. [1943 c 117 § 14; Rem. Supp. 1943 § 6294-138. Formerly RCW 19.32.160, part.]

19.32.170 Operator's lien—Liability for game law violations. Every operator of a locker shall have a lien upon all the property of every kind in his possession for all lockers' rentals, processing, handling or other charges due. Such lien may be foreclosed under the procedures as provided in chapter 60.10 RCW.

Locker owners and operators shall not be responsible for liability for violations of game or other laws by renters unless the contents of the locker are under the control of the locker plant operator. [1995 c 62 § 3; 1969 c 82 § 10; 1943 c 117 § 13; Rem. Supp. 1943 § 6294-137. Formerly RCW 19.32.160, part.]

19.32.180 Violations—Penalty. Any person violating any provision of this chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars for the first offense, and not less than two hundred dollars for the second and for each and every subsequent offense, and each day that any violation contin-

ues shall constitute a separate offense. [1943 c 117 § 11; Rem. Supp. 1943 § 6294-135.]

19.32.900 Severability—1943 c 117. If any clause, sentence, paragraph, section or part of this chapter shall, for any reason, be adjudged or decreed to be invalid by any court of competent jurisdiction, such judgment or decree shall not affect, impair nor invalidate the remainder of this chapter, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered. [1943 c 117 § 16.]

Chapter 19.34

WASHINGTON ELECTRONIC AUTHENTICATION ACT

Sections

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19.34.010 Purpose and construction. (*Effective January 1, 1998.*) This chapter shall be construed consistently with what is commercially reasonable under the circumstances and to effectuate the following purposes:

- (1) To facilitate commerce by means of reliable electronic messages;
- (2) To minimize the incidence of forged digital signatures and fraud in electronic commerce;
- (3) To implement legally the general import of relevant standards, such as X.509 of the international telecommunication union, formerly known as the international telegraph and telephone consultative committee; and
- (4) To establish, in coordination with multiple states, uniform rules regarding the authentication and reliability of electronic messages. [1996 c 250 § 102.]

19.34.020 Definitions. (*Effective January 1, 1998.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

- (1) "Accept a certificate" means either:
 - (a) To manifest approval of a certificate, while knowing or having notice of its contents; or
 - (b) To apply to a licensed certification authority for a certificate, without canceling or revoking the application by delivering notice of the cancellation or revocation to the certification authority and obtaining a signed, written receipt from the certification authority, if the certification authority subsequently issues a certificate based on the application.
- (2) "Asymmetric cryptosystem" means an algorithm or series of algorithms that provide a secure key pair.
- (3) "Certificate" means a computer-based record that:
 - (a) Identifies the certification authority issuing it;
 - (b) Names or identifies its subscriber;
 - (c) Contains the subscriber's public key; and
 - (d) Is digitally signed by the certification authority issuing it.
- (4) "Certification authority" means a person who issues a certificate.
- (5) "Certification authority disclosure record" means an on-line, publicly accessible record that concerns a licensed certification authority and is kept by the secretary. A certification authority disclosure record has the contents specified by rule by the secretary under RCW 19.34.030.
- (6) "Certification practice statement" means a declaration of the practices that a certification authority employs in issuing certificates generally, or employed in issuing a material certificate.
- (7) "Certify" means to declare with reference to a certificate, with ample opportunity to reflect, and with a duty to apprise oneself of all material facts.
- (8) "Confirm" means to ascertain through appropriate inquiry and investigation.
- (9) "Correspond," with reference to keys, means to belong to the same key pair.
- (10) "Digital signature" means a transformation of a message using an asymmetric cryptosystem such that a person having the initial message and the signer's public key can accurately determine:
 - (a) Whether the transformation was created using the private key that corresponds to the signer's public key; and

(b) Whether the initial message has been altered since the transformation was made.

(11) "Financial institution" means a national or state-chartered commercial bank or trust company, savings bank, savings association, or credit union authorized to do business in the state of Washington and the deposits of which are federally insured.

(12) "Forge a digital signature" means either:

- (a) To create a digital signature without the authorization of the rightful holder of the private key; or
- (b) To create a digital signature verifiable by a certificate listing as subscriber a person who either:

- (i) Does not exist; or
- (ii) Does not hold the private key corresponding to the public key listed in the certificate.

(13) "Hold a private key" means to be authorized to utilize a private key.

(14) "Incorporate by reference" means to make one message a part of another message by identifying the message to be incorporated and expressing the intention that it be incorporated.

(15) "Issue a certificate" means the acts of a certification authority in creating a certificate and notifying the subscriber listed in the certificate of the contents of the certificate.

(16) "Key pair" means a private key and its corresponding public key in an asymmetric cryptosystem, keys which have the property that the public key can verify a digital signature that the private key creates.

(17) "Licensed certification authority" means a certification authority to whom a license has been issued by the secretary and whose license is in effect.

(18) "Message" means a digital representation of information.

(19) "Notify" means to communicate a fact to another person in a manner reasonably likely under the circumstances to impart knowledge of the information to the other person.

(20) "Operative personnel" means one or more natural persons acting as a certification authority or its agent, or in the employment of, or under contract with, a certification authority, and who have:

- (a) Managerial or policymaking responsibilities for the certification authority; or
- (b) Duties directly involving the issuance of certificates, creation of private keys, or administration of a certification authority's computing facilities.

(21) "Person" means a human being or an organization capable of signing a document, either legally or as a matter of fact.

(22) "Private key" means the key of a key pair used to create a digital signature.

(23) "Public key" means the key of a key pair used to verify a digital signature.

(24) "Publish" means to record or file in a repository.

(25) "Qualified right to payment" means an award of damages against a licensed certification authority by a court having jurisdiction over the certification authority in a civil action for violation of this chapter.

(26) "Recipient" means a person who receives or has a digital signature and is in a position to rely on it.

(27) "Recognized repository" means a repository recognized by the secretary under RCW 19.34.400.

(28) "Recommended reliance limit" means the monetary amount recommended for reliance on a certificate under RCW 19.34.280(1).

(29) "Repository" means a system for storing and retrieving certificates and other information relevant to digital signatures.

(30) "Revoke a certificate" means to make a certificate ineffective permanently from a specified time forward. Revocation is effected by notation or inclusion in a set of revoked certificates, and does not imply that a revoked certificate is destroyed or made illegible.

(31) "Rightfully hold a private key" means the authority to utilize a private key:

(a) That the holder or the holder's agents have not disclosed to a person in violation of RCW 19.34.240(1); and
(b) That the holder has not obtained through theft, deceit, eavesdropping, or other unlawful means.

(32) "Secretary" means the secretary of state.

(33) "Subscriber" means a person who:

(a) Is the subject listed in a certificate;
(b) Accepts the certificate; and
(c) Holds a private key that corresponds to a public key listed in that certificate.

(34) "Suitable guaranty" means either a surety bond executed by a surety authorized by the insurance commissioner to do business in this state, or an irrevocable letter of credit issued by a financial institution authorized to do business in this state, which, in either event, satisfies all of the following requirements:

(a) It is issued payable to the secretary for the benefit of persons holding qualified rights of payment against the licensed certification authority named as the principal of the bond or customer of the letter of credit;

(b) It is in an amount specified by rule by the secretary under RCW 19.34.030;

(c) It states that it is issued for filing under this chapter;

(d) It specifies a term of effectiveness extending at least as long as the term of the license to be issued to the certification authority; and

(e) It is in a form prescribed or approved by rule by the secretary.

A suitable guaranty may also provide that the total annual liability on the guaranty to all persons making claims based on it may not exceed the face amount of the guaranty.

(35) "Suspend a certificate" means to make a certificate ineffective temporarily for a specified time forward.

(36) "Time stamp" means either:

(a) To append or attach to a message, digital signature, or certificate a digitally signed notation indicating at least the date, time, and identity of the person appending or attaching the notation; or

(b) The notation thus appended or attached.

(37) "Transactional certificate" means a valid certificate incorporating by reference one or more digital signatures.

(38) "Trustworthy system" means computer hardware and software that:

(a) Are reasonably secure from intrusion and misuse;
(b) Provide a reasonable level of availability, reliability, and correct operation; and

(c) Are reasonably suited to performing their intended functions.

(39) "Valid certificate" means a certificate that:

(a) A licensed certification authority has issued;
(b) The subscriber listed in it has accepted;
(c) Has not been revoked or suspended; and
(d) Has not expired.

However, a transactional certificate is a valid certificate only in relation to the digital signature incorporated in it by reference.

(40) "Verify a digital signature" means, in relation to a given digital signature, message, and public key, to determine accurately that:

(a) The digital signature was created by the private key corresponding to the public key; and

(b) The message has not been altered since its digital signature was created. [1996 c 250 § 103.]

19.34.030 Secretary—Duties. (*Effective January 1, 1998.*) (1) If six months elapse during which time no certification authority is licensed in this state, then the secretary shall be a certification authority, and may issue, suspend, and revoke certificates in the manner prescribed for licensed certification authorities. Except for licensing requirements, this chapter applies to the secretary with respect to certificates he or she issues. The secretary must discontinue acting as a certification authority if another certification authority is licensed, in a manner allowing reasonable transition to private enterprise.

(2) The secretary must maintain a publicly accessible data base containing a certification authority disclosure record for each licensed certification authority. The secretary must publish the contents of the data base in at least one recognized repository.

(3) The secretary must adopt rules consistent with this chapter and in furtherance of its purposes:

(a) To govern licensed certification authorities, their practice, and the termination of a certification authority's practice;

(b) To determine an amount reasonably appropriate for a suitable guaranty, in light of the burden a suitable guaranty places upon licensed certification authorities and the assurance of quality and financial responsibility it provides to persons who rely on certificates issued by licensed certification authorities;

(c) To specify reasonable requirements for the form of certificates issued by licensed certification authorities, in accordance with generally accepted standards for digital signature certificates;

(d) To specify reasonable requirements for recordkeeping by licensed certification authorities;

(e) To specify reasonable requirements for the content, form, and sources of information in certification authority disclosure records, the updating and timeliness of the information, and other practices and policies relating to certification authority disclosure records;

(f) To specify the form of certification practice statements; and

(g) Otherwise to give effect to and implement this chapter. [1996 c 250 § 104.]

19.34.040 Secretary—Fees—Disposition. (*Effective January 1, 1998.*) The secretary may adopt rules establishing reasonable fees for all services rendered under this chapter, in amounts sufficient to compensate for the costs of all services under this chapter. All fees recovered by the secretary must be deposited in the state general fund. [1996 c 250 § 105.]

19.34.100 Certification authorities—Licensure—Qualifications. (*Effective January 1, 1998.*) (1) To obtain or retain a license, a certification authority must:

(a) Be the subscriber of a certificate published in a recognized repository;

(b) Employ as operative personnel only persons who have not been convicted within the past fifteen years of a felony or a crime involving fraud, false statement, or deception;

(c) Employ as operative personnel only persons who have demonstrated knowledge and proficiency in following the requirements of this chapter;

(d) File with the secretary a suitable guaranty, unless the certification authority is a department, office, or official of a state, city, or county governmental entity, provided that:

(i) Each of the public entities in (d) of this subsection act through designated officials authorized by rule or ordinance to perform certification authority functions; or

(ii) This state or one of the public entities in (d) of this subsection is the subscriber of all certificates issued by the certification authority;

(e) Have the right to use a trustworthy system, including a secure means for limiting access to its private key;

(f) Present proof to the secretary of having working capital reasonably sufficient, according to rules adopted by the secretary, to enable the applicant to conduct business as a certification authority;

(g) Maintain an office in this state or have established a registered agent for service of process in this state; and

(h) Comply with all further licensing requirements established by rule by the secretary.

(2) The secretary must issue a license to a certification authority that:

(a) Is qualified under subsection (1) of this section;

(b) Applies in writing to the secretary for a license; and

(c) Pays a filing fee adopted by rule by the secretary.

(3) The secretary may by rule classify licenses according to specified limitations, such as a maximum number of outstanding certificates, cumulative maximum of recommended reliance limits in certificates issued by the certification authority, or issuance only within a single firm or organization, and the secretary may issue licenses restricted according to the limits of each classification. A certification authority acts as an unlicensed certification authority in issuing a certificate exceeding the restrictions of the certification authority's license.

(4) The secretary may revoke or suspend a certification authority's license, in accordance with the administrative procedure act, chapter 34.05 RCW, for failure to comply with this chapter or for failure to remain qualified under subsection (1) of this section.

(5) The secretary may recognize by rule the licensing or authorization of certification authorities by other governmen-

tal entities, provided that those licensing or authorization requirements are substantially similar to those of this state. If licensing by another government is so recognized:

(a) RCW 19.34.300 through 19.34.350 apply to certificates issued by the certification authorities licensed or authorized by that government in the same manner as it applies to licensed certification authorities of this state; and

(b) The liability limits of RCW 19.34.280 apply to the certification authorities licensed or authorized by that government in the same manner as they apply to licensed certification authorities of this state.

(6) Unless the parties provide otherwise by contract between themselves, the licensing requirements in this section do not affect the effectiveness, enforceability, or validity of any digital signature, except that RCW 19.34.300 through 19.34.350 do not apply in relation to a digital signature that cannot be verified by a certificate issued by an unlicensed certification authority.

(7) A certification authority that has not obtained a license is not subject to the provisions of this chapter. [1996 c 250 § 201.]

19.34.110 Performance audits—Exemptions. (*Effective January 1, 1998.*) (1) A certified public accountant having expertise in computer security or an accredited computer security professional must audit the operations of each licensed certification authority at least once each year to evaluate compliance with this chapter. The secretary may by rule specify the qualifications of auditors.

(2) Based on information gathered in the audit, the auditor must categorize the licensed certification authority's compliance as one of the following:

(a) Full compliance. The certification authority appears to conform to all applicable statutory and regulatory requirements.

(b) Substantial compliance. The certification authority appears generally to conform to applicable statutory and regulatory requirements. However, one or more instances of noncompliance or of inability to demonstrate compliance were found in an audited sample, but were likely to be inconsequential.

(c) Partial compliance. The certification authority appears to comply with some statutory and regulatory requirements, but was found not to have complied or not to be able to demonstrate compliance with one or more important safeguards.

(d) Noncompliance. The certification authority complies with few or none of the statutory and regulatory requirements, fails to keep adequate records to demonstrate compliance with more than a few requirements, or refused to submit to an audit.

The secretary must publish in the certification authority disclosure record it maintains for the certification authority the date of the audit and the resulting categorization of the certification authority.

(3) The secretary may exempt a licensed certification authority from the requirements of subsection (1) of this section, if:

(a) The certification authority to be exempted requests exemption in writing;

(b) The most recent performance audit, if any, of the certification authority resulted in a finding of full or substantial compliance; and

(c) The certification authority declares under oath, affirmation, or penalty of perjury that one or more of the following is true with respect to the certification authority:

(i) The certification authority has issued fewer than six certificates during the past year and the recommended reliance limits of all of the certificates do not exceed ten thousand dollars;

(ii) The aggregate lifetime of all certificates issued by the certification authority during the past year is less than thirty days and the recommended reliance limits of all of the certificates do not exceed ten thousand dollars; or

(iii) The recommended reliance limits of all certificates outstanding and issued by the certification authority total less than one thousand dollars.

(4) If the certification authority's declaration under subsection (3) of this section falsely states a material fact, the certification authority has failed to comply with the performance audit requirements of this section.

(5) If a licensed certification authority is exempt under subsection (3) of this section, the secretary must publish in the certification authority disclosure record it maintains for the certification authority that the certification authority is exempt from the performance audit requirement. [1996 c 250 § 202.]

19.34.120 Licensed certification authorities—Enforcement—Suspension or revocation—Penalties—Costs—Procedure—Injunctions. (*Effective January 1, 1998.*) (1) The secretary may investigate the activities of a licensed certification authority material to its compliance with this chapter and issue orders to a certification authority to further its investigation and secure compliance with this chapter.

(2) The secretary may suspend or revoke the license of a certification authority for its failure to comply with an order of the secretary.

(3) The secretary may by order impose and collect a civil monetary penalty for a violation of this chapter in an amount not to exceed five thousand dollars per incident, or ninety percent of the recommended reliance limit of a material certificate, whichever is less. In case of a violation continuing for more than one day, each day is considered a separate incident.

(4) The secretary may order a certification authority, which it has found to be in violation of this chapter, to pay the costs incurred by the secretary in prosecuting and adjudicating proceedings relative to the order, and enforcing it.

(5) The secretary must exercise authority under this section in accordance with the administrative procedure act, chapter 34.05 RCW, and a licensed certification authority may obtain judicial review of the secretary's actions as prescribed by chapter 34.05 RCW. The secretary may also seek injunctive relief to compel compliance with an order. [1996 c 250 § 203.]

19.34.130 Certification authorities—Prohibited activities—Statement by secretary advising of certifica-

tion authorities creating prohibited risks—Protest—Hearing—Disposition—Notice—Procedure. (*Effective January 1, 1998.*) (1) No certification authority, whether licensed or not, may conduct its business in a manner that creates an unreasonable risk of loss to subscribers of the certification authority, to persons relying on certificates issued by the certification authority, or to a repository.

(2) The secretary may publish in the repository it provides, or elsewhere, brief statements advising subscribers, persons relying on digital signatures, or other repositories about activities of a certification authority, whether licensed or not, that create a risk prohibited by subsection (1) of this section. The certification authority named in a statement as creating or causing such a risk may protest the publication of the statement by filing a written defense of ten thousand bytes or less. Upon receipt of such a protest, the secretary must publish the protest along with the secretary's statement, and must promptly give the protesting certification authority notice and an opportunity to be heard. Following the hearing, the secretary must rescind the advisory statement if its publication was unwarranted under this section, cancel it if its publication is no longer warranted, continue or amend it if it remains warranted, or take further legal action to eliminate or reduce a risk prohibited by subsection (1) of this section. The secretary must publish its decision in the repository it provides.

(3) In the manner provided by the administrative procedure act, chapter 34.05 RCW, the secretary may issue orders and obtain injunctions or other civil relief to prevent or restrain a certification authority from violating this section, regardless of whether the certification authority is licensed. This section does not create a right of action in a person other than the secretary. [1996 c 250 § 204.]

19.34.200 Licensed certification authorities—Requirements—Disclosure—Inquiry and compensation. (*Effective January 1, 1998.*) (1) A licensed certification authority or subscriber may use only a trustworthy system:

(a) To issue, suspend, or revoke a certificate;

(b) To publish or give notice of the issuance, suspension, or revocation of a certificate; or

(c) To create a private key.

(2) A licensed certification authority must disclose any material certification practice statement, and any fact material to either the reliability of a certificate that it has issued or its ability to perform its services. A certification authority may require a signed, written, and reasonably specific inquiry from an identified person, and payment of reasonable compensation, as conditions precedent to effecting a disclosure required in this subsection. [1996 c 250 § 301.]

19.34.210 Certificate—Issuance—Confirmation of information—Publishing—Standards, statements, plans, requirements more rigorous than chapter—Revocation, suspension—Investigation—Notice—Procedure. (*Effective January 1, 1998.*) (1) A licensed certification authority may issue a certificate to a subscriber only after all of the following conditions are satisfied:

(a) The certification authority has received a request for issuance signed by the prospective subscriber; and

(b) The certification authority has confirmed that:

(i) The prospective subscriber is the person to be listed in the certificate to be issued;

(ii) If the prospective subscriber is acting through one or more agents, the subscriber duly authorized the agent or agents to have custody of the subscriber's private key and to request issuance of a certificate listing the corresponding public key;

(iii) The information in the certificate to be issued is accurate;

(iv) The prospective subscriber rightfully holds the private key corresponding to the public key to be listed in the certificate;

(v) The prospective subscriber holds a private key capable of creating a digital signature; and

(vi) The public key to be listed in the certificate can be used to verify a digital signature affixed by the private key held by the prospective subscriber.

The requirements of this subsection may not be waived or disclaimed by either the licensed certification authority, the subscriber, or both.

(2) If the subscriber accepts the issued certificate, the certification authority must publish a signed copy of the certificate in a recognized repository, as the certification authority and the subscriber named in the certificate may agree, unless a contract between the certification authority and the subscriber provides otherwise. If the subscriber does not accept the certificate, a licensed certification authority must not publish it, or must cancel its publication if the certificate has already been published.

(3) Nothing in this section precludes a licensed certification authority from conforming to standards, certification practice statements, security plans, or contractual requirements more rigorous than, but nevertheless consistent with, this chapter.

(4) After issuing a certificate, a licensed certification authority must revoke it immediately upon confirming that it was not issued as required by this section. A licensed certification authority may also suspend a certificate that it has issued for a reasonable period not exceeding forty-eight hours as needed for an investigation to confirm grounds for revocation under this subsection. The certification authority must give notice to the subscriber as soon as practicable after a decision to revoke or suspend under this subsection.

(5) The secretary may order the licensed certification authority to suspend or revoke a certificate that the certification authority issued, if, after giving any required notice and opportunity for the certification authority and subscriber to be heard in accordance with the administrative procedure act, chapter 34.05 RCW, the secretary determines that:

(a) The certificate was issued without substantial compliance with this section; and

(b) The noncompliance poses a significant risk to persons reasonably relying on the certificate.

Upon determining that an emergency requires an immediate remedy, and in accordance with the administrative procedure act, chapter 34.05 RCW, the secretary may issue an order suspending a certificate for a period not to exceed forty-eight hours. [1996 c 250 § 302.]

19.34.220 Licensed certification authorities—Warranties, obligations upon issuance of certificate—

Notice. (*Effective January 1, 1998.*) (1) By issuing a certificate, a licensed certification authority warrants to the subscriber named in the certificate that:

(a) The certificate contains no information known to the certification authority to be false;

(b) The certificate satisfies all material requirements of this chapter; and

(c) The certification authority has not exceeded any limits of its license in issuing the certificate.

The certification authority may not disclaim or limit the warranties of this subsection.

(2) Unless the subscriber and certification authority otherwise agree, a certification authority, by issuing a certificate, promises to the subscriber:

(a) To act promptly to suspend or revoke a certificate in accordance with RCW 19.34.250 or 19.34.260; and

(b) To notify the subscriber within a reasonable time of any facts known to the certification authority that significantly affect the validity or reliability of the certificate once it is issued.

(3) By issuing a certificate, a licensed certification authority certifies to all who reasonably rely on the information contained in the certificate that:

(a) The information in the certificate and listed as confirmed by the certification authority is accurate;

(b) All information foreseeably material to the reliability of the certificate is stated or incorporated by reference within the certificate;

(c) The subscriber has accepted the certificate; and

(d) The licensed certification authority has complied with all applicable laws of this state governing issuance of the certificate.

(4) By publishing a certificate, a licensed certification authority certifies to the repository in which the certificate is published and to all who reasonably rely on the information contained in the certificate that the certification authority has issued the certificate to the subscriber. [1996 c 250 § 303.]

19.34.230 Subscribers—Representations and duties upon acceptance of certificate. (*Effective January 1, 1998.*)

(1) By accepting a certificate issued by a licensed certification authority, the subscriber listed in the certificate certifies to all who reasonably rely on the information contained in the certificate that:

(a) The subscriber rightfully holds the private key corresponding to the public key listed in the certificate;

(b) All representations made by the subscriber to the certification authority and material to the information listed in the certificate are true; and

(c) All material representations made by the subscriber to a certification authority or made in the certificate and not confirmed by the certification authority in issuing the certificate are true.

(2) By requesting on behalf of a principal the issuance of a certificate naming the principal as subscriber, the requesting person certifies in that person's own right to all who reasonably rely on the information contained in the certificate that the requesting person:

(a) Holds all authority legally required to apply for issuance of a certificate naming the principal as subscriber; and

(b) Has authority to sign digitally on behalf of the principal, and, if that authority is limited in any way, adequate safeguards exist to prevent a digital signature exceeding the bounds of the person's authority.

(3) No person may disclaim or contractually limit the application of this section, nor obtain indemnity for its effects, if the disclaimer, limitation, or indemnity restricts liability for misrepresentation as against persons reasonably relying on the certificate.

(4) By accepting a certificate, a subscriber undertakes to indemnify the issuing certification authority for loss or damage caused by issuance or publication of a certificate in reliance on:

(a) A false and material representation of fact by the subscriber; or

(b) The failure by the subscriber to disclose a material fact;

if the representation or failure to disclose was made either with intent to deceive the certification authority or a person relying on the certificate, or with negligence. If the certification authority issued the certificate at the request of one or more agents of the subscriber, the agent or agents personally undertake to indemnify the certification authority under this subsection, as if they were accepting subscribers in their own right. The indemnity provided in this section may not be disclaimed or contractually limited in scope. However, a contract may provide consistent, additional terms regarding the indemnification.

(5) In obtaining information of the subscriber material to issuance of a certificate, the certification authority may require the subscriber to certify the accuracy of relevant information under oath or affirmation of truthfulness and under penalty of perjury. [1996 c 250 § 304.]

19.34.240 Private key—Control. (*Effective January 1, 1998.*) (1) By accepting a certificate issued by a licensed certification authority, the subscriber identified in the certificate assumes a duty to exercise reasonable care to retain control of the private key and prevent its disclosure to a person not authorized to create the subscriber's digital signature.

(2) A private key is the personal property of the subscriber who rightfully holds it.

(3) If a certification authority holds the private key corresponding to a public key listed in a certificate that it has issued, the certification authority holds the private key as a fiduciary of the subscriber named in the certificate, and may use that private key only with the subscriber's prior, written approval, unless the subscriber expressly grants the private key to the certification authority and expressly permits the certification authority to hold the private key according to other terms. [1996 c 250 § 305.]

19.34.250 Suspension of certificate—Evidence—Investigation—Notice—Termination—Limitation or preclusion by contract—Misrepresentation—Penalty—Release from security duty. (*Effective January 1, 1998.*)

(1) Unless the certification authority and the subscriber agree otherwise, the licensed certification authority that issued a certificate that is not a transactional certificate must suspend the certificate for a period not to exceed forty-eight hours:

(a) Upon request by a person identifying himself or herself as the subscriber named in the certificate, or as a person in a position likely to know of a compromise of the security of a subscriber's private key, such as an agent, business associate, employee, or member of the immediate family of the subscriber; or

(b) By order of the secretary under RCW 19.34.210(5).

The certification authority need not confirm the identity or agency of the person requesting suspension.

(2) Unless the certificate provides otherwise or the certificate is a transactional certificate, the secretary or a county clerk may suspend a certificate issued by a licensed certification authority for a period of forty-eight hours, if:

(a) A person identifying himself or herself as the subscriber named in the certificate or as an agent, business associate, employee, or member of the immediate family of the subscriber requests suspension; and

(b) The requester represents that the certification authority that issued the certificate is unavailable.

The secretary or county clerk may require the person requesting suspension to provide evidence, including a statement under oath or affirmation, regarding his or her identity, authorization, or the unavailability of the issuing certification authority, and may decline to suspend the certificate in its discretion. The secretary or law enforcement agencies may investigate suspensions by the secretary or county clerk for possible wrongdoing by persons requesting suspension.

(3) Immediately upon suspension of a certificate by a licensed certification authority, the licensed certification authority must give notice of the suspension according to the specification in the certificate. If one or more repositories are specified, then the licensed certification authority must publish a signed notice of the suspension in all the repositories. If a repository no longer exists or refuses to accept publication, or if no repository is recognized under RCW 19.34.400, the licensed certification authority must also publish the notice in a recognized repository. If a certificate is suspended by the secretary or county clerk, the secretary or clerk must give notice as required in this subsection for a licensed certification authority, provided that the person requesting suspension pays in advance any fee required by a repository for publication of the notice of suspension.

(4) A certification authority must terminate a suspension initiated by request only:

(a) If the subscriber named in the suspended certificate requests termination of the suspension, the certification authority has confirmed that the person requesting suspension is the subscriber or an agent of the subscriber authorized to terminate the suspension; or

(b) When the certification authority discovers and confirms that the request for the suspension was made without authorization by the subscriber. However, this subsection (4)(b) does not require the certification authority to confirm a request for suspension.

(5) The contract between a subscriber and a licensed certification authority may limit or preclude requested suspension by the certification authority, or may provide otherwise for termination of a requested suspension. However, if the contract limits or precludes suspension by the secretary or county clerk when the issuing certification

authority is unavailable, the limitation or preclusion is effective only if notice of it is published in the certificate.

(6) No person may knowingly or intentionally misrepresent to a certification authority his or her identity or authorization in requesting suspension of a certificate. Violation of this subsection is a misdemeanor.

(7) The subscriber is released from the duty to keep the private key secure under RCW 19.34.240(1) while the certificate is suspended. [1996 c 250 § 306.]

19.34.260 Revocation of certificate—Confirmation—Notice—Release from security duty—Discharge of warranties. (*Effective January 1, 1998.*) (1) A licensed certification authority must revoke a certificate that it issued but which is not a transactional certificate, after:

(a) Receiving a request for revocation by the subscriber named in the certificate; and

(b) Confirming that the person requesting revocation is the subscriber, or is an agent of the subscriber with authority to request the revocation.

(2) A licensed certification authority must confirm a request for revocation and revoke a certificate within one business day after receiving both a subscriber's written request and evidence reasonably sufficient to confirm the identity and any agency of the person requesting the suspension.

(3) A licensed certification authority must revoke a certificate that it issued:

(a) Upon receiving a certified copy of the subscriber's death certificate, or upon confirming by other evidence that the subscriber is dead; or

(b) Upon presentation of documents effecting a dissolution of the subscriber, or upon confirming by other evidence that the subscriber has been dissolved or has ceased to exist.

(4) A licensed certification authority may revoke one or more certificates that it issued if the certificates are or become unreliable, regardless of whether the subscriber consents to the revocation and notwithstanding a provision to the contrary in a contract between the subscriber and certification authority.

(5) Immediately upon revocation of a certificate by a licensed certification authority, the licensed certification authority must give notice of the revocation according to the specification in the certificate. If one or more repositories are specified, then the licensed certification authority must publish a signed notice of the revocation in all repositories. If a repository no longer exists or refuses to accept publication, or if no repository is recognized under RCW 19.34.400, then the licensed certification authority must also publish the notice in a recognized repository.

(6) A subscriber ceases to certify, as provided in RCW 19.34.230, and has no further duty to keep the private key secure, as required by RCW 19.34.240, in relation to the certificate whose revocation the subscriber has requested, beginning at the earlier of either:

(a) When notice of the revocation is published as required in subsection (5) of this section; or

(b) One business day after the subscriber requests revocation in writing, supplies to the issuing certification authority information reasonably sufficient to confirm the request, and pays any contractually required fee.

(7) Upon notification as required by subsection (5) of this section, a licensed certification authority is discharged of its warranties based on issuance of the revoked certificate and ceases to certify as provided in RCW 19.34.220 (2) and (3) in relation to the revoked certificate. [1996 c 250 § 307.]

19.34.270 Certificate—Expiration. (*Effective January 1, 1998.*) (1) A certificate must indicate the date on which it expires.

(2) When a certificate expires, the subscriber and certification authority cease to certify as provided in this chapter and the certification authority is discharged of its duties based on issuance, in relation to the expired certificate. [1996 c 250 § 308.]

19.34.280 Recommended reliance limit—Liability. (*Effective January 1, 1998.*) (1) By specifying a recommended reliance limit in a certificate, the issuing certification authority and accepting subscriber recommend that persons rely on the certificate only to the extent that the total amount at risk does not exceed the recommended reliance limit.

(2) Unless a licensed certification authority waives application of this subsection, a licensed certification authority is:

(a) Not liable for a loss caused by reliance on a false or forged digital signature of a subscriber, if, with respect to the false or forged digital signature, the certification authority complied with all material requirements of this chapter;

(b) Not liable in excess of the amount specified in the certificate as its recommended reliance limit for either:

(i) A loss caused by reliance on a misrepresentation in the certificate of a fact that the licensed certification authority is required to confirm; or

(ii) Failure to comply with RCW 19.34.210 in issuing the certificate;

(c) Liable only for direct compensatory damages in an action to recover a loss due to reliance on the certificate. Direct compensatory damages do not include:

(i) Punitive or exemplary damages. Nothing in this chapter may be interpreted to permit punitive or exemplary damages that would not otherwise be permitted by the law of this state;

(ii) Damages for lost profits or opportunity; or

(iii) Damages for pain or suffering. [1996 c 250 § 309.]

19.34.290 Collection based on suitable guaranty—Proceeds—Attorneys' fees—Costs—Notice—Recovery of qualified right of payment. (*Effective January 1, 1998.*) (1)(a) If the suitable guaranty is a surety bond, a person may recover from the surety the full amount of a qualified right to payment against the principal named in the bond, or, if there is more than one such qualified right to payment during the term of the bond, a ratable share, up to a maximum total liability of the surety equal to the amount of the bond.

(b) If the suitable guaranty is a letter of credit, a person may recover from the issuing financial institution only in accordance with the terms of the letter of credit.

Claimants may recover successively on the same suitable guaranty, provided that the total liability on the

suitable guaranty to all persons making qualified rights of payment during its term must not exceed the amount of the suitable guaranty.

(2) In addition to recovering the amount of a qualified right to payment, a claimant may recover from the proceeds of the guaranty, until depleted, the attorneys' fees, reasonable in amount, and court costs incurred by the claimant in collecting the claim, provided that the total liability on the suitable guaranty to all persons making qualified rights of payment or recovering attorneys' fees during its term must not exceed the amount of the suitable guaranty.

(3) To recover a qualified right to payment against a surety or issuer of a suitable guaranty, the claimant must:

(a) File written notice of the claim with the secretary stating the name and address of the claimant, the amount claimed, and the grounds for the qualified right to payment, and any other information required by rule by the secretary; and

(b) Append to the notice a certified copy of the judgment on which the qualified right to payment is based.

Recovery of a qualified right to payment from the proceeds of the suitable guaranty is barred unless the claimant substantially complies with this subsection (3).

(4) Recovery of a qualified right to payment from the proceeds of a suitable guaranty are forever barred unless notice of the claim is filed as required in subsection (3)(a) of this section within three years after the occurrence of the violation of this chapter that is the basis for the claim. Notice under this subsection need not include the requirement imposed by subsection (3)(b) of this section. [1996 c 250 § 310.]

19.34.300 Satisfaction of signature requirements. (*Effective January 1, 1998.*) Where a rule of law requires a signature, or provides for certain consequences in the absence of a signature, that rule is satisfied by a digital signature, if:

(1) No party affected by a digital signature objects to the use of digital signatures in lieu of a signature, and the objection may be evidenced by refusal to provide or accept a digital signature;

(2) That digital signature is verified by reference to the public key listed in a valid certificate issued by a licensed certification authority;

(3) That digital signature was affixed by the signer with the intention of signing the message, and after the signer has had an opportunity to review items being signed; and

(4) The recipient has no knowledge or notice that the signer either:

(a) Breached a duty as a subscriber; or

(b) Does not rightfully hold the private key used to affix the digital signature.

However, nothing in this chapter precludes a mark from being valid as a signature under other applicable law. [1996 c 250 § 401.]

19.34.310 Unreliable digital signatures—Risk—Notice of nonreliance—Reliance not required. (*Effective January 1, 1998.*) Unless otherwise provided by law or contract, the recipient of a digital signature assumes the risk that a digital signature is forged, if reliance on the digital

signature is not reasonable under the circumstances. If the recipient determines not to rely on a digital signature under this section, the recipient must promptly notify the signer of any determination not to rely on a digital signature and the grounds for that determination. Nothing in this chapter shall be construed to obligate a person to accept a digital signature or to respond to an electronic message containing a digital signature. [1996 c 250 § 402.]

19.34.320 Digital message as written on paper—Requirements—Other requirements not affected—Exception from uniform commercial code. (*Effective January 1, 1998.*) A message is as valid, enforceable, and effective as if it had been written on paper, if it:

(1) Bears in its entirety a digital signature; and

(2) That digital signature is verified by the public key listed in a certificate that:

(a) Was issued by a licensed certification authority; and

(b) Was valid at the time the digital signature was created.

Nothing in this chapter shall be construed to eliminate, modify, or condition any other requirements for a contract to be valid, enforceable, and effective. No digital message shall be deemed to be an instrument under the provisions of Title 62A RCW unless all parties to the transaction agree. [1996 c 250 § 403.]

19.34.330 Copies as originals—Exception. (*Effective January 1, 1998.*) A copy of a digitally signed message is as effective, valid, and enforceable as the original of the message, unless it is evident that the signer designated an instance of the digitally signed message to be a unique original, in which case only that instance constitutes the valid, effective, and enforceable message. [1996 c 250 § 404.]

19.34.340 Certificate as acknowledgment—Requirements—Exception. (*Effective January 1, 1998.*)

Unless otherwise provided by law or contract, a certificate issued by a licensed certification authority is an acknowledgment of a digital signature verified by reference to the public key listed in the certificate, regardless of whether words of an express acknowledgment appear with the digital signature and regardless of whether the signer physically appeared before the certification authority when the digital signature was created, if that digital signature is:

(1) Verifiable by that certificate; and

(2) Affixed when that certificate was valid. [1996 c 250 § 405.]

19.34.350 Adjudicating disputes—Presumptions. (*Effective January 1, 1998.*) In adjudicating a dispute involving a digital signature, a court of this state presumes that:

(1) A certificate digitally signed by a licensed certification authority and either published in a recognized repository, or made available by the issuing certification authority or by the subscriber listed in the certificate is issued by the certification authority that digitally signed it and is accepted by the subscriber listed in it.

(2) The information listed in a valid certificate and confirmed by a licensed certification authority issuing the certificate is accurate.

(3) If a digital signature is verified by the public key listed in a valid certificate issued by a licensed certification authority:

(a) That digital signature is the digital signature of the subscriber listed in that certificate;

(b) That digital signature was affixed by that subscriber with the intention of signing the message; and

(c) The recipient of that digital signature has no knowledge or notice that the signer:

(i) Breached a duty as a subscriber; or

(ii) Does not rightfully hold the private key used to affix the digital signature.

(4) A digital signature was created before it was time stamped by a disinterested person utilizing a trustworthy system. [1996 c 250 § 406.]

19.34.400 Recognition of repositories—Application—Discontinuance—Procedure. (*Effective January 1, 1998.*) (1) The secretary must recognize one or more repositories, after finding that a repository to be recognized:

(a) Is operated under the direction of a licensed certification authority;

(b) Includes a data base containing:

(i) Certificates published in the repository;

(ii) Notices of suspended or revoked certificates published by licensed certification authorities or other persons suspending or revoking certificates;

(iii) Certification authority disclosure records for licensed certification authorities;

(iv) All orders or advisory statements published by the secretary in regulating certification authorities; and

(v) Other information adopted by rule by the secretary;

(c) Operates by means of a trustworthy system;

(d) Contains no significant amount of information that is known or likely to be untrue, inaccurate, or not reasonably reliable;

(e) Contains certificates published by certification authorities that conform to legally binding requirements that the secretary finds to be substantially similar to, or more stringent toward the certification authorities, than those of this state;

(f) Keeps an archive of certificates that have been suspended or revoked, or that have expired, within at least the past three years; and

(g) Complies with other reasonable requirements adopted by rule by the secretary.

(2) A repository may apply to the secretary for recognition by filing a written request and providing evidence to the secretary sufficient for the secretary to find that the conditions for recognition are satisfied.

(3) A repository may discontinue its recognition by filing thirty days' written notice with the secretary. In addition the secretary may discontinue recognition of a repository in accordance with the administrative procedure act, chapter 34.05 RCW, if it concludes that the repository no longer satisfies the conditions for recognition listed in this

section or in rules adopted by the secretary. [1996 c 250 § 501.]

19.34.410 Repositories—Liability—Exemptions. (*Effective January 1, 1998.*) (1) Notwithstanding a disclaimer by the repository or a contract to the contrary between the repository, a certification authority, or a subscriber, a repository is liable for a loss incurred by a person reasonably relying on a digital signature verified by the public key listed in a suspended or revoked certificate, if loss was incurred more than one business day after receipt by the repository of a request to publish notice of the suspension or revocation, and the repository had failed to publish the notice when the person relied on the digital signature.

(2) Unless waived, a recognized repository or the owner or operator of a recognized repository is:

(a) Not liable for failure to record publication of a suspension or revocation, unless the repository has received notice of publication and one business day has elapsed since the notice was received;

(b) Not liable under subsection (1) of this section in excess of the amount specified in the certificate as the recommended reliance limit;

(c) Liable under subsection (1) of this section only for direct compensatory damages, which do not include:

(i) Punitive or exemplary damages;

(ii) Damages for lost profits or opportunity; or

(iii) Damages for pain or suffering;

(d) Not liable for misrepresentation in a certificate published by a licensed certification authority;

(e) Not liable for accurately recording or reporting information that a licensed certification authority, or court clerk, or the secretary has published as required or permitted in this chapter, including information about suspension or revocation of a certificate;

(f) Not liable for reporting information about a certification authority, a certificate, or a subscriber, if the information is published as required or permitted in this chapter or a rule adopted by the secretary, or is published by order of the secretary in the performance of the licensing and regulatory duties of that office under this chapter. [1996 c 250 § 502.]

19.34.500 Rule making. (*Effective January 1, 1998.*) The secretary of state may adopt rules to implement this chapter beginning July 1, 1996. [1996 c 250 § 603.]

19.34.900 Short title. This chapter shall be known and may be cited as the Washington electronic authentication act. [1996 c 250 § 101.]

19.34.901 Effective date—1996 c 250. This act shall take effect January 1, 1998. [1996 c 250 § 602.]

19.34.902 Severability—1996 c 250. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1996 c 250 § 604.]

19.34.903 Part headings and section captions not law—1996 c 250. Part headings and section captions as used in this act do not constitute any part of the law. [1996 c 250 § 605.]

Chapter 19.36

CONTRACTS AND CREDIT AGREEMENTS REQUIRING WRITINGS

Sections

- 19.36.010 Contracts, etc., void unless in writing.
- 19.36.020 Deeds, etc., in trust for grantor void as to creditors.
- 19.36.100 "Credit agreement" defined.
- 19.36.110 Enforceability of credit agreements—Effect of oral agreements and partial performance.
- 19.36.120 Exempt agreements.
- 19.36.130 Notice required.
- 19.36.140 Notice—Form and contents.
- 19.36.900 Effective date—Application—1990 c 211.

Assignment for benefit of creditors: Chapter 7.08 RCW.

Contracts

by telegraph: RCW 5.52.010.

of minors: Chapters 26.28 and 26.30 RCW.

Conveyances of real property: Chapter 64.04 RCW.

Fraudulent conveyances: Chapter 19.40 RCW.

Leases of real property: RCW 59.04.010.

19.36.010 Contracts, etc., void unless in writing. In the following cases, specified in this section, any agreement, contract and promise shall be void, unless such agreement, contract or promise, or some note or memorandum thereof, be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized, that is to say: (1) Every agreement that by its terms is not to be performed in one year from the making thereof; (2) every special promise to answer for the debt, default, or misdoings of another person; (3) every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry; (4) every special promise made by an executor or administrator to answer damages out of his own estate; (5) an agreement authorizing or employing an agent or broker to sell or purchase real estate for compensation or a commission. [1905 c 58 § 1; RRS § 5825. Prior: Code 1881 § 2325; 1863 p 412 § 2; 1860 p 298 § 2; 1854 p 403 § 2.]

19.36.020 Deeds, etc., in trust for grantor void as to creditors. That all deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the existing or subsequent creditors of such person. [Code 1881 § 2324; RRS § 5824. Prior: 1863 p 412 § 1; 1860 p 298 § 1; 1854 p 403 § 1.]

19.36.100 "Credit agreement" defined. "Credit agreement" means an agreement, promise, or commitment to lend money, to otherwise extend credit, to forbear with respect to the repayment of any debt or the exercise of any remedy, to modify or amend the terms under which the creditor has lent money or otherwise extended credit, to release any guarantor or consigner [cosigner], or to make

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any other financial accommodation pertaining to a debt or other extension of credit. [1990 c 211 § 1.]

19.36.110 Enforceability of credit agreements—Effect of oral agreements and partial performance. A credit agreement is not enforceable against the creditor unless the agreement is in writing and signed by the creditor. The rights and obligations of the parties to a credit agreement shall be determined solely from the written agreement, and any prior or contemporaneous oral agreements between the parties are superseded by, merged into, and may not vary the credit agreement. Partial performance of a credit agreement does not remove the agreement from the operation of this section. [1990 c 211 § 3.]

19.36.120 Exempt agreements. RCW 19.36.100 through 19.36.140 and 19.36.900 shall not apply to: (1) A promise, agreement, undertaking, document, or commitment relating to a credit card or charge card; or (2) a loan of money or extension of credit to a natural person that is primarily for personal, family, or household purposes and not primarily for investment, business, agricultural, or commercial purposes. [1990 c 211 § 2.]

19.36.130 Notice required. If a notice complying with RCW 19.36.140, is not given simultaneously with or before a credit agreement is made, RCW 19.36.100 through 19.36.140 and 19.36.900 shall not apply to the credit agreement. Notice, once given to a debtor, shall be effective as to all subsequent credit agreements and effective against the debtor, and its guarantors, successors, and assigns. [1990 c 211 § 4.]

19.36.140 Notice—Form and contents. The creditor shall give notice to the other party on a separate document or incorporated into one or more of the documents relating to a credit agreement. The notice shall be in type that is bold face, capitalized, underlined, or otherwise set out from surrounding written materials so it is conspicuous. The notice shall state substantially the following:

Oral agreements or oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law.

[1990 c 211 § 5.]

19.36.900 Effective date—Application—1990 c 211. RCW 19.36.100 through 19.36.140 shall take effect July 1, 1990, and shall apply only to credit agreements entered into on or after July 1, 1990. [1990 c 211 § 6.]

Chapter 19.40

UNIFORM FRAUDULENT TRANSFER ACT

Sections

- 19.40.011 Definitions.
- 19.40.021 Insolvency.
- 19.40.031 Value.
- 19.40.041 Transfers fraudulent as to present and future creditors.
- 19.40.051 Transfers fraudulent as to present creditors.

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- 19.40.061 When transfer is made or obligation is incurred.
 19.40.071 Remedies of creditors.
 19.40.081 Defenses, liability, and protection of transferee.
 19.40.091 Extinguishment of cause of action.
 19.40.900 Short title.
 19.40.901 Captions not law.
 19.40.902 Supplementary provisions.
 19.40.903 Uniformity of application and construction.

Assignment for benefit of creditors: Chapter 7.08 RCW.

Conveyances of property to qualify for public assistance: RCW 74.08.331 through 74.08.338.

Disposal of property to defraud creditors, etc.: RCW 9.45.080 through 9.45.100.

19.40.011 Definitions. As used in this chapter:

(1) "Affiliate" means:

(i) A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities;

(A) As a fiduciary or agent without sole discretionary power to vote the securities; or

(B) Solely to secure a debt, if the person has not exercised the power to vote;

(ii) A corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(A) As a fiduciary or agent without sole power to vote the securities; or

(B) Solely to secure a debt, if the person has not in fact exercised the power to vote;

(iii) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(iv) A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

(i) Property to the extent it is encumbered by a valid lien; or

(ii) Property to the extent it is generally exempt under nonbankruptcy law.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person who has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person who is liable on a claim.

(7) "Insider" includes:

(i) If the debtor is an individual:

(A) A relative of the debtor or of a general partner of the debtor;

(B) A partnership in which the debtor is a general partner;

(C) A general partner in a partnership described in subsection (7)(i)(B) of this section; or

(D) A corporation of which the debtor is a director, officer, or person in control;

(ii) If the debtor is a corporation:

(A) A director of the debtor;

(B) An officer of the debtor;

(C) A person in control of the debtor;

(D) A partnership in which the debtor is a general partner;

(E) A general partner in a partnership described in subsection (7)(ii)(D) of this section; or

(F) A relative of a general partner, director, officer, or person in control of the debtor;

(iii) If the debtor is a partnership:

(A) A general partner in the debtor;

(B) A relative of a general partner in, or a general partner of, or a person in control of the debtor;

(C) Another partnership in which the debtor is a general partner;

(D) A general partner in a partnership described in subsection (7)(iii)(C) of this section; or

(E) A person in control of the debtor;

(iv) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(v) A managing agent of the debtor.

(8) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) "Property" means anything that may be the subject of ownership.

(11) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings. [1987 c 444 § 1.]

Effective date—1987 c 444: "This act shall take effect July 1, 1988." [1987 c 444 § 16.]

19.40.021 Insolvency. (a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation.

(b) A debtor who is generally not paying his or her debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets, at a fair valuation, and the sum of the excess of the value of each

general partner's nonpartnership assets over the partner's nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset. [1987 c 444 § 2.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.031 Value. (a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of RCW 19.40.041(a)(2) and 19.40.051, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous. [1987 c 444 § 3.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.041 Transfers fraudulent as to present and future creditors. (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

(b) In determining actual intent under subsection (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;

(3) The transfer or obligation was disclosed or concealed;

(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) The transfer was of substantially all the debtor's assets;

(6) The debtor absconded;

(7) The debtor removed or concealed assets;

(8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor. [1987 c 444 § 4.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.051 Transfers fraudulent as to present creditors. (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent. [1987 c 444 § 5.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.061 When transfer is made or obligation is incurred. For the purposes of this chapter:

(1) A transfer is made:

(i) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(ii) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee;

(2) If applicable law permits the transfer to be perfected as provided in subsection (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action;

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee;

(4) A transfer is not made until the debtor has acquired rights in the asset transferred;

(5) An obligation is incurred:

(i) If oral, when it becomes effective between the parties; or

(ii) If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee. [1987 c 444 § 6.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.071 Remedies of creditors. (a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in RCW 19.40.081, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by *chapter 7.12 RCW;

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds. [1987 c 444 § 7.]

*Reviser's note: Chapter 7.12 RCW was recodified by 1987 c 442 § 1121. See Comparative Table for that chapter in the Table of Disposition of Former RCW Sections, Volume 0.

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.081 Defenses, liability, and protection of transferee. (a) A transfer or obligation is not voidable under RCW 19.40.041(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under RCW 19.40.071(a)(1), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made; or

(2) Any subsequent transferee other than a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) A lien on or a right to retain any interest in the asset transferred;

(2) Enforcement of any obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under RCW 19.40.041(a)(2) or 19.40.051 if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) Enforcement of a security interest in compliance with Article 9 of Title 62A RCW.

(f) A transfer is not voidable under RCW 19.40.051(b):

(1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor. [1987 c 444 § 8.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.091 Extinguishment of cause of action. A cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

(a) Under RCW 19.40.041(a)(1), within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(b) Under RCW 19.40.041(a)(2) or 19.40.051(a), within four years after the transfer was made or the obligation was incurred; or

(c) Under RCW 19.40.051(b), within one year after the transfer was made or the obligation was incurred. [1987 c 444 § 9.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.900 Short title. This chapter may be cited as the uniform fraudulent transfer act. [1987 c 444 § 12.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.901 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1987 c 444 § 13.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.902 Supplementary provisions. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions. [1987 c 444 § 10.]

Effective date—1987 c 444: See note following RCW 19.40.011.

19.40.903 Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1987 c 444 § 11.]

Effective date—1987 c 444: See note following RCW 19.40.011.

Chapter 19.48
HOTELS, LODGING HOUSES, ETC.—
RESTAURANTS

Sections

- 19.48.010 Definitions.
- 19.48.020 Record of guests—Hotels and trailer camps.
- 19.48.030 Liability for loss of valuables when safe or vault furnished—Limitation.
- 19.48.070 Liability for loss of baggage and other property—Limitation—Storage—Disposal.
- 19.48.110 Obtaining hotel, restaurant, lodging house, ski area, etc., accommodations by fraud—Penalty.
- 19.48.900 Severability—1929 c 216.

Alcoholic beverage control: Title 66 RCW.

Discrimination: Chapter 49.60 RCW, RCW 9.91.010.

Hotel and restaurant safety regulations: Chapter 70.62 RCW.

Lien of hotels and lodging and boarding houses: Chapter 60.64 RCW.

19.48.010 Definitions. Any building held out to the public to be an inn, hotel or public lodging house or place where sleeping accommodations, whether with or without meals, or the facilities for preparing the same, are furnished for hire to transient guests, in which fifteen or more rooms are used for the accommodation of such guests, shall for the purposes of this chapter and chapter 60.64 RCW, or any amendment thereof, only, be defined to be a hotel, and whenever the word hotel shall occur in this chapter and chapter 60.64 RCW, or any amendment thereof, it shall be construed to mean a hotel as herein described. [1929 c 216 § 1; 1915 c 190 § 1; 1909 c 29 § 1; RRS § 6860. FORMER PART OF SECTION: 1933 c 114 § 1, part; 1929 c 216 § 2, part; 1915 c 190 § 3, part; 1890 p 95 § 1, part; RRS § 6862, part, now codified in RCW 19.48.030.]

Guest defined: RCW 60.64.010.

19.48.020 Record of guests—Hotels and trailer camps. Every hotel and trailer camp shall keep a record of the arrival and departure of its guests in such a manner that the record will be a permanent one for at least one year from the date of departure: PROVIDED, That this requirement shall not apply with respect to guests of tenants in mobile home parks, as defined in RCW 59.20.030. [1979 ex.s. c 186 § 14; 1955 c 138 § 1; 1915 c 190 § 2; RRS § 6861.]

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

19.48.030 Liability for loss of valuables when safe or vault furnished—Limitation. Whenever the proprietor, keeper, owner, operator, lessee, or manager of any hotel, lodging house or inn shall provide a safe or vault for the safekeeping of any money, bank notes, jewelry, precious stones, ornaments, railroad mileage books or tickets, negotiable securities or other valuable papers, bullion, or other valuable property of small compass belonging to the guests, boarders or lodgers of such hotel, lodging house or inn, and shall notify the guests, boarders or lodgers thereof by posting a notice in three or more public and conspicuous places in the office, elevators, public rooms, elevator lobbies, public corridors, halls or entrances, or in the public parlors of such hotel, lodging house or inn, stating the fact that such safe or

vault is provided in which such property may be deposited; and if such guests, boarders or lodgers shall neglect to deliver such property to the person in charge of such office, for deposit in the safe or vault, the proprietor, keeper, owner, operator, lessee or manager, whether individual, partnership or corporation, of such hotel, lodging house or inn shall not be liable for any loss or destruction of any such property, or any damage thereto, sustained by such guests, boarders or lodgers, by negligence of such proprietor, keeper, owner, operator, lessee or manager, or his, her, their or its employees, or by fire, theft, burglary, or any other cause whatsoever; but no proprietor, keeper, owner, operator, lessee or manager of any hotel, lodging house or inn, shall be obliged to receive property on deposit for safekeeping exceeding one thousand dollars in value; and if such guests, boarders or lodgers shall deliver such property to the person in charge of said office for deposit in such safe or vault, said proprietor, keeper, owner, operator, lessee, or manager, shall not be liable for the loss or destruction thereof, or damage thereto, sustained by such guests, boarders or lodgers in any such hotel, lodging house, or inn, exceeding the sum of one thousand dollars, notwithstanding said property may be of greater value, unless by special arrangement in writing with such proprietor, keeper, owner, operator, lessee or manager: PROVIDED, HOWEVER, That in case of such deposit of such property, the proprietor, keeper, owner, operator, lessee or manager of such hotel, lodging house, or inn, shall in no event be liable for loss or destruction thereof, or damage thereto, unless caused by the theft or gross negligence of such proprietor, keeper, owner, operator, lessee, or manager, of his, her, their, or its agents, servants or employees. [1933 c 114 § 1; 1929 c 216 § 2; 1915 c 190 § 3; 1890 p 95 § 1; RRS § 6862. Formerly RCW 19.48.010, part, 19.48.030 through 19.48.060.]

19.48.070 Liability for loss of baggage and other property—Limitation—Storage—Disposal. Except as provided for in RCW 19.48.030, the proprietor, keeper, owner, operator, lessee or manager, whether individual, partnership or corporation, of a hotel, lodging house, or inn, shall not be liable for the loss or destruction of, or damage to any personal property brought or sent into such hotel, lodging house, or inn, by or for any of the guests, boarders or lodgers thereof, unless such loss, destruction or damage is occasioned by the gross negligence of such proprietor, keeper, owner, operator, lessee or manager, or his, her, their, or its agents, servants or employees; but in no event shall such liability exceed the sum of two hundred dollars, unless such proprietor, keeper, owner, operator, lessee, or manager, shall have contracted in writing with such guest, boarder, or lodger to assume a greater liability: PROVIDED, HOWEVER, That in no event shall liability of the proprietor, keeper, owner, operator, lessee or manager, or his, her, their, or its agents, servants or employees, of a hotel, lodging house, or inn exceed the following: For a guest, boarder or lodger, paying twenty-five cents per day, for lodging, or for any person who is not a guest, boarder or lodger, the liability for loss, destruction or damage, shall not exceed the sum of fifty dollars for a trunk and contents, ten dollars for a suitcase or valise and contents, five dollars for a box, bundle or package, and ten dollars for wearing apparel or miscellaneous

effects. For a guest, boarder or lodger, paying fifty cents a day for lodging, the liability for loss, destruction or damage shall not exceed seventy-five dollars for a trunk and contents, twenty dollars for a suitcase or valise and contents, ten dollars for a box, bundle or package and contents, and twenty dollars for wearing apparel and miscellaneous effects. For a guest, boarder or lodger paying more than fifty cents per day for lodging, the liability for loss, destruction or damage shall not exceed one hundred fifty dollars for a trunk and contents, fifty dollars for a suitcase or valise and contents, ten dollars for a box, bundle or package and contents, and fifty dollars for wearing apparel and miscellaneous effects, unless in such case such proprietor, keeper, owner, operator, lessee, or manager of such hotel, lodging house, or inn, shall have consented in writing to assume a greater liability: AND PROVIDED FURTHER, Whenever any person shall suffer his baggage or property to remain in any hotel, lodging house, or inn, after leaving the same as a guest, boarder or lodger, and after the relation of guest, boarder or lodger between such person and the proprietor, keeper, owner, operator, lessee, or manager of such hotel, lodging house, or inn, has ceased, or shall forward or deliver the same to such hotel, lodging house, or inn, before, or without, becoming a guest, boarder, or lodger thereof, and the same shall be received into such hotel, lodging house, or inn, the liability of such proprietor, keeper, owner, operator, lessee, or manager thereof shall in no event exceed the sum of one hundred dollars, and such proprietor, keeper, owner, operator, lessee, or manager, may at his, her, their or its option, hold such baggage or property at the risk of such owner thereof; and when any baggage or property has been kept or stored by such hotel, lodging house, or inn, for six months after such relation of guest, boarder or lodger has ceased, or when such relation does not exist, after six months from the receipt of such baggage or property in such hotel, lodging house, or inn, such proprietor, keeper, owner, operator, lessee, or manager, may, if he, she, they or it so desires, sell the same at public auction in the manner now or hereinafter provided by law for the sale of property to satisfy a hotel keeper's lien, and from the proceeds of such sale pay or reimburse himself the expenses incurred for advertisement and sale, as well as any storage that may have accrued, and any other amounts owing by such person to said hotel, lodging house, or inn: PROVIDED, That when any such baggage or property is received, kept or stored therein after such relation does not exist, such proprietor, keeper, owner, operator, lessee, or manager, may, if he, she, or it, so desires, deliver the same at any time to a storage or warehouse company for storage, and in such event all responsibility or liability of such hotel, lodging house, or inn, for such baggage or property, or for storage charges thereon, shall thereupon cease and terminate. [1929 c 216 § 3; 1917 c 57 § 1; 1915 c 190 § 4; RRS § 6863. Formerly RCW 19.48.070 through 19.48.100.]

19.48.110 Obtaining hotel, restaurant, lodging house, ski area, etc., accommodations by fraud—Penalty. Any person who shall wilfully obtain food, money, credit, use of ski area facilities, lodging or accommodation at any hotel, inn, restaurant, commercial ski area, boarding house or lodging house, without paying therefor, with intent to

defraud the proprietor, owner, operator or keeper thereof; or who obtains food, money, credit, use of ski area facilities, lodging or accommodation at such hotel, inn, restaurant, commercial ski area, boarding house or lodging house, by the use of any false pretense; or who, after obtaining food, money, credit, use of ski area facilities, lodging, or accommodation at such hotel, inn, restaurant, commercial ski area, boarding house, or lodging house, removes or causes to be removed from such hotel, inn, restaurant, commercial ski area, boarding house or lodging house, his or her baggage, without the permission or consent of the proprietor, manager or authorized employee thereof, before paying for such food, money, credit, use of ski area facilities, lodging or accommodation, shall be guilty of a gross misdemeanor: PROVIDED, That if the aggregate amount of food, money, use of ski area facilities, lodging or accommodation, or credit so obtained is seventy-five dollars or more such person shall be guilty of a felony. Proof that food, money, credit, use of ski area facilities, lodging or accommodation were obtained by false pretense or by false or fictitious show or pretense of any baggage or other property, or that the person refused or neglected to pay for such food, money, credit, use of ski area facilities, lodging or accommodation on demand, or that he or she gave in payment for such food, money, credit, use of ski area facilities, lodging or accommodation, negotiable paper on which payment was refused, or that he or she absconded, or departed from, or left, the premises without paying for such food, money, credit, use of ski area facilities, lodging or accommodation, or that he or she removed, or attempted to remove, or caused to be removed, or caused to be attempted to be removed his or her property or baggage, shall be prima facie evidence of the fraudulent intent hereinbefore mentioned. [1985 c 129 § 2; 1974 ex.s. c 21 § 1; 1929 c 216 § 6; 1915 c 190 § 7; 1890 p 96 § 2; RRS § 6866. Formerly RCW 19.48.110, 19.48.120.]

Legislative findings—1985 c 129: "The legislature finds that commercial ski areas, which contribute significantly to the economic well-being of the state, suffer substantial financial losses from the fraudulent use of their facilities by persons who obtain services without paying for them. It is therefore the intent of the legislature that the law that protects hotels, inns, and restaurants from such fraud be extended to also protect commercial ski areas." [1985 c 129 § 1.]

Leaving restaurant or hotel or motel without paying: RCW 4.24.230.

19.48.900 Severability—1929 c 216. In the event that any section or any part of any section of this act, or this act as it applies to any persons or under any circumstances, should be adjudged invalid, such adjudication shall not affect or impair the validity of the remainder of this act, or the act as it applies to other persons, and under other circumstances. [1929 c 216 § 7.]

Chapter 19.52 INTEREST—USURY

Sections

19.52.005	Declaration of policy.
19.52.010	Rate in absence of agreement—Application to consumer leases.
19.52.020	Highest rate permissible—Setup charges.
19.52.025	Highest rate permissible—Computation—Publication in the Washington State Register.

- 19.52.030 Usury—Penalty upon suit on contract—Costs and attorneys' fees.
- 19.52.032 Declaratory judgment action to establish usury—Time limitations for commencing.
- 19.52.034 Application of chapter 19.52 RCW to loan or forbearance made outside state.
- 19.52.036 Application of consumer protection act.
- 19.52.060 Interest on charges in excess of published rates.
- 19.52.080 Defense of usury or maintaining action thereon prohibited if transaction primarily agricultural, commercial, investment, or business—Exception.
- 19.52.090 Defense of usury or maintaining action thereon prohibited for certain types of transactions after May 1, 1980, and prior to March 1, 1981.
- 19.52.100 Chapter not applicable to retail installment transactions.
- 19.52.110 Limitations in chapter not applicable to interest charged by broker-dealers—When.
- 19.52.115 Lender credit card agreements subject to provisions of chapter 19.52 RCW.
- 19.52.120 Sales contract providing for deferred payment of purchase price not subject to chapter.
- 19.52.130 Charge made by assignee of retail installment contract or charge agreement to seller-assignor not limited by chapter—No agreement between credit card issuing bank and retailer shall prohibit discounts for cash payment.
- 19.52.140 Chapter not applicable to interest, penalties, or costs on delinquent property taxes.
- 19.52.150 Defense or action of usury not applicable to consumer leases.
- 19.52.160 Chapter not applicable to mobile homes.
- 19.52.170 Chapter not applicable to certain loans from tax-qualified retirement plan.
- 19.52.900 Application—Construction—1981 c 78.

Interest

rates on pledged property: RCW 19.60.060.

rates on warrants: Chapter 39.56 RCW.

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

19.52.005 Declaration of policy. RCW 19.52.005, 19.52.020, 19.52.030, 19.52.032, 19.52.034, and 19.52.036 are enacted in order to protect the residents of this state from debts bearing burdensome interest rates; and in order to better effect the policy of this state to use this state's policies and courts to govern the affairs of our residents and the state; and in recognition of the duty to protect our citizens from oppression generally. [1967 ex.s. c 23 § 2.]

Severability—1967 ex.s. c 23: "If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby." [1967 ex.s. c 23 § 8.]

Savings—1967 ex.s. c 23: "The provisions of this 1967 amendatory act shall not apply to transactions entered into prior to the effective date hereof." [1967 ex.s. c 23 § 9.]

19.52.010 Rate in absence of agreement—Application to consumer leases. (1) Every loan or forbearance of money, goods, or thing in action shall bear interest at the rate of twelve percent per annum where no different rate is agreed to in writing between the parties: PROVIDED, That with regard to any transaction heretofore or hereafter entered into subject to this section, if an agreement in writing between the parties evidencing such transaction provides for the payment of money at the end of an agreed period of time or in installments over an agreed period of time, then such agreement shall constitute a writing for purposes of this section and satisfy the requirements thereof. The discounting of commercial paper, where the borrower

makes himself liable as maker, guarantor, or indorser, shall be considered as a loan for the purposes of this chapter.

(2) A lease shall not be considered a loan or forbearance for the purposes of this chapter if:

(a) It constitutes a "consumer lease" as defined in RCW 63.10.020;

(b) It constitutes a lease-purchase agreement under chapter 63.19 RCW; or

(c) It would constitute such "consumer lease" but for the fact that:

(i) The lessee was not a natural person;

(ii) The lease was not primarily for personal, family, or household purposes; or

(iii) The total contractual obligation exceeded twenty-five thousand dollars. [1992 c 134 § 13. Prior: 1983 c 309 § 1; 1983 c 158 § 6; 1981 c 80 § 1; 1899 c 80 § 1; RRS § 7299; prior: 1895 c 136 § 1; 1893 c 20 § 1; Code 1881 § 2368; 1863 p 433 § 1; 1854 p 380 § 1.]

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

Severability—1983 c 158: See RCW 63.10.900.

19.52.020 Highest rate permissible—Setup charges.

(1) Any rate of interest shall be legal so long as the rate of interest does not exceed the higher of: (a) Twelve percent per annum; or (b) four percentage points above the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted during the calendar month immediately preceding the later of (i) the establishment of the interest rate by written agreement of the parties to the contract, or (ii) any adjustment in the interest rate in the case of a written agreement permitting an adjustment in the interest rate. No person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater interest for the loan or forbearance of any money, goods, or things in action.

(2)(a) In any loan of money in which the funds advanced do not exceed the sum of five hundred dollars, a setup charge may be charged and collected by the lender, and such setup charge shall not be considered interest hereunder.

(b) The setup charge shall not exceed four percent of the amount of funds advanced, or fifteen dollars, whichever is the lesser, except that on loans of under one hundred dollars a minimum not exceeding four dollars may be so charged.

(3) Any loan made pursuant to a commitment to lend at an interest rate permitted at the time the commitment is made shall not be usurious. Credit extended pursuant to an open-end credit agreement upon which interest is computed on the basis of a balance or balances outstanding during a billing cycle shall not be usurious if on any one day during the billing cycle the rate at which interest is charged for the billing cycle is not usurious. [1989 c 14 § 3; 1985 c 224 § 1; 1981 c 78 § 1; 1967 ex.s. c 23 § 4; 1899 c 80 § 2; RRS § 7300. Prior: 1895 c 136 § 2; 1893 c 20 § 3; Code 1881 § 2369; 1863 p 433 § 2; 1854 p 380 § 2.]

Effective date—1985 c 224: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state

government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 224 § 2.]

Severability—1981 c 78: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 78 § 7.]

Severability—Savings—1967 ex.s. c 23: See notes following RCW 19.52.005.

Interest on judgments: RCW 4.56.110.

19.52.025 Highest rate permissible—Computation—Publication in the Washington State Register. Each month the state treasurer shall compute the highest rate of interest permissible under RCW 19.52.020(1) for the succeeding calendar month. The treasurer shall file this rate with the state code reviser for publication in the next available issue of the Washington State Register in compliance with RCW 34.08.020(8). [1986 c 60 § 1.]

19.52.030 Usury—Penalty upon suit on contract—Costs and attorneys' fees. (1) If a greater rate of interest than is allowed by statute shall be contracted for or received or reserved, the contract shall be usurious, but shall not, therefore, be void. If in any action on such contract proof be made that greater rate of interest has been directly or indirectly contracted for or taken or reserved, the creditor shall only be entitled to the principal, less the amount of interest accruing thereon at the rate contracted for; and if interest shall have been paid, the creditor shall only be entitled to the principal less twice the amount of the interest paid, and less the amount of all accrued and unpaid interest; and the debtor shall be entitled to costs and reasonable attorneys' fees plus the amount by which the amount the debtor has paid under the contract exceeds the amount to which the creditor is entitled: PROVIDED, That the debtor may not commence an action on the contract to apply the provisions of this section if a loan or forbearance is made to a corporation engaged in a trade or business for the purposes of carrying on said trade or business unless there is also, in connection with such loan or forbearance, the creation of liability on the part of a natural person or that person's property for an amount in excess of the principal plus interest allowed pursuant to RCW 19.52.020. The reduction in principal shall be applied to diminish pro rata each future installment of principal payable under the terms of the contract.

(2) The acts and dealings of an agent in loaning money shall bind the principal, and in all cases where there is usurious interest contracted for by the transaction of any agent the principal shall be held thereby to the same extent as though the principal had acted in person. Where the same person acts as agent of the borrower and lender, that person shall be deemed the agent of the lender for the purposes of this chapter. If the agent of both the borrower and lender, or of the lender only, transacts a usurious loan for a commission or fee, such agent shall be liable to the principal for the amount of the commission or fee received or reserved by the agent, and liable to the lender for the loss suffered by the lender as a result of the application of this chapter. [1989 c 14 § 7; 1967 ex.s. c 23 § 5; 1899 c 80 § 7; RRS § 7304. Prior: 1895 c 136 § 5; 1893 c 20 § 3. Formerly RCW 19.52.030 through 19.52.050.]

Severability—Savings—1967 ex.s. c 23: See notes following RCW 19.52.005.

19.52.032 Declaratory judgment action to establish usury—Time limitations for commencing. The debtor, if a natural person, or the creditor may bring an action for declaratory judgment to establish whether a loan or forbearance contract is or was usurious, and such an action shall be considered an action on the contract for the purposes of applying the provisions of RCW 19.52.030. Such an action shall be brought against the current creditor or debtor on the contract or, if the loan or debt has been fully repaid, by the debtor against the creditor to whom the debtor was last indebted on the contract. No such an action shall be commenced after six months following the date the final payment becomes due, whether by acceleration or otherwise, nor after six months following the date the principal is fully paid, whichever first occurs. If the debtor commences such an action and fails to establish usury, and if the court finds the action was frivolously commenced, the defendant or defendants may, in the court's discretion, recover reasonable attorney's fees from the debtor. [1967 ex.s. c 23 § 6.]

Severability—Savings—1967 ex.s. c 23: See notes following RCW 19.52.005.

19.52.034 Application of chapter 19.52 RCW to loan or forbearance made outside state. Whenever a loan or forbearance is made outside Washington state to a person then residing in this state the usury laws found in chapter 19.52 RCW, as now or hereafter amended, shall be applicable in all courts of this state to the same extent such usury laws would be applicable if the loan or forbearance was made in this state. [1967 ex.s. c 23 § 3.]

Severability—Savings—1967 ex.s. c 23: See notes following RCW 19.52.005.

19.52.036 Application of consumer protection act. Entering into or transacting a usurious contract is hereby declared to be an unfair act or practice in the conduct of commerce for the purpose of the application of the consumer protection act found in chapter 19.86 RCW. [1967 ex.s. c 23 § 7.]

Severability—Savings—1967 ex.s. c 23: See notes following RCW 19.52.005.

19.52.060 Interest on charges in excess of published rates. Any corporation, partnership or individual who furnishes the public any goods, wares, merchandise, pledge, security, insurance or transportation of which the price, rate or tariff is by law required to be published, shall, when any price, rate or tariff is charged in excess of the existing and established price, rate or tariff, refund to the person, partnership or corporation so overcharge, or to the assignee of such claim, the amount of such overcharge, and on failure so to do, the claim for such overcharge shall bear interest at the rate of eight percent per annum until paid. [1907 c 187 § 1; RRS § 5841.]

19.52.080 Defense of usury or maintaining action thereon prohibited if transaction primarily agricultural, commercial, investment, or business—Exception. Profit

and nonprofit corporations, Massachusetts trusts, associations, trusts, general partnerships, joint ventures, limited partnerships, and governments and governmental subdivisions, agencies, or instrumentalities may not plead the defense of usury nor maintain any action thereon or therefor, and persons may not plead the defense of usury nor maintain any action thereon or therefor if the transaction was primarily for agricultural, commercial, investment, or business purposes: PROVIDED, HOWEVER, That this section shall not apply to a consumer transaction of any amount.

Consumer transactions, as used in this section, shall mean transactions primarily for personal, family, or household purposes. [1981 c 78 § 2; 1975 1st ex.s. c 180 § 1; 1970 ex.s. c 97 § 2; 1969 ex.s. c 142 § 1.]

Severability—1981 c 78: See note following RCW 19.52.020.

19.52.090 Defense of usury or maintaining action thereon prohibited for certain types of transactions after May 1, 1980, and prior to March 1, 1981. No person may plead the defense of usury or maintain any action thereon or therefor for the interest charged on the unpaid balance of a contract for the sale and purchase of personal property which was not purchased primarily for personal, family or household use or real property if the purchase was made after May 1, 1980 and prior to March 1, 1981. [1981 c 78 § 9.]

Severability—1981 c 78: See note following RCW 19.52.020.

19.52.100 Chapter not applicable to retail installment transactions. This chapter shall not apply to a retail installment transaction, as defined by RCW 63.14.010, whether or not it is construed to be a loan or forbearance of any money, goods, or things in action. [1981 c 78 § 3.]

Severability—1981 c 78: See note following RCW 19.52.020.

19.52.110 Limitations in chapter not applicable to interest charged by broker-dealers—When. The interest charged by any broker-dealer registered under chapter 21.20 RCW and under the federal securities and exchange act of 1934, as amended, shall not be subject to the limitations imposed by this chapter if the underlying loans (1) may be paid in full at the option of the borrower and (2) are subject to the credit regulations of the board of governors of the federal reserve system, or its successor. [1981 c 79 § 1.]

19.52.115 Lender credit card agreements subject to provisions of chapter 19.52 RCW. See RCW 63.14.165.

19.52.120 Sales contract providing for deferred payment of purchase price not subject to chapter. A sales contract for goods or services providing for the deferred payment of the purchase price shall not be subject to this chapter, regardless of who seeks to enforce the contract, notwithstanding the existence or occurrence of any one or more of the following events:

(1) That the seller may have arranged to sell, pledge, indorse, negotiate, assign, or transfer the obligations thereof to any person, including a financing organization, prior to or subsequent to or concurrently with the making of the sales transaction;

(2) That the amount of the finance charge, however denominated, is determined by reference to charts, computations or information supplied by such person;

(3) That the form or forms of instruments used to evidence the sales transaction have been supplied or prepared by such person;

(4) That the credit standing of the purchaser is or may have been evaluated by such person;

(5) That the sales transaction and the execution of any instrument evidencing the same is negotiated in the presence or with the assistance of a representative of such person;

(6) That the instrument or instruments used to evidence the sales transaction are pledged, indorsed, negotiated, assigned, or transferred by the seller to such person;

(7) That there is an underlying agreement between the seller and such person concerning the pledging, indorsing, negotiation, assigning, or transferring of sales contracts; or

(8) That the financing organization or its affiliates also provide franchising, financing, or other services to the seller-assignor. [1981 c 77 § 7.]

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

19.52.130 Charge made by assignee of retail installment contract or charge agreement to seller-assignor not limited by chapter—No agreement between credit card issuing bank and retailer shall prohibit discounts for cash payment. (1) Nothing contained in this chapter shall be deemed to limit any charge made by an assignee of a retail installment contract or charge agreement to the seller-assignor upon the sale, transfer, assignment, or discount of the contract or agreement, notwithstanding retention by the assignee of recourse rights and notwithstanding duties retained by the assignee to service delinquencies, perform service or warranty agreements regarding the property which is the subject matter of the assigned or discounted contracts or charge agreements, or to do or perform any other duty with respect to the account or contract assigned or the subject matter of such account or contract.

(2) No agreement between a credit card issuing bank and retailer shall prohibit the retailer from granting general discounts for the payment of cash, not in excess of the percentage allowed by Regulation Z, the Federal Truth in Lending Act. [1981 c 77 § 8.]

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

19.52.140 Chapter not applicable to interest, penalties, or costs on delinquent property taxes. This chapter does not apply in respect to interest, penalties, or costs imposed on delinquent property taxes under chapter 84.64 RCW. [1981 c 322 § 8.]

19.52.150 Defense or action of usury not applicable to consumer leases. See RCW 63.10.060.

19.52.160 Chapter not applicable to mobile homes. This chapter shall not apply to the financing of mobile homes which meets the definition of real property contained

in RCW 84.04.090, and which financing is insured by a federal instrumentality. [1985 c 395 § 6.]

19.52.170 Chapter not applicable to certain loans from tax-qualified retirement plan. This chapter does not apply to any loan permitted under applicable federal law and regulations from a tax-qualified retirement plan to a person then a participant or a beneficiary under the plan.

This section affects loans being made, negotiated, renegotiated, extended, renewed, or revised on or after April 20, 1989. [1989 c 138 § 1.]

19.52.900 Application—Construction—1981 c 78. Chapter 78, Laws of 1981 shall apply only to loans or forbearances or transactions which are entered into after May 8, 1981, or to existing loans or forbearances, contracts or agreements which were not primarily for personal, family, or household use to which there is an addition to the principal amount of the credit outstanding after May 8, 1981: PROVIDED, HOWEVER, That nothing in chapter 78, Laws of 1981 shall be construed as implying that agricultural or investment purposes are not already included within the meaning of "commercial or business purposes" as used in RCW 19.52.080 as in effect prior to May 8, 1981. [1989 c 8 § 2; 1981 c 78 § 10.]

Severability—1981 c 78: See note following RCW 19.52.020.

Chapter 19.56 UNSOLICITED GOODS

Sections

- 19.56.010 Newspaper mailed without authority is gift.
- 19.56.020 Unsolicited goods or services as gifts.
- 19.56.030 Violation—Application of consumer protection act.

Advertising, crimes relating to: Chapter 9.04 RCW.

Libel and slander: Chapter 9.58 RCW.

19.56.010 Newspaper mailed without authority is gift. Whenever any person, company or corporation owning or controlling any newspaper or periodical of any kind, or whenever any editor or proprietor of any such newspaper or periodical shall mail or send any such newspaper or periodical to any person or persons in this state without first receiving an order for said newspaper or periodical from such person or persons to whom said newspaper or periodical is mailed or sent, [it] shall be deemed to be a gift, and no debt or obligation shall accrue against such person or persons, whether said newspaper or periodical is received by the person or persons to whom it is sent or not. [1890 p 460 § 1; RRS § 5842.]

19.56.020 Unsolicited goods or services as gifts. If unsolicited goods or services are provided to a person, the person has a right to accept the goods or services as a gift only, and is not bound to return the goods or services. Goods or services are not considered to have been solicited unless the recipient specifically requested, in an affirmative manner, the receipt of the goods or services according to the terms under which they are being offered. Goods or services are not considered to have been requested if a person fails to

respond to an invitation to purchase the goods or services and the goods or services are provided notwithstanding. If the unsolicited goods or services are either addressed to or intended for the recipient, the recipient may use them or dispose of them in any manner without any obligation to the provider, and in any action for goods or services sold and delivered, or in any action for the return of the goods, it is a complete defense that the goods or services were provided voluntarily and that the defendant did not affirmatively order or request the goods or services, either orally or in writing. [1992 c 43 § 1; 1967 c 57 § 1.]

19.56.030 Violation—Application of consumer protection act. Violation of RCW 19.56.020 is a matter affecting the public interest for the purpose of applying chapter 19.86 RCW. Failure to comply with this chapter is not reasonable in relation to the development and preservation of business. A violation of RCW 19.56.020 constitutes an unfair or deceptive act or practice in trade or commerce for the purposes of applying chapter 19.86 RCW. [1992 c 43 § 2.]

Chapter 19.58

MOTION PICTURE FAIR COMPETITION ACT

Sections

- 19.58.010 Purpose.
- 19.58.020 Definitions.
- 19.58.030 Blind bidding or blind selling prohibited—Trade screening required—Notice.
- 19.58.040 Solicitation of bids.
- 19.58.050 Violation—Civil suit—Attorneys' fees.
- 19.58.900 Short title.
- 19.58.905 Severability—1979 ex.s. c 29.

19.58.010 Purpose. The purpose of this chapter is to establish fair and open procedures for bidding and negotiation for the right to exhibit motion pictures in the state in order to prevent unfair and deceptive acts or practices and unreasonable restraints of trade in the business of motion picture distribution and exhibition within the state; to promote fair and effective competition in that business; and to insure that exhibitors have the opportunity to view a motion picture and know its contents before committing themselves to exhibiting the motion picture in their communities. [1979 ex.s. c 29 § 1.]

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

(1) "Bid" means a written or oral offer or proposal to buy made by an exhibitor to a distributor in response to an invitation to bid for the license or right to exhibit a motion picture, the license stating the terms under which the exhibitor agrees to exhibit the motion picture.

(2) "Blind bidding" means the exhibitor's bidding or negotiating for, or the exhibitor's offering or agreeing to, terms for the license or right to exhibit a feature motion picture at any time either before the feature motion picture has been trade screened within the state or before the feature motion picture has been otherwise made available for viewing within the state by all exhibitors.

(3) "Blind selling" means the practice whereby a distributor licenses a feature motion picture before the exhibitor is afforded an opportunity to view the feature motion picture by trade screening.

(4) "Buying" or "selling" of the right to exhibit a feature motion picture means the licensing of a theater to show the feature motion picture for a certain number of days for a certain price.

(5) "Distributor" means a person engaged in the business of distributing or supplying more than one feature motion picture per year to exhibitors by rental, sale, licensing, or other agreement.

(6) "Exhibit" or "exhibition" means playing or showing a feature motion picture to the public for an admission charge.

(7) "Exhibitor" means a person in the business of operating one or more theaters in which motion pictures are exhibited to the public.

(8) "Feature motion picture" means a motion picture exceeding sixty minutes in duration.

(9) "Invitation to bid" means a written or oral solicitation or invitation by a distributor to one or more exhibitors to bid or negotiate for the license or right to exhibit a feature motion picture.

(10) "Licensing agreement" means a contract, agreement, understanding, or condition between a distributor and an exhibitor relating to the licensing or exhibition of a feature motion picture by the exhibitor.

(11) "Person" means one or more individuals, firms, partnerships, associations, societies, trusts, organizations, or corporations.

(12) "Run" means the continuous exhibition of a feature motion picture in a defined geographic area for a specified period of time. A "first run" is the first exhibition of the feature motion picture in the defined area; a "second run" is the second exhibition; and "subsequent runs" are subsequent exhibitions after the second run. "Exclusive run" is a run limited to a single theater in a defined geographic area and a "nonexclusive run" is a run in more than one theater in a defined geographic area.

(13) "Theater" means an establishment in which feature motion pictures are regularly exhibited to the public for an admission charge.

(14) "Trade screening" means the exhibition of a feature motion picture, prior to its release for public exhibition by a distributor, in the largest city within the state, which is open to all exhibitors from whom the distributor intends to solicit bids or with whom the distributor intends to negotiate for the license or right to exhibit the feature motion picture. [1979 ex.s. c 29 § 2.]

19.58.030 Blind bidding or blind selling prohibited—Trade screening required—Notice. (1) The buying or selling of the right to exhibit a feature motion picture by blind bidding or blind selling is prohibited within the state.

(2) No bids may be returnable, no negotiations for the exhibition or licensing of a motion picture may take place, and no license agreement or any of its terms may be agreed upon, for the exhibition of a feature motion picture within the state before the feature motion picture has either been

trade screened or otherwise made available for viewing by all exhibitors within the state.

(3) A distributor shall provide reasonable and uniform notice of the trade screening of feature motion pictures to those exhibitors within the state from whom bids will be solicited or with whom negotiations will be conducted for the license or right to exhibit the feature motion picture.

(4) A purported waiver of the prohibition in this chapter against blind bidding or blind selling is void and unenforceable. [1979 ex.s. c 29 § 3.]

19.58.040 Solicitation of bids. If bids are solicited from exhibitors for the licensing of a feature motion picture within the state, then:

(1) The invitation to bid shall specify: (a) Whether the run for which the bid is being solicited is a first, second, or subsequent run; whether the run is an exclusive or nonexclusive run; and, the geographic area for the run; (b) the names of all exhibitors who are being solicited; (c) the date and hour the invitation to bid expires; and (d) the time, date, and location, including the address, where the bids will be opened, which shall be within the state.

(2) All bids shall be submitted in writing and shall be opened at the same time and in the presence of those exhibitors, or their agents, who submitted bids and who attend the bid opening.

(3) Immediately upon being opened, the bids shall be subject to examination by the exhibitors, or their agents, who submitted bids, and who are present at the opening. Within ten business days after the bids are opened, the distributor shall notify each exhibitor who submitted a bid either the name of the winning bidder or the fact that none of the bids were acceptable.

(4) Once bids are solicited, the distributor shall license the feature motion picture only by bidding and may solicit rebids if none of the submitted bids are acceptable. [1979 ex.s. c 29 § 4.]

19.58.050 Violation—Civil suit—Attorneys' fees. Any person aggrieved by a violation of this chapter may bring a civil action in superior court to enjoin further violations or to recover the actual damages sustained, or both, together with the costs of the suit. In any such action, the court shall award reasonable attorneys' fees to the prevailing party. [1979 ex.s. c 29 § 5.]

19.58.900 Short title. This chapter may be known and cited as the Washington motion picture fair competition act. [1979 ex.s. c 29 § 6.]

19.58.905 Severability—1979 ex.s. c 29. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 29 § 8.]

Chapter 19.60

PAWNBROKERS AND SECOND-HAND DEALERS

Sections

19.60.010	Definitions.
19.60.014	Fixed place of business required.
19.60.020	Duty to record information.
19.60.040	Report to chief law enforcement officer.
19.60.045	Duties upon notification that property is reported stolen.
19.60.050	Retention of property by pawnbrokers—Inspection.
19.60.055	Retention of property by second-hand dealers—Inspection.
19.60.060	Rates of interest and other fees—Sale of pledged property.
19.60.061	Pawnbrokers—Sale of pledged property limited—Written document required for transactions.
19.60.062	Attorney fees and costs in action to recover possession or determine title or ownership.
19.60.066	Prohibited acts—Penalty.
19.60.068	Resale agreement to avoid interest and fee restrictions prohibited.
19.60.075	Regulation by political subdivisions.
19.60.085	Exemptions.
19.60.900	Severability—1984 c 10.
19.60.901	Effective date—1984 c 10.

Larceny—Receiving stolen property: RCW 9A.56.140 through 9A.56.170.

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

(1) Melted metals means metals derived from metal junk or precious metals that have been reduced to a melted state from other than ore or ingots which are produced from ore that has not previously been processed.

(2) Metal junk means any metal that has previously been milled, shaped, stamped, or forged and that is no longer useful in its original form, except precious metals.

(3) Nonmetal junk means any nonmetal, commonly discarded item that is worn out, or has outlasted its usefulness as intended in its original form except nonmetal junk does not include an item made in a former period which has enhanced value because of its age.

(4) Pawnbroker means every person engaged, in whole or in part, in the business of loaning money on the security of pledges of personal property, or deposits or conditional sales of personal property, or the purchase or sale of personal property.

(5) Precious metals means gold, silver, and platinum.

(6) Second-hand dealer means every person engaged in whole or in part in the business of purchasing, selling, trading, consignment selling, or otherwise transferring for value, second-hand property including metal junk, melted metals, precious metals, whether or not the person maintains a fixed place of business within the state. Second-hand dealer also includes persons or entities conducting business at flea markets or swap meets, more than three times per year.

(7) Second-hand property means any item of personal property offered for sale which is not new, including metals in any form, except postage stamps, coins that are legal tender, bullion in the form of fabricated hallmarked bars, used books, and clothing of a resale value of seventy-five dollars or less, except furs.

(8) Transaction means a pledge, or the purchase of, or consignment of, or the trade of any item of personal property by a pawnbroker or a second-hand dealer from a member of the general public.

(9) "Loan period" means the period of time from the date the loan is made until the date the loan is paid off, the loan is in default, or the loan is refinanced and new loan documents are issued, including all grace or extension periods. [1995 c 133 § 1; 1991 c 323 § 1; 1985 c 70 § 1; 1984 c 10 § 1; 1981 c 279 § 3; 1909 c 249 § 235; RRS § 2487. FORMER PARTS OF SECTION: (i) 1909 c 249 § 236; RRS § 2488, now codified as RCW 19.60.015. (ii) 1939 c 89 § 1; RRS § 2488-1, now codified as RCW 19.60.065.]

19.60.014 Fixed place of business required. No person may operate as a pawnbroker unless the person maintains a fixed place of business within the state. [1984 c 10 § 4.]

19.60.020 Duty to record information. (1) Every pawnbroker and second-hand dealer doing business in this state shall maintain wherever that business is conducted a record in which shall be legibly written in the English language, at the time of each transaction the following information:

(a) The signature of the person with whom the transaction is made;

(b) The date of the transaction;

(c) The name of the person or employee or the identification number of the person or employee conducting the transaction, as required by the applicable chief of police or the county's chief law enforcement officer;

(d) The name, date of birth, sex, height, weight, race, and address and telephone number of the person with whom the transaction is made;

(e) A complete description of the property pledged, bought, or consigned, including the brand name, serial number, model number or name, any initials or engraving, size, pattern, and color or stone or stones, and in the case of firearms, the caliber, barrel length, type of action, and whether it is a pistol, rifle, or shotgun;

(f) The price paid or the amount loaned;

(g) The type and identifying number of identification used by the person with whom the transaction was made, which shall consist of a valid drivers license or identification card issued by any state or two pieces of identification issued by a governmental agency, one of which shall be descriptive of the person identified. At all times, one piece of current government issued picture identification will be required; and

(h) The nature of the transaction, a number identifying the transaction, the store identification as designated by the applicable law enforcement agency, or the name and address of the business and the name of the person or employee, conducting the transaction, and the location of the property.

(2) This record shall at all times during the ordinary hours of business, or at reasonable times if ordinary hours of business are not kept, be open to the inspection of any commissioned law enforcement officer of the state or any of its political subdivisions, and shall be maintained wherever that business is conducted for three years following the date of the transaction. [1991 c 323 § 2; 1984 c 10 § 3; 1909 c 249 § 229; RRS § 2481.]

19.60.040 Report to chief law enforcement officer.

(1) Upon request, every pawnbroker and second-hand dealer doing business in the state shall furnish a full, true, and correct transcript of the record of all transactions conducted on the preceding day. These transactions shall be recorded on such forms as may be provided and in such format as may be required by the chief of police or the county's chief law enforcement officer within a specified time not less than twenty-four hours. This information may be transmitted to the applicable law enforcement agency electronically, by facsimile transmission, or by modem or similar device, or by delivery of computer disk subject to the requirements of, and approval by, the chief of police or the county's chief law enforcement officer.

(2) If a pawnbroker or second-hand dealer has good cause to believe that any property in his or her possession has been previously lost or stolen, the pawnbroker or second-hand dealer shall promptly report that fact to the applicable chief of police or the county's chief law enforcement officer, together with the name of the owner, if known, and the date when, and the name of the person from whom it was received. [1991 c 323 § 3; 1984 c 10 § 6; 1909 c 249 § 231; RRS § 2483.]

19.60.045 Duties upon notification that property is reported stolen. Following notification from a law enforcement agency that an item of property has been reported as stolen, the pawnbroker or second-hand dealer shall hold that property intact and safe from alteration, damage, or commingling. The pawnbroker or second-hand dealer shall place an identifying tag or other suitable identification upon the property so held. Property held shall not be released for one hundred twenty days from the date of police notification unless released by written consent of the applicable law enforcement agency or by order of a court of competent jurisdiction. In cases where the applicable law enforcement agency has placed a verbal hold on an item, that agency must then give written notice within ten business days. If such written notice is not received within that period of time, then the hold order will cease. The pawnbroker or second-hand dealer shall give a twenty-day written notice before the expiration of the one hundred twenty-day holding period to the applicable law enforcement agency about the stolen property. If notice is not given within twenty days, then the hold on the property shall continue for an additional one hundred twenty days. The applicable law enforcement agency may renew the holding period for additional one hundred twenty-day periods as necessary. After the receipt of notification from a pawnbroker or second-hand dealer, if an additional holding period is required, the applicable law enforcement agency shall give the pawnbroker or second-hand dealer written notice, prior to the expiration of the existing hold order. A law enforcement agency shall not place on hold any item of personal property unless that agency reasonably suspects that the item of personal property is a lost or stolen item. Any hold that is placed on an item will be removed as soon as practicable after the item on hold is determined not to be stolen or lost. [1991 c 323 § 4; 1984 c 10 § 5.]

Receiving stolen property: RCW 9A.56.140 through 9A.56.170.

19.60.050 Retention of property by pawnbrokers—

Inspection. Property bought or received in pledge by any pawnbroker shall not be removed from that place of business, except when redeemed by, or returned to the owner, within thirty days after the receipt of the property. Property shall at all times during the ordinary hours of business be open to inspection to any commissioned law enforcement officer of the state or any of its political subdivisions. [1991 c 323 § 5; 1984 c 10 § 8; 1909 c 249 § 232; RRS § 2484.]

Auction of second-hand property, exemption by rule of department of licensing: RCW 18.11.075.

Restoration of stolen property: RCW 9.54.130.

19.60.055 Retention of property by second-hand dealers—Inspection.

(1) Property bought or received on consignment by any second-hand dealer with a permanent place of business in the state shall not be removed from that place of business except consigned property returned to the owner, within thirty days after the receipt of the property. Property shall at all times during the ordinary hours of business be open to inspection to any commissioned law enforcement officer of the state or any of its political subdivisions.

(2) Property bought or received on consignment by any second-hand dealer without a permanent place of business in the state, shall be held within the city or county in which the property was received, except consigned property returned to the owner, within thirty days after receipt of the property. The property shall be available within the appropriate jurisdiction for inspection at reasonable times by any commissioned law enforcement officer of the state or any of its political subdivisions. [1991 c 323 § 6; 1984 c 10 § 7.]

Auction of second-hand property, exemption by rule of department of licensing: RCW 18.11.075.

19.60.060 Rates of interest and other fees—Sale of pledged property. All pawnbrokers are authorized to charge and receive interest and other fees at the following rates for money on the security of personal property actually received in pledge:

(1) The interest for the loan period shall not exceed:

(a) For an amount loaned up to \$9.99 - interest at \$1.00 for each thirty-day period to include the loan date.

(b) For an amount loaned from \$10.00 to \$19.99 - interest at the rate of \$1.25 for each thirty-day period to include the loan date.

(c) For an amount loaned from \$20.00 to \$24.99 - interest at the rate of \$1.50 for each thirty-day period to include the loan date.

(d) For an amount loaned from \$25.00 to \$34.99 - interest at the rate of \$1.75 for each thirty-day period to include the loan date.

(e) For an amount loaned from \$35.00 to \$39.99 - interest at the rate of \$2.00 for each thirty-day period to include the loan date.

(f) For an amount loaned from \$40.00 to \$49.99 - interest at the rate of \$2.25 for each thirty-day period to include the loan date.

(g) For the amount loaned from \$50.00 to \$59.99 - interest at the rate of \$2.50 for each thirty-day period to include the loan date.

(h) For the amount loaned from \$60.00 to \$69.99 - interest at the rate of \$2.75 for each thirty-day period to include the loan date.

(i) For the amount loaned from \$70.00 to \$79.99 - interest at the rate of \$3.00 for each thirty-day period to include the loan date.

(j) For the amount loaned from \$80.00 to \$89.99 - interest at the rate of \$3.25 for each thirty-day period to include the loan date.

(k) For the amount loaned from \$90.00 to \$99.99 - interest at the rate of \$3.50 for each thirty-day period to include the loan date.

(l) For the amount loaned from \$100.00 or more - interest at the rate of three percent for each thirty-day period to include the loan date.

(2) The fee for the preparation of loan documents, pledges, or reports required under the laws of the United States of America, the state of Washington, or the counties, cities, towns, or other political subdivisions thereof, shall not exceed:

(a) For the amount loaned up to \$4.99 - the sum of \$.50;

(b) For the amount loaned from \$5.00 to \$9.99 - the sum of \$2.00;

(c) For the amount loaned from \$10.00 to \$14.99 - the sum of \$3.00;

(d) For the amount loaned from \$15.00 to \$19.99 - the sum of \$3.50.

(e) For the amount loaned from \$20.00 to \$24.99 - the sum of \$4.00.

(f) For the amount loaned from \$25.00 to \$29.99 - the sum of \$4.50.

(g) For the amount loaned from \$30.00 to \$34.99 - the sum of \$5.00.

(h) For the amount loaned from \$35.00 to \$39.99 - the sum of \$5.50.

(i) For the amount loaned from \$40.00 to \$44.99 - the sum of \$6.00.

(j) For the amount loaned from \$45.00 to \$49.99 - the sum of \$6.50.

(k) For the amount loaned from \$50.00 to \$54.99 - the sum of \$7.00.

(l) For the amount loaned from \$55.00 to \$59.99 - the sum of \$7.50.

(m) For the amount loaned from \$60.00 to \$64.99 - the sum of \$8.00.

(n) For the amount loaned from \$65.00 to \$69.99 - the sum of \$8.50.

(o) For the amount loaned from \$70.00 to \$74.99 - the sum of \$9.00.

(p) For the amount loaned from \$75.00 to \$79.99 - the sum of \$9.50.

(q) For the amount loaned from \$80.00 to \$84.99 - the sum of \$10.00.

(r) For the amount loaned from \$85.00 to \$89.99 - the sum of \$10.50.

(s) For the amount loaned from \$90.00 to \$94.99 - the sum of \$11.00.

(t) For the amount loaned from \$95.00 to \$99.99 - the sum of \$11.50.

(u) For the amount loaned from \$100.00 to \$104.99 - the sum of \$12.00.

(v) For the amount loaned from \$105.00 to \$109.99 - the sum of \$12.25.

(w) For the amount loaned from \$110.00 to \$114.99 - the sum of \$12.75.

(x) For the amount loaned from \$115.00 to \$119.99 - the sum of \$13.25.

(y) For the amount loaned from \$120.00 to \$124.99 - the sum of \$13.50.

(z) For the amount loaned from \$125.00 to \$129.99 - the sum of \$13.75.

(aa) For the amount loaned from \$130.00 to \$149.99 - the sum of \$14.50.

(bb) For the amount loaned from \$150.00 to \$174.99 - the sum of \$14.75.

(cc) For the amount loaned from \$175.00 to \$199.99 - the sum of \$15.00.

(dd) For the amount loaned from \$200.00 to \$224.99 - the sum of \$16.00.

(ee) For the amount loaned from \$225.00 to \$249.99 - the sum of \$17.00.

(ff) For the amount loaned from \$250.00 to \$274.99 - the sum of \$18.00.

(gg) For the amount loaned from \$275.00 to \$299.99 - the sum of \$19.00.

(hh) For the amount loaned from \$300.00 to \$324.99 - the sum of \$20.00.

(ii) For the amount loaned from \$325.00 to \$349.99 - the sum of \$21.00.

(jj) For the amount loaned from \$350.00 to \$374.99 - the sum of \$22.00.

(kk) For the amount loaned from \$375.00 to \$399.99 - the sum of \$23.00.

(ll) For the amount loaned from \$400.00 to \$424.99 - the sum of \$24.00.

(mm) For the amount loaned from \$425.00 to \$449.99 - the sum of \$25.00.

(nn) For the amount loaned from \$450.00 to \$474.99 - the sum of \$26.00.

(oo) For the amount loaned from \$475.00 to \$499.99 - the sum of \$27.00.

(pp) For the amount loaned from \$500.00 to \$524.99 - the sum of \$28.00.

(qq) For the amount loaned from \$525.00 to \$549.99 - the sum of \$29.00.

(rr) For the amount loaned from \$550.00 to \$599.99 - the sum of \$30.00.

(ss) For the amount loaned from \$600.00 to \$699.99 - the sum of \$35.00.

(tt) For the amount loaned from \$700.00 to \$799.99 - the sum of \$40.00.

(uu) For the amount loaned from \$800.00 to \$899.99 - the sum of \$40.00.

(vv) For the amount loaned from \$900.00 to \$999.99 - the sum of \$50.00.

(ww) For the amount loaned from \$1000.00 to \$1499.99 - the sum of \$55.00.

(xx) For the amount loaned from \$1500.00 to \$1999.99 - the sum of \$60.00.

(yy) For the amount loaned from \$2000.00 to \$2499.99 - the sum of \$65.00.

(zz) For the amount loaned from \$2500.00 to \$2999.99 - the sum of \$70.00.

- (aaa) For the amount loaned from \$3000.00 to \$3499.99 - the sum of \$75.00.
- (bbb) For the amount loaned from \$3500.00 to \$3999.99 - the sum of \$80.00.
- (ccc) For the amount loaned from \$4000.00 to \$4499.99 - the sum of \$85.00.
- (ddd) For the amount loaned from \$4500.00 or more - the sum of \$90.00.

(3) Fees under subsection (2) of this section may be charged one time only for each loan period; no additional fees, other than interest allowed under subsection (1) of this section, shall be charged for making the loan.

A copy of this section, set in twelve point type or larger, shall be posted prominently in each premises subject to this chapter. [1995 c 133 § 2; 1991 c 323 § 7; 1984 c 10 § 9; 1973 1st ex.s. c 91 § 1; 1909 c 249 § 234; RRS § 2486.]

Interest—Usury: Chapter 19.52 RCW.

19.60.061 Pawnbrokers—Sale of pledged property limited—Written document required for transactions.

(1) The term of the loan shall be for a period of thirty days to include the date of the loan.

(2) A pawnbroker shall not sell any property received in pledge, until both the term of the loan and a grace period of a minimum of sixty days has expired. However, if a pledged article is not redeemed within the ninety-day period of the term of the loan and the grace period, the pawnbroker shall have all rights, title, and interest of that item of personal property. The pawnbroker shall not be required to account to the pledgor for the proceeds received from the disposition of that item. Any provision of law relating to the foreclosures and the subsequent sale of forfeited pledged items, shall not be applicable to any pledge as defined under this chapter, the title to which is transferred in accordance with this section.

(3) Every loan transaction entered into by a pawnbroker shall be evidenced by a written document, a copy of which shall be furnished to the pledgor. The document shall set forth the term of the loan; the final date on which the loan is due and payable; the loan preparation fee; the amount of interest charged every thirty days; the total amount due including the principal amount, the preparation fee, and all interest charges due if the loan is outstanding for the full ninety days allowed by the term and minimum grace period; and the annual percentage rate, and shall inform the pledgor of the pledgor's right to redeem the pledge at any time within the term of the loan or the minimum sixty-day grace period.

(4) If a person who has entered into a loan transaction with a pawnbroker in this state is unable to redeem and repay the loan on or before the expiration of the term of the loan plus the minimum sixty-day grace period, and that person wishes to retain his or her rights to use that item by rewriting the loan, and if both parties mutually agree, an existing loan transaction may be rewritten into a new loan, either in person or by mail. All applicable provisions of this chapter shall be followed in rewriting a loan, except that where an existing loan is rewritten by mail RCW 19.60.020(1) (a) and (g) shall not apply. [1995 c 133 § 3; 1991 c 323 § 8; 1984 c 10 § 10.]

19.60.062 Attorney fees and costs in action to recover possession or determine title or ownership. By either party, in an action brought by an owner to recover goods in the possession of a pawnbroker or second-hand dealer, or an action brought by a pawnbroker or second-hand dealer against an owner, or a person claiming ownership, to determine title or ownership of any item, the prevailing party is entitled to reasonable attorney's fees and costs. [1991 c 323 § 9; 1984 c 10 § 11; 1979 ex.s. c 41 § 1.]

19.60.066 Prohibited acts—Penalty. It is a gross misdemeanor under chapter 9A.20 RCW for:

(1) Any person to remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of personal property that was purchased, consigned, or received in pledge. In addition an item shall not be accepted for pledge or a second-hand purchase where the manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of personal property has been removed, altered, or obliterated;

(2) Any person to knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept under this chapter;

(3) Any pawnbroker or second-hand dealer to receive any property from any person under the age of eighteen years, any person under the influence of intoxicating liquor or drugs, or any person known to the pawnbroker or second-hand dealer as having been convicted of burglary, robbery, theft, or possession of or receiving stolen property within the past ten years whether the person is acting in his or her own behalf or as the agent of another;

(4) Any pawnbroker to engage in the business of cashing or selling checks, drafts, money orders, or other commercial paper serving the same purpose unless the pawnbroker complies with the provisions of chapter 31.45 RCW; or

(5) Any person to violate knowingly any other provision of this chapter. [1991 c 355 § 21; 1991 c 323 § 10; 1984 c 10 § 12.]

Reviser's note: This section was amended by 1991 c 323 § 10 and by 1991 c 355 § 21, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date, implementation—1991 c 355: See RCW 31.45.900.

19.60.068 Resale agreement to avoid interest and fee restrictions prohibited. A purchase of personal property shall not be made on the condition of selling it back at a stipulated time and price greater than the purchase price, for the purpose of avoiding the interest and fee restrictions of this chapter. [1991 c 323 § 11.]

19.60.075 Regulation by political subdivisions. The regulation of pawnbrokers and second-hand dealers under this chapter is not intended to restrict political subdivisions from enacting ordinances or codes requiring the licensing of pawnbrokers and second-hand dealers or from enacting ordi-

nances or codes which are more restrictive than the provisions of this chapter. [1984 c 10 § 13.]

19.60.085 Exemptions. The provisions of this chapter do not apply to transactions conducted by the following:

(1) Motor vehicle dealers licensed under chapter 46.70 RCW;

(2) *Motor vehicle wreckers or hulk haulers licensed under chapter 46.79 or 46.80 RCW;

(3) Persons giving an allowance for the trade-in or exchange of second-hand property on the purchase of other merchandise of the same kind of greater value; and

(4) Persons in the business of buying or selling empty food and beverage containers or metal or nonmetal junk. [1985 c 70 § 2; 1984 c 10 § 2.]

*Reviser's note: "Motor vehicle wrecker" redesignated "vehicle wrecker" by 1995 c 256.

19.60.900 Severability—1984 c 10. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 10 § 15.]

19.60.901 Effective date—1984 c 10. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect thirty days after it is signed by the governor and filed with the secretary of state. [1984 c 10 § 16.]

Reviser's note: The effective date of this act [1984 c 10] was March 22, 1984.

Chapter 19.64

RADIO BROADCASTING

Sections

- 19.64.010 Liability of owner or operator limited.
19.64.020 Speaker or sponsor liability not limited.
19.64.900 Saving—1943 c 229.

Libel and slander: Chapter 9.58 RCW.

Radio broadcasting rights as to horse races: RCW 67.16.110.

19.64.010 Liability of owner or operator limited. Where the owner, licensee, or operator of a radio or television broadcasting station, or the agents or employees thereof, has required a person speaking over said station to submit a written copy of his script prior to such broadcast and has cut such speaker off the air as soon as reasonably possible in the event such speaker deviates from such written script, said owner, licensee, or operator, or the agents or employees thereof, shall not be liable for any damages, for any defamatory statement published or uttered by such person in or as a part of such radio or television broadcast unless such defamatory statements are contained in said written script. [1943 c 229 § 1; Rem. Supp. 1943 § 998-1.]

19.64.020 Speaker or sponsor liability not limited. Nothing contained shall be construed as limiting the liability of any speaker or his sponsor or sponsors for defamatory

statements made by such speaker in or as a part of any such broadcast. [1943 c 229 § 2; Rem. Supp. 1943 § 998-2.]

19.64.900 Saving—1943 c 229. This chapter shall not be applicable to or affect any cause of action existing at the time this chapter becomes effective. [1943 c 229 § 3.]

Chapter 19.68

REBATING BY PRACTITIONERS OF HEALING PROFESSIONS

Sections

- 19.68.010 Rebating prohibited—Disclosure—List of alternative facilities.
19.68.020 Deemed unprofessional conduct.
19.68.030 License may be revoked or suspended.
19.68.040 Declaration of intent.

Hearing instrument fitter/dispensers: RCW 18.35.110.

Physicians, surgeons, dentists, oculists, optometrists, osteopaths, chiropractors, drugless healers, etc.: Title 18 RCW.

19.68.010 Rebating prohibited—Disclosure—List of alternative facilities. It shall be unlawful for any person, firm, corporation or association, whether organized as a cooperative, or for profit or nonprofit, to pay, or offer to pay or allow, directly or indirectly, to any person licensed by the state of Washington to engage in the practice of medicine and surgery, drugless treatment in any form, dentistry, or pharmacy and it shall be unlawful for such person to request, receive or allow, directly or indirectly, a rebate, refund, commission, unearned discount or profit by means of a credit or other valuable consideration in connection with the referral of patients to any person, firm, corporation or association, or in connection with the furnishings of medical, surgical or dental care, diagnosis, treatment or service, on the sale, rental, furnishing or supplying of clinical laboratory supplies or services of any kind, drugs, medication, or medical supplies, or any other goods, services or supplies prescribed for medical diagnosis, care or treatment. Ownership of a financial interest in any firm, corporation or association which furnishes any kind of clinical laboratory or other services prescribed for medical, surgical, or dental diagnosis shall not be prohibited under this section where (1) the referring practitioner affirmatively discloses to the patient in writing, the fact that such practitioner has a financial interest in such firm, corporation, or association; and (2) the referring practitioner provides the patient with a list of effective alternative facilities, informs the patient that he or she has the option to use one of the alternative facilities, and assures the patient that he or she will not be treated differently by the referring practitioner if the patient chooses one of the alternative facilities.

Any person violating the provisions of this section is guilty of a misdemeanor. [1993 c 492 § 233; 1973 1st ex.s. c 26 § 1; 1965 ex.s. c 58 § 1. Prior: 1949 c 204 § 1; Rem. Supp. 1949 § 10185-14.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

19.68.020 Deemed unprofessional conduct. The acceptance directly or indirectly by any person so licensed of any rebate, refund, commission, unearned discount, or profit by means of a credit or other valuable consideration whether in the form of money or otherwise, as compensation for referring patients to any person, firm, corporation or association as set forth in RCW 19.68.030, constitutes unprofessional conduct. [1965 ex.s. c 58 § 2; 1949 c 204 § 2; Rem. Supp. 1949 § 10185-15.]

19.68.030 License may be revoked or suspended. The license of any person so licensed may be revoked or suspended if he has directly or indirectly requested, received or participated in the division, transference, assignment, rebate, splitting or refunding of a fee for, or has directly or indirectly requested, received or profited by means of a credit or other valuable consideration as a commission, discount or gratuity in connection with the furnishing of medical, surgical or dental care, diagnosis or treatment or service, including x-ray examination and treatment, or for or in connection with the sale, rental, supplying or furnishing of clinical laboratory service or supplies, x-ray services or supplies, inhalation therapy service or equipment, ambulance service, hospital or medical supplies, physiotherapy or other therapeutic service or equipment, artificial limbs, teeth or eyes, orthopedic or surgical appliances or supplies, optical appliances, supplies or equipment, devices for aid of hearing, drugs, medication or medical supplies or any other goods, services or supplies prescribed for medical diagnosis, care or treatment, except payment, not to exceed thirty-three and one-third percent of any fee received for x-ray examination, diagnosis or treatment, to any hospital furnishing facilities for such examination, diagnosis or treatment. [1965 ex.s. c 58 § 3. Prior: 1949 c 204 § 3; Rem. Supp. 1949 § 10185-16.]

19.68.040 Declaration of intent. It is the intent of this article [chapter], and this article [chapter] shall be so construed, that persons so licensed shall only be authorized by law to charge or receive compensation for professional services rendered if such services are actually rendered by the licensee and not otherwise: PROVIDED, HOWEVER, That it is not intended to prohibit two or more licensees who practice their profession as copartners to charge or collect compensation for any professional services by any member of the firm, or to prohibit a licensee who employs another licensee to charge or collect compensation for professional services rendered by the employee licensee. [1949 c 204 § 4; Rem. Supp. 1949 § 10185-17.]

**Chapter 19.72
SURETYSHIP**

Sections

- 19.72.001 Definitions.
- 19.72.020 Individual sureties—Eligibility.
- 19.72.030 Individual sureties—Number—Qualification.
- 19.72.040 Individual sureties—Examination—Approval.
- 19.72.060 Corporate surety.
- 19.72.070 Subrogation of surety.
- 19.72.080 Contribution among sureties.
- 19.72.090 Default by surety—Indemnity.

- 19.72.100 Notice to creditor to institute action.
- 19.72.101 Failure of creditor to proceed—Discharge of surety.
- 19.72.107 Surety bond—Liability limited.
- 19.72.109 Release from official's, executor's, licensee's, etc., bond—Definitions.
- 19.72.110 Release from official's, executor's, licensee's, etc., bond—Notice, service, proof.
- 19.72.130 Release from official's, executor's, licensee's, etc., bond—Effective date—Failure to give new bond, effect.
- 19.72.140 Suretyship—Raising issue as defendant.
- 19.72.141 Suretyship—Order to exhaust principal's property.
- 19.72.150 Heirs, etc., bound—Exception.
- 19.72.160 Assets—Safekeeping agreements—Joint control of deposits.
- 19.72.170 Bonds not to fail for want of form or substance.
- 19.72.180 Successive recoveries on bond—Limitation.
- 19.72.900 Application.

Bail and appearance bonds: Chapter 10.19 RCW.

Bond of executor or administrator: Chapter 11.28 RCW.

Corporate

seals, effect of absence from instrument: RCW 64.04.105.

surety: Chapter 48.28 RCW.

Official bonds, in general: Chapter 42.08 RCW.

19.72.001 Definitions. See RCW 19.72.109.

19.72.020 Individual sureties—Eligibility. Whenever any bond or recognizance is required, or permitted, by law to be made, given or filed, conditioned upon the doing or not doing of anything specified therein and to be signed by one or more persons as sureties, each of such sureties shall be a resident of this state; but no attorney at law, sheriff, clerk of any court of record, or other officer of such court, shall be permitted to become such surety. [1927 c 162 § 1; RRS § 958-1.]

19.72.030 Individual sureties—Number—Qualification. Each of such sureties shall have separate property worth the amount specified in the bond or recognizance, over and above all debts and liabilities, and exclusive of property exempt from execution, unless the other spouse joins in the execution of the bond, in which case they must have community property of such required value; but in case such bond or recognizance is given in any action or proceeding commenced or pending in any court the judge, on justification, may allow more than two sureties to justify, severally, in amounts less than the amount specified, if the whole justification is equivalent to that of two sufficient sureties. [1987 c 202 § 185; 1973 1st ex.s. c 154 § 22; 1927 c 162 § 2; RRS § 958-2.]

Intent—1987 c 202: See note following RCW 2.04.190.

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

19.72.040 Individual sureties—Examination—Approval. In case such bond or recognizance is given in any action or proceeding commenced or pending in any court, the judge or clerk of any court of record or district court, or any party to the action or proceeding for the security or protection of which such bond or recognizance is made may, upon notice, require any of such sureties to attend before the judge at a time and place specified and to be examined under oath touching the surety's qualifications both as to residence and property as such surety, in such manner as the judge, in the judge's discretion, may think

proper. If the party demanding the examination require it, the examination shall be reduced to writing and subscribed by the surety. If the judge find[s] the surety possesses the requisite qualifications and property, the judge shall endorse the allowance thereof on the bond or recognizance, and cause it to be filed as provided by law, otherwise it shall be of no effect. [1987 c 202 § 186; 1927 c 162 § 3; RRS § 958-3. Formerly RCW 19.72.040, 19.72.050.]

Intent—1987 c 202: See note following RCW 2.04.190.

19.72.060 Corporate surety. See surety insurance: Chapter 48.28 RCW.

19.72.070 Subrogation of surety. When any defendant, surety in a judgment or special bail or replevin or surety in a delivery bond or replevin bond, or any person being surety in any bond whatever, has been or shall be compelled to pay any judgment or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, or when any sheriff or other officer or other surety upon his official bond shall be compelled to pay any judgment or any part thereof by reason of any default of such officer, except for failing to pay over money collected, or for wasting property levied upon, the judgment shall not be discharged by such payment, but shall remain in force for the use of the bail, surety, officer or other person making such payment, and after the plaintiff is paid, so much of the judgment as remains unsatisfied may be prosecuted to execution for his use. [Code 1881 § 648; RRS § 978. Prior: 1877 p 134 § 651; 1869 p 151 § 588; 1854 p 211 § 430.]

19.72.080 Contribution among sureties. Any one of several judgment defendants, and any one of several replevin bail having paid and satisfied the plaintiff, shall have the remedy provided in RCW 19.72.070 against the codefendants and cosureties to collect of them the ratable proportion each is equitably bound to pay. [Code 1881 § 649; RRS § 979. Prior: 1877 p 135 § 652; 1869 p 151 § 589; 1854 p 211 § 431.]

19.72.090 Default by surety—Indemnity. No surety or his representative shall confess judgment or suffer judgment by default in any case where he is notified that there is a valid defense, if the principal will enter himself defendant to the action and tender to the surety or his representatives good security to indemnify him, to be approved by the court. [Code 1881 § 650; RRS § 980. Prior: 1877 p 135 § 653; 1869 p 151 § 590; 1854 p 211 § 432.]

19.72.100 Notice to creditor to institute action. Any person bound as surety upon any contract in writing for the payment of money or the performance of any act, when the right of action has accrued, may require by notice in writing the creditor or obligee forthwith to institute an action upon the contract. [Code 1881 § 644; RRS § 974. Prior: 1877 p 134 § 647; 1869 p 150 § 584; 1854 p 210 § 426. FORMER PART OF SECTION: Code 1881 § 645; RRS § 975, now codified as RCW 19.72.101.]

19.72.101 Failure of creditor to proceed—Discharge of surety. If the creditor or obligee shall not proceed within a reasonable time to bring his action upon such contract, and prosecute the same to judgment and execution, the surety shall be discharged from all liability thereon. [Code 1881 § 645; RRS § 975. Prior: 1877 p 134 § 648; 1869 p 150 § 585; 1854 p 210 § 427. Formerly RCW 19.72.100, part.]

19.72.107 Surety bond—Liability limited. (1) Except under RCW 19.72.109, surety bond means any form of surety insurance as defined in RCW 48.11.080. A surety bond may not provide any other type of insurance coverage defined in chapter 48.11 RCW. Language in any statute, ordinance, contract, or surety bond to the contrary is void.

(2) A surety bond shall not be liable for damages based upon or arising out of any:

(a) Tortious injury, including death, to:

(i) Any person; or

(ii) Any real or personal property; or

(b) Failure to have any or adequate insurance coverage, even if liability under (a) or (b) of this subsection is imposed on the surety's principal or the surety by contract, surety bond, strict liability, ordinance, statute, or common law. [1992 c 115 § 1.]

19.72.109 Release from official's, executor's, licensee's, etc., bond—Definitions. Unless otherwise required by the context, words as used in RCW 19.72.110, and 19.72.130 shall mean:

(1) "Bond" shall mean and include any bond, undertaking or writing executed by a principal and surety, required by law from the principal as an official or employee of the state, or any county, municipal corporation or taxing district, or as guardian, executor, administrator, receiver or trustee, or as a licensee or permittee as a condition to the right to receive, hold or exercise any license, permit or franchise;

(2) "Surety" shall mean and include any person, firm or corporation that has executed as surety any bond. [1937 c 145 § 1; RRS § 9942. Formerly RCW 19.72.010.] [SLC-RO-17.]

19.72.110 Release from official's, executor's, licensee's, etc., bond—Notice, service, proof. Any surety upon any bond described in RCW 19.72.109 desiring to be released from subsequent liability and responsibility on any such bond shall serve upon the principal of such bond a written notice that on and after a certain date to be fixed in the notice, which shall be not less than ten days from the date of the service of the notice, the surety will withdraw as surety from such bond and shall serve a copy of such notice upon the official with whom such bond is filed not less than ten days prior to the date fixed in the notice as the date of termination of liability. If such principal is an individual and resides within the state of Washington, or is a corporation doing business in the state of Washington, such notice shall be personally served upon such individual, or if the principal is a firm or a corporation, such notice shall be served personally upon any person upon whom personal service of summons may be made under the existing laws of the state of Washington. If the principal is an individual and is not a resident of the state of Washington, or cannot be found

therein, or if the principal is a foreign corporation, such notice shall be mailed by registered mail to the last known address of such principal, if any, which fact shall be shown by affidavit filed with the notice of withdrawal as hereinafter provided, and a copy of such notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the county of the residence of the official with whom such bond is filed. The date of the last publication of notice shall be not less than twenty days from the date stated therein as the date upon which the surety will withdraw from the bond. Proof of such service or publication shall be made by affidavit and filed with the official with whom the bond is filed at least ten days before the date fixed in the notice of withdrawal. [1937 c 145 § 2; RRS § 9943. Formerly RCW 19.72.110 and 19.72.120.] [SLC-RO-17.]

19.72.130 Release from official's, executor's, licensee's, etc., bond—Effective date—Failure to give new bond, effect. On and after the date fixed in the notice as the termination date the surety shall be released from subsequent liability on such bond; and, unless before the date fixed in such notice as the termination date by the surety, a new bond shall be filed with sufficient and satisfactory surety as required by law under which the bond was originally furnished and filed, the office, position or trust in the case of a public office, guardian, executor, administrator, receiver or trustee shall become vacant and a successor shall be appointed as provided by law; and in case of a license, certificate, permit or franchise, the same shall become null and void: PROVIDED, HOWEVER, That no surety shall be released on the bond of any guardian, executor, administrator, receiver, or trustee until such fiduciary shall have furnished a new bond with surety approved by the court, or until his successor has been appointed and has qualified and taken over the fiduciary assets. Said notice of withdrawal shall be final and not subject to cancellation by said surety and said license, certificate, permit or franchise can only be continued upon filing a new bond as above provided. [1937 c 145 § 3; RRS § 9944.] [SLC-RO-17.]

19.72.140 Suretyship—Raising issue as defendant. When any action is brought against two or more defendants upon a contract, any one or more of the defendants being surety for the others, the surety may, upon a written complaint to the court, cause the question of suretyship to be tried and determined upon the issues made by the parties at the trial of the cause, or at any time before or after the trial, or at a subsequent term, but such proceedings shall not affect the proceedings of the plaintiff. [Code 1881 § 646; RRS § 976. Prior: 1877 p 134 § 649; 1869 p 150 § 586; 1854 p 210 § 428. FORMER PART OF SECTION: Code 1881 § 647; RRS § 977, now codified as RCW 19.72.141.]

19.72.141 Suretyship—Order to exhaust principal's property. If the finding upon such issue be in favor of the surety, the court shall make an order directing the sheriff to levy the execution upon, and first exhaust the property of the principal before a levy shall be made upon the property of the surety, and the clerk shall indorse a memorandum of the order upon the execution. [Code 1881 § 647; RRS § 977.]

Prior: 1877 p 134 § 650; 1869 p 151 § 587; 1854 p 211 § 429. Formerly RCW 19.72.140, part.]

19.72.150 Heirs, etc., bound—Exception. The provisions of RCW 19.72.070 through 19.72.101, 19.72.140, 19.72.141 shall extend to heirs, executors, and administrators of deceased persons, but the provisions of RCW 19.72.101 shall not operate against persons under legal disabilities. [Code 1881 § 651; RRS § 981. Prior: 1877 p 135 § 654; 1869 p 151 § 591; 1854 p 211 § 433.]

19.72.160 Assets—Safekeeping agreements—Joint control of deposits. It shall be lawful for any party of whom a bond, undertaking or other obligation is required, to agree with his surety or sureties for the deposit of any or all moneys and assets for which he and his surety or sureties are or may be held responsible, with a bank, savings bank, savings and loan association, safe deposit or trust company, authorized by law to do business as such, or with other depository approved by the court or a judge thereof, if such deposit is otherwise proper, for the safekeeping thereof, and in such manner as to prevent the withdrawal of such money or assets or any part thereof, without the written consent of such surety or sureties, or an order of court, or a judge thereof made on such notice to such surety or sureties as such court or judge may direct: PROVIDED, HOWEVER, That such agreement shall not in any manner release from or change the liability of the principal or sureties as established by the terms of said bond. [1953 c 46 § 1.]

19.72.170 Bonds not to fail for want of form or substance. No bond required by law, and intended as such bond, shall be void for want of form or substance, recital, or condition; nor shall the principal or surety on such account be discharged, but all the parties thereto shall be held and bound to the full extent contemplated by the law requiring the same, to the amount specified in such bond. In all actions on such defective bond, the plaintiff may state its legal effect, in the same manner as though it were a perfect bond. [Code 1881 § 749; 1854 p 219 § 489; RRS § 777. Formerly RCW 10.19.120, part.] [SLC-RO-10.]

19.72.180 Successive recoveries on bond—Limitation. In the event of the breach of the condition of any bond described in RCW 19.72.109, successive recoveries may be made thereon by any of the obligees thereof: PROVIDED, HOWEVER, That the total amount of all such recoveries, whether by one or more of such obligees, shall not exceed, in the aggregate, the penal sum specified in such bond. [1959 c 113 § 1.]

19.72.900 Application. This chapter applies to all sureties, regardless of whether the sureties are compensated or uncompensated. [1992 c 115 § 2.]

Chapter 19.76

BEVERAGE BOTTLES, ETC.—LABELING—
REFILLING

Sections

- 19.76.100 Labels on bottles, etc.—Filing—Publication.
 19.76.110 Refilling bottles, etc.—Forbidden.
 19.76.120 Refilling bottles, etc.—Possession as evidence.

Trademark registration: Chapter 19.77 RCW.

19.76.100 Labels on bottles, etc.—Filing—Publication. All persons engaged in the manufacture, bottling or selling of ale, porter, lager beer, soda, mineral water, or other beverages in casks, kegs, bottles or boxes, with their names or other marks of ownership stamped or marked thereon, may file in the office of the secretary of state a description of names or marks so used by them, and publish the same in a newspaper of general circulation in the county, printed in the English language, once a week for six successive weeks, in counties where the articles are manufactured, bottled or sold. [1985 c 469 § 11; 1981 c 302 § 1; 1897 c 38 § 1; RRS § 11546.]

Severability—1981 c 302: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 302 § 40.]

Alcoholic beverage control: Title 66 RCW.

Labeling of spirits, etc.: RCW 66.28.100 through 66.28.120.

19.76.110 Refilling bottles, etc.—Forbidden. It is hereby declared to be unlawful for any person or persons hereafter, without the written consent of the owner or owners thereof, to fill with ale, porter, lager beer or soda, mineral water or other beverages, for sale or to be furnished to customers, any such casks, barrels, kegs, bottles or boxes so marked or stamped, or to sell, dispose of, buy or traffic in, or wantonly destroy any such cask, barrel, keg, bottle or box so marked, stamped, by the owner or owners thereof, after such owner or owners shall have complied with the provisions of RCW 19.76.100. Any person or persons who shall violate any of the provisions of RCW 19.76.100 through 19.76.120 shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined five dollars for each and every cask, barrel, keg, or box, and fifty cents for each and every bottle so by him, her or them filled, bought, sold, used, trafficked in or wantonly destroyed, together with costs of suit for first offense, and ten dollars for each and every cask, barrel, keg and box and one dollar for each and every bottle so filled, bought, sold, used, trafficked in, or wantonly destroyed, together with the costs of suit for each subsequent offense. [1897 c 38 § 2; RRS § 11547.]

Crimes relating to brands and marks: Chapter 9.16 RCW.

19.76.120 Refilling bottles, etc.—Possession as evidence. The using by any person other than the rightful owner thereof, without such written permission, of any such cask, barrel, keg, bottle or box, for the sale therein of ale, porter, lager beer, soda, mineral waters or other beverages, or to be furnished to customers, or the buying, selling or trafficking in any such barrel, keg, bottle or box, by any person other than the owner, without such written permission, or the fact that any junk dealer or dealers in casks, bar-

rels, kegs, bottles or boxes, shall have in his or her possession any such cask, barrel, keg, bottle or box so marked or stamped and registered as aforesaid, without such written permission, shall and is hereby declared to be prima facie evidence that such use, buying, selling, trafficking in or possession is unlawful within the meaning of RCW 19.76.100 through 19.76.120. [1897 c 38 § 3; RRS § 11548.]

Chapter 19.77

TRADEMARK REGISTRATION

Sections

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Crimes relating to trademarks: Chapter 9.16 RCW.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

19.77.010 Definitions. As used in this chapter:

- (1) "Alien" when used with reference to a person means a person who is not a citizen of the United States;
- (2) "Applicant" means the person filing an application for registration of a trademark under this chapter, his legal representatives, successors, or assigns of record with the secretary of state;
- (3) "Domestic" when used with reference to a person means a person who is a citizen of the United States;
- (4) The term "colorable imitation" includes any mark which so resembles a registered mark as to be likely to cause confusion or mistake or to deceive;
- (5) A "counterfeit" is a spurious mark which is identical with, or substantially indistinguishable from, a registered mark;
- (6) "Dilution" means the material reduction of the distinctive quality of a famous mark through use of a mark by another person, regardless of the presence or absence of (a) competition between the users of the mark, or (b) likelihood of confusion, mistake, or deception arising from that use;
- (7) "Person" means any individual, firm, partnership, corporation, association, union, or other organization;

(8) "Registered mark" means a trademark registered under this chapter;

(9) "Registrant" means the person to whom the registration of a trademark under this chapter is issued, his legal representatives, successors, or assigns of record with the secretary of state;

(10) "Trademark" or "mark" means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others, and any word, name, symbol, or device, or any combination thereof, and any title, designation, slogan, character name, and distinctive feature of radio or television programs used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others;

(11) A trademark shall be deemed to be "used" in this state when it is placed in any manner on the goods or their containers, or on tabs or labels affixed thereto, or displayed in connection with such goods, and such goods are sold or otherwise distributed in this state, or when it is used or displayed in the sale or advertising of services rendered in this state;

(12) "Trade name" shall have the same definition as under RCW 19.80.005(1);

(13) A mark shall be deemed to be "abandoned":

(a) When its use has been discontinued with intent not to resume. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall be prima facie abandonment; or

(b) When any course of conduct of the registrant, including acts of omission as well as commission, causes the mark to lose its significance as an indication of origin. Purchaser motivation shall not be a test for determining abandonment under this subsection. [1994 c 60 § 6; 1989 c 72 § 1; 1955 c 211 § 1.]

Effective date—1955 c 211: "This act shall be in force and take effect on September 1, 1955." [1955 c 211 § 19.]

19.77.015 Reservation—Fees—Rules. The exclusive right to the use of a trademark may be reserved by:

(1) A person intending to register a trademark under this title; or

(2) A domestic or foreign corporation intending to change its trademark.

The reservation shall be made by filing with the secretary of state an application to reserve a specified trademark or service mark, executed by or on behalf of the applicant, one copy of the trademark artwork, and fees as set by rule by the secretary of state. If the secretary of state finds that the trademark is available for use, the secretary of state shall reserve the trademark for the exclusive use of the applicant for a period of one hundred eighty days. The reservation is limited to one filing. [1994 c 60 § 2.]

19.77.020 Registration of certain trademarks prohibited. A trademark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(1) Consists of or comprises immoral, deceptive, or scandalous matter; or

(2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute; or

(3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or

(4) Consists of or comprises the name, portrait, or signature identifying a particular living individual who has not consented in writing to its registration; or

(5) Consists of a mark which,

(a) when applied to the goods or services of the applicant is merely descriptive or deceptively misdescriptive of them, or

(b) when applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or

(c) is primarily merely a surname: PROVIDED, That nothing in this subsection shall prevent the registration of a trademark used in this state by the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as prima facie evidence that the trademark has become distinctive, as used on or in connection with the applicant's goods or services, proof of substantially exclusive and continuous use thereof as a trademark by the applicant in this state or elsewhere in the United States for the five years next preceding the date of the filing of the application for registration; or

(6) Consists of or comprises a trademark which so resembles a trademark registered in this state, or a trademark or trade name used in this state by another prior to the date of the applicant's or applicant's predecessor's first use in this state and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

A trade name is not registrable under this chapter. However, if a trade name also functions as a trademark, it is registrable as a trademark.

The secretary of state shall make a determination of registerability by considering the application record and the marks previously registered and subsisting under this chapter. [1989 c 72 § 2; 1955 c 211 § 2.]

19.77.030 Application for registration—Fee—Rules. Subject to the limitations set forth in this chapter, any person who has adopted and is using a trademark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that trademark setting forth, but not limited to, the following information:

(1) The name and business address of the applicant, and, if the applicant is a corporation, its state of incorporation;

(2) The particular goods or services in connection with which the trademark is used and the class in which such goods or services fall;

(3) The manner in which the trademark is placed on or affixed to the goods or containers, or displayed in connection with such goods, or used in connection with the sale or advertising of the services;

(4) The date when the trademark was first used with such goods or services anywhere and the date when it was first used with such goods or services in this state by the applicant or his predecessor in business;

(5) A statement that the trademark is presently in use in this state by the applicant;

(6) A statement that the applicant believes himself to be the owner of the trademark and believes that no other person has the right to use such trademark in connection with the same or similar goods or services in this state either in the identical form or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of such other person, to cause confusion or mistake or to deceive; and

(7) Such additional information or documents as the secretary of state may reasonably require.

A single application for registration of a trademark may specify all goods or services in a single class for which the trademark is actually being used, but may not specify goods or services in different classes.

The application shall be signed by the applicant individual, or by a member of the applicant firm, or by an officer of the applicant corporation, association, union or other organization.

The application shall be accompanied by three specimens or facsimiles of the trademark for at least one of the goods or services for which its registration is requested, and a filing fee, as set by rule by the secretary of state, payable to the secretary of state. [1994 c 60 § 1; 1989 c 72 § 3; 1982 c 35 § 181; 1955 c 211 § 3.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

19.77.040 Certificate of registration—Issuance—Contents—Admissibility in evidence. Upon compliance by the applicant with the requirements of this chapter, the secretary of state shall issue a certificate of registration and deliver it to the applicant. The certificate of registration shall be issued under the signature of the secretary of state and the seal of the state, and it shall show the registrant's name and business address and, if the registrant is a corporation, its state of incorporation, the date claimed for the first use of the trademark anywhere, the date claimed for the first use of the trademark in this state, the particular goods or services for which the trademark is used, the class in which such goods and services fall, a reproduction of the trademark, the registration date and the term of the registration.

Any certificate of registration issued by the secretary of state under the provisions hereof or a copy thereof duly certified by the secretary of state shall be admissible in any action or judicial proceeding in any court of this state as prima facie evidence of:

(1) The validity of the registration of the trademark;
 (2) The registrant's ownership of the trademark; and
 (3) The registrant's exclusive right to use the trademark in this state in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated in the certificate.

Registration of a trademark under this chapter shall be constructive notice of the registrant's claim of ownership of the trademark throughout this state. [1989 c 72 § 4; 1955 c 211 § 4.]

[Title 19 RCW—page 98]

19.77.050 Duration of certificate—Renewal—Fees—Rules. Registration of a trademark hereunder shall be effective for a term of six years from the date of registration. Upon application filed within six months prior to the expiration of such term, on a form to be furnished by the secretary of state requiring all the allegations of an application for original registration, the registration may be renewed for successive terms of six years as to the goods or services for which the trademark is still in use in this state. A renewal fee as set by rule by the secretary of state, payable to the secretary of state, shall accompany each application for renewal of the registration.

The secretary of state shall notify registrants of trademarks hereunder or their agents for service of record with the secretary of state of the necessity of renewal within the year, but not less than six months, next preceding the expiration of the unexpired original or renewed term by writing to the last known address of the registrants or their agents according to the files of the secretary of state. Neither the secretary of state's failure to notify a registrant nor the registrant's nonreceipt of a notice under this section shall extend the term of a registration or excuse the registrant's failure to renew a registration. [1994 c 60 § 3; 1989 c 72 § 5; 1982 c 35 § 182; 1955 c 211 § 5.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

19.77.060 Assignment of trademark, registration, or application—Fee—Rules. Any trademark and its registration or application for registration hereunder shall be assignable with the good will of the business in which the trademark is used, or with that part of the good will of the business connected with the use of and symbolized by the trademark. An assignment by an instrument in writing duly executed and acknowledged, or the designation of a legal representative, successor, or agent for service shall be recorded by the secretary of state on request when accompanied by a fee, as set by rule by the secretary of state, payable to the secretary of state. On request, upon recording of the assignment and payment of a further fee of five dollars, the secretary of state shall issue in the name of the assignee a new certificate for the remainder of the unexpired original or renewal term of the registration. An assignment of any registration or application for registration under this chapter shall be void as against any subsequent purchaser for a valuable consideration without notice, unless it is recorded with the secretary of state within three months after the date thereof or prior to such subsequent purchase. [1994 c 60 § 4; 1982 c 35 § 183; 1955 c 211 § 6.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

19.77.070 Secretary of state to keep records. The secretary of state shall keep for public examination a record of all trademarks registered or renewed under this chapter, and the records specified in RCW 19.77.060. [1955 c 211 § 7.]

19.77.080 Secretary of state must cancel certain registrations. The secretary of state shall cancel from the register:

(1) Any registration concerning which the secretary of state shall receive a voluntary written request for cancellation thereof from the registrant;

(2) All expired registrations not renewed under this chapter;

(3) Any registration concerning which a court of competent jurisdiction has rendered a final judgment against the registrant, which has become unappealable, canceling the registration or finding that:

(a) The registered trademark has been abandoned;

(b) The registrant under this chapter or under a prior act is not the owner of the trademark;

(c) The registration was granted contrary to the provisions of this chapter;

(d) The registration was obtained fraudulently;

(e) The registered trademark has become incapable of serving as a trademark; or

(f) The registered trademark is so similar to a trademark registered by another person in the United States patent and trademark office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned, as to be likely to cause confusion or mistake or to deceive: PROVIDED, That such finding was made on petition of such other person and that should the registrant prove that he or she is the owner of a concurrent registration of the trademark in the United States patent and trademark office covering an area including this state, the registration hereunder shall not be canceled. [1989 c 72 § 6; 1955 c 211 § 8.]

19.77.090 Actions relating to registration—Service on secretary of state—Assessment—Set by rule. The secretary of state shall be the agent for service of process in any action relating to the registration of any registrant who is at the time of such service a nonresident or a foreign firm, corporation, association, union, or other organization without a resident of this state designated as the registrant's agent for service of record with the secretary of state, or who cannot be found in this state, and service of process, pleadings and papers in such action made upon the secretary of state shall be held as due and sufficient process upon the registrant. The secretary of state shall charge and collect an assessment, as set by rule by the secretary of state, at the time of any service of process upon the secretary of state under this section. The assessment may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action. The assessment shall be deposited in the secretary of state's revolving fund. [1994 c 287 § 5; 1982 c 35 § 184; 1955 c 211 § 9.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

19.77.110 Classification of goods. The International Classification of Goods and Services to Which Trademarks Are Applied, as adopted in accordance with the Nice Agreement of 1957, as amended, shall be used for the convenient administration of this chapter. Such classification shall not be deemed to limit or extend the applicant's or registrant's rights. The short titles of such classifications are as follows:

- (1) Chemicals.
- (2) Paints.
- (3) Cosmetics and cleaning preparation.
- (4) Lubricants and fuels.
- (5) Pharmaceuticals.
- (6) Metal goods.
- (7) Machinery.
- (8) Hand tools.
- (9) Electrical and scientific apparatus.
- (10) Medical apparatus.
- (11) Environmental control apparatus.
- (12) Vehicles.
- (13) Firearms.
- (14) Jewelry.
- (15) Musical instruments.
- (16) Paper goods and printed matter.
- (17) Rubber goods.
- (18) Leather goods.
- (19) Nonmetallic building materials.
- (20) Furniture and articles not otherwise classified.
- (21) Housewares and glass.
- (22) Cordage and fibers.
- (23) Yarns and threads.
- (24) Fabrics.
- (25) Clothing.
- (26) Fancy goods.
- (27) Floor coverings.
- (28) Toys and sporting goods.
- (29) Meats and processed foods.
- (30) Staple foods.
- (31) Natural agricultural products.
- (32) Light beverages.
- (33) Wines and spirits.
- (34) Smokers' articles.
- (35) Advertising and business.
- (36) Insurance and financial.
- (37) Construction and repair.
- (38) Communication.
- (39) Transportation and storage.
- (40) Material treatment.
- (41) Education and entertainment.
- (42) Miscellaneous. [1989 c 72 § 7; 1955 c 211 § 11.]

19.77.130 Fraudulent registration—Financial liability. Any person who shall for himself, or on behalf of any other person, procure the registration of any trademark by the secretary of state under the provisions of this chapter, by knowingly making any false or fraudulent representation or declaration, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction, together with costs of such action including reasonable attorneys' fees. [1989 c 72 § 8; 1955 c 211 § 13.]

19.77.140 Trademark imitation. (1) Subject to the provisions of RCW 19.77.900 any person who shall:

(a) Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a trademark registered under this chapter in connection with the sale, offering for sale, or advertising of any goods or

services on or in connection with which such use is likely to cause confusion or mistake or to deceive; or

(b) Reproduce, counterfeit, copy or colorably imitate any such trademark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution of goods or services in this state on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive

shall be liable to a civil action by the registrant for any or all of the remedies provided in RCW 19.77.150, except that under (b) of this subsection the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such imitation is intended to be used to cause confusion or mistake, or to deceive.

(2) In determining whether, under this chapter, there is a likelihood of confusion, mistake, or deception between marks when used in association with goods or services, the court shall consider all relevant factors, including, but not limited to the following:

(a) The similarity or dissimilarity of the marks in their entireties to appearance, sound, meaning, connotation, and commercial impression;

(b) The similarity or dissimilarity of the goods or services and nature of the goods and services;

(c) The similarity or dissimilarity of trade channels;

(d) The conditions under which sales are made and buyers to whom sales are made;

(e) The fame of the marks;

(f) The number and nature of similar marks in use on similar goods or services;

(g) The nature and extent of any actual confusion;

(h) The length of time during and conditions under which there has been concurrent use without evidence of actual confusion;

(i) The variety of goods or services on which each of the marks is or is not used;

(j) The nature and extent of potential confusion, i.e., whether de minimis or substantial;

(k) Any other established fact probative of the effect of use. [1989 c 72 § 9; 1955 c 211 § 14.]

19.77.150 Remedies of registrants. Any registrant may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or colorable imitations of a trademark registered under this chapter, and any court of competent jurisdiction may grant an injunction to restrain such manufacture, use, display, or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such registrant all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display, or sale; and such court may also order that any such counterfeits or colorable imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court, or to the registrant, to be destroyed. In exceptional cases the court may award to the prevailing party the costs of the suit including reasonable attorneys' fees.

The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state. [1989 c 72 § 11; 1955 c 211 § 15.]

19.77.160 Injunctive relief for owners of famous marks. The owner of a famous mark shall be entitled, subject to the principles of equity, to an injunction against another person's use in this state of a mark, commencing after the mark becomes famous, which causes dilution of the distinctive quality of the mark, and to obtain such other relief as is provided in this section. In determining whether a mark is famous and has distinctive quality, a court shall consider all relevant factors, including, but not limited to the following:

(1) Whether the mark is inherently distinctive or has become distinctive through substantially exclusive and continuous use;

(2) Whether the duration and extent of use of the mark are substantial;

(3) Whether the duration and extent of advertising and publicity of the mark are substantial;

(4) Whether the geographical extent of the trading area in which the mark is used is substantial;

(5) Whether the mark has substantial renown in its and in the other person's trading areas and channels of trade; and

(6) Whether substantial use of the same or similar marks is being made by third parties.

The owner shall be entitled only to injunctive relief in an action brought under this section, unless the subsequent user willfully intended to trade on the registrant's reputation or to cause dilution of the owner's mark. If such willful intent is proven, the owner shall also be entitled to the remedies set forth in this chapter, subject to the discretion of the court and the principles of equity. [1989 c 72 § 10.]

19.77.170 Use of trademark employed by alien person outside of United States—Limitation of damages, relief—Exceptions. Damages or equitable relief of any nature may not be awarded in any pending or future legal procedure in favor of an alien person against a domestic person on account of the domestic person's use of a trademark or trade name in this state that is employed by the alien person outside of the United States, absent proof that:

(1) The alien person had commenced to employ the trademark or trade name in connection with the sale of its goods or services within the United States prior to the time the domestic person commenced to use the trademark or trade name in this state; or

(2) That the trademark was registered by the United States patent and trademark office or reserved by the secretary of state to the alien person at the time the domestic person commenced to use it. This section applies regardless of the nature of the claim asserted and whether the claim upon which any such relief is sought arises by statute, under the common law, or otherwise. [1994 c 60 § 7.]

19.77.900 Common law rights preserved prior to registration. Nothing herein shall adversely affect the rights or the enforcement of rights in trademarks acquired in good faith at common law prior to registration under this chapter; however, during any period subsequent to July 23, 1989,

when the registration of a mark under this chapter is in force and the registrant has not abandoned the trademark, no common law rights as against the registrant may be acquired. [1989 c 72 § 12; 1955 c 211 § 16.]

19.77.910 Saving—1955 c 211. As to any pending suit, proceeding or appeal, and for that purpose only, the repeal of prior acts shall be deemed not to be effective until final determination. [1955 c 211 § 17.]

19.77.920 Severability—1955 c 211. If any provision of this chapter is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions. [1955 c 211 § 20.]

19.77.930 Construction—1989 c 72. It is the intent of the legislature that, in construing this chapter, the courts be guided by the interpretation given by the federal courts to the federal trademark act of 1946, as amended, 15 U.S.C., Sec. 1051, et seq. [1989 c 72 § 13.]

19.77.940 Prospective application—1989 c 72. Chapter 72, Laws of 1989 applies prospectively only and not retroactively. The rights and obligations of chapter 72, Laws of 1989 shall accrue upon July 23, 1989, to all prior trademark registrations then in effect, and the provisions of chapter 72, Laws of 1989 shall not apply to any cause of action arising prior to July 23, 1989. [1989 c 72 § 14.]

**Chapter 19.80
TRADE NAMES**

Sections

- 19.80.001 Purposes.
- 19.80.005 Definitions.
- 19.80.010 Registration required.
- 19.80.025 Changes in registration—Filing amendment.
- 19.80.040 Failure to file.
- 19.80.045 Rules—Fees.
- 19.80.065 RCW 42.17.260(5) inapplicable.
- 19.80.075 Collection and deposit of fees.
- 19.80.900 Severability—1984 c 130.

19.80.001 Purposes. The purposes of this chapter are:
(1) To require each person who is conducting business in the state of Washington under a trade name to disclose the true and real name of each person conducting that business, and
(2) to provide a central registry of businesses operating under a trade name in the state of Washington. [1984 c 130 § 1.]

Effective date—1984 c 130: "Sections 1 through 11 of this act shall take effect on October 1, 1984. The director of licensing is authorized to immediately take such steps as are necessary to insure that this act is implemented on its effective date." [1984 c 130 § 12.]

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

(1) "Trade name" means a word or name, or any combination of a word or name, used by a person to identify the person's business which:

(a) Is not, or does not include, the true and real name of all persons conducting the business; or

(b) Includes words which suggest additional parties of interest such as "company," "and sons," or "and associates."

(2) "Business" means an occupation, profession, or employment engaged in for the purpose of seeking a profit.

(3) "Executed" by a person means that a document signed by such person is signed by that person under penalties of perjury and in an official and authorized capacity on behalf of the person submitting the document to the department of licensing.

(4) "Person" means any individual, partnership, limited liability company, or corporation conducting or having an interest in a business in the state.

(5) "True and real name" means:

(a) The surname of an individual coupled with one or more of the individual's other names, one or more of the individual's initials, or any combination;

(b) The designation or appellation by which an individual is best known and called in the business community where that individual transacts business, if this is used as that individual's legal signature;

(c) The registered corporate name of a domestic corporation as filed with the secretary of state;

(d) The registered corporate name of a foreign corporation authorized to do business within the state of Washington as filed with the secretary of state;

(e) The registered partnership name of a domestic limited partnership as filed with the secretary of state;

(f) The registered partnership name of a foreign limited partnership as filed with the secretary of state; or

(g) The name of a general partnership which includes in its name the true and real names, as defined in (a) through (f) of this subsection, of each general partner as required in RCW 19.80.010. [1996 c 231 § 2; 1984 c 130 § 2.]

Effective date—1984 c 130: See note following RCW 19.80.001.

19.80.010 Registration required. Each person or persons who shall carry on, conduct, or transact business in this state under any trade name shall register that trade name with the department of licensing as set forth in this section:

(1) Sole proprietorship or general partnership: The registration shall set forth the true and real name or names of each person conducting the same, together with the post office address or addresses of each such person and the name of the general partnership, if applicable.

(2) Foreign or domestic limited partnership: The registration shall set forth the limited partnership name as filed with the office of the secretary of state.

(3) Foreign or domestic limited liability company: The registration shall set forth the limited liability company name as filed with the office of the secretary of state.

(4) Foreign or domestic corporation: The registration shall set forth the corporate name as filed with the office of the secretary of state.

(5) The registration shall be executed by:

(a) The sole proprietor of a sole proprietorship;

(b) A general partner of a domestic or foreign general or limited partnership; or

(c) An officer of a domestic or foreign corporation. [1996 c 231 § 3; 1984 c 130 § 3; 1979 ex.s. c 22 § 1; 1907 c 145 § 1; RRS § 9976.]

Effective date—1984 c 130: See note following RCW 19.80.001.

Adoption of rules—1979 ex.s. c 22: "The director of the department of licensing shall promulgate such rules and regulations as are necessary to implement the transfer of duties and of records required by section 1 of this 1979 act. Such rules shall provide for transfer of existing certificates from the counties to the department, set fees for filing of certificates and amendments, and set fees for obtaining copies thereof." [1979 ex.s. c 22 § 3.] "Section 1 of this 1979 act" consists of the 1979 ex.s. c 22 amendment to RCW 19.80.010.

Effective date—1979 ex.s. c 22: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 ex.s. c 22 § 4.]

19.80.025 Changes in registration—Filing amendment. (1) An executed amendment shall be filed with the department of licensing when a change occurs in:

(a) The true and real name of a person conducting a business with a trade name registered under this chapter; or
(b) Any mailing address set forth on the registration or any subsequently filed amendment.

(2) A notice of cancellation shall be filed with the department when use of a trade name is discontinued.

(3) A notice of cancellation, together with a new registration, shall be filed before conducting or transacting any business when:

(a) An addition, deletion, or any change of person or persons conducting business under the registered trade name occurs; or

(b) There is a change in the wording or spelling of the trade name since initial registration or renewal. [1984 c 130 § 5.]

Effective date—1984 c 130: See note following RCW 19.80.001.

19.80.040 Failure to file. No person or persons carrying on, conducting, or transacting business under any trade name shall be entitled to maintain any suit in any of the courts of this state until such person or persons have properly completed the registration as provided for in RCW 19.80.010. Failure to complete this registration shall not impair the validity of any contract or act of such person or persons and shall not prevent such person or persons from defending any suit in any court of this state. [1984 c 130 § 7; 1907 c 145 § 5; RRS § 9980. Formerly RCW 19.80.040 and 19.80.050.]

Effective date—1984 c 130: See note following RCW 19.80.001.

19.80.045 Rules—Fees. The director of licensing shall adopt rules as necessary to administer this chapter. The rules may include but are not limited to specifying forms and setting fees for trade name registrations, amendments, searches, renewals, and copies of registration documents. Fees shall not exceed the actual cost of administering this chapter. [1984 c 130 § 6.]

Effective date—1984 c 130: See note following RCW 19.80.001.

19.80.065 *RCW 42.17.260(5) inapplicable. *RCW 42.17.260(5) does not apply to registrations made under this chapter. [1984 c 130 § 8.]

***Reviser's note:** RCW 42.17.260 was amended by 1989 c 175 § 36, changing subsection (5) to subsection (6). RCW 42.17.260 was subsequently amended by 1992 c 139 § 3, changing subsection (6) to subsection (7). RCW 42.17.260 was subsequently amended by 1995 c 341 § 1, changing subsection (7) to subsection (9).

Effective date—1984 c 130: See note following RCW 19.80.001.

19.80.075 Collection and deposit of fees. All fees collected by the department of licensing under this chapter shall be deposited with the state treasurer and credited to the master license fund, except for trade name registration fees collected from June 1, 1992, to June 30, 1992, which shall be deposited in the general fund. Beginning July 1, 1992, trade name registration fees shall be deposited in the master license fund. [1992 c 107 § 6; 1984 c 130 § 9.]

Effective dates—1992 c 107: See note following RCW 19.02.020.

Effective date—1984 c 130: See note following RCW 19.80.001.

19.80.900 Severability—1984 c 130. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 130 § 11.]

Effective date—1984 c 130: See note following RCW 19.80.001.

Chapter 19.83

TRADING STAMP LICENSES

Sections

19.83.010 License required to use or furnish trading stamps, coupons, or similar devices.

19.83.020 Issuance of license—Fee.

19.83.030 Furnishing or selling trading stamps, coupons, or similar devices geographically limited.

19.83.040 Coupons or similar devices—Exemptions.

19.83.050 Penalty.

Trading stamps and premiums, general provision: Chapter 19.84 RCW.

19.83.010 License required to use or furnish trading stamps, coupons, or similar devices. Every person who uses, or furnishes, or sells to any other person for use, in, with, or for the sale of any goods, any trading stamps, coupons, tickets, certificates, cards or other similar devices which entitle the purchaser to procure any goods free of charge or for less than the retail market price thereof, upon the production of any number of such trading stamps, coupons, tickets, certificates, cards, or other similar devices, shall before so furnishing, selling, or using the same obtain a separate license from the auditor of each county wherein such furnishing or selling or using shall take place for each and every store or place of business in that county, owned or conducted by such person from which such furnishing or selling, or in which such using shall take place. [1913 c 134 § 1; RRS § 8359. Formerly RCW 36.91.010.]

19.83.020 Issuance of license—Fee. In order to obtain such license the person applying therefor shall pay to the county treasurer of the county for which the license is sought the sum of six thousand dollars, and upon such payment being made to the county treasurer he shall issue his receipt therefor which shall be presented to the auditor of the county, who shall upon the presentation thereof issue to

the person making such payment a license to furnish or sell, or a license to use, for one year, trading stamps, coupons, tickets, certificates, cards, or other similar devices. Such license shall contain the name of the licensee, the date of its issue, the date of its expiration, the city or town in which and the location at which the same shall be used, and the license shall be used at no place other than that mentioned therein. [1913 c 134 § 2; RRS § 8360. Formerly RCW 36.91.020.]

19.83.030 Furnishing or selling trading stamps, coupons, or similar devices geographically limited. No person shall furnish or sell to another for use, in, with, or for the sale of any goods, any trading stamps, coupons, tickets, certificates, cards, or other similar devices to be used in any county, city or town in this state other than that in which such furnishing or selling shall take place. [1957 c 221 § 2. Prior: 1939 c 31 § 1, part; 1913 c 134 § 3, part; RRS § 8361, part. Formerly RCW 36.91.030.]

19.83.040 Coupons or similar devices—Exemptions.

(1) Nothing in this chapter, or in any other statute or ordinance of this state, shall apply to:

(a) The issuance and direct redemption by a manufacturer of a premium coupon, certificate, or similar device; or prevent him from issuing and directly redeeming such premium coupon, certificate, or similar device, which, however, shall not be issued, circulated, or distributed by retail vendors except when contained in or attached to an original package;

(b) The publication by, or distribution through, newspapers or other publications of coupons, certificates, or similar devices; or

(c) A coupon, certificate, or similar device which is within, attached to, or a part of a package or container as packaged by the original manufacturer and which is to be redeemed by another manufacturer, if:

(i) The coupon, certificate, or similar device clearly states the names and addresses of both the issuing manufacturer and the redeeming manufacturer; and

(ii) The issuing manufacturer is responsible for redemption of the coupon, certificate, or similar device if the redeeming manufacturer fails to do so.

(2) The term "manufacturer," as used in this section, means any vendor of an article of merchandise which is put up by or for him in an original package and which is sold under his or its trade name, brand, or mark. [1983 c 40 § 1; 1972 ex.s. c 104 § 1; 1957 c 221 § 3. Prior: 1939 c 31 § 1, part; 1913 c 134 § 3, part; RRS § 8361, part. Formerly RCW 36.91.040.]

Severability—1983 c 40: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 40 § 2.]

19.83.050 Penalty. Any person violating any of the provisions of this chapter shall be guilty of a gross misdemeanor. [1913 c 134 § 4; RRS § 8362. Formerly RCW 36.91.050.]

Chapter 19.84

TRADING STAMPS AND PREMIUMS

Sections

- 19.84.010 Redeemable cash value to be printed on face.
- 19.84.020 Must redeem at cash value.
- 19.84.030 Distributor liable.
- 19.84.040 Criminal penalty.

Trading stamp licenses: Chapter 19.83 RCW.

19.84.010 Redeemable cash value to be printed on face. No person shall sell or issue any stamps, trading stamp, cash discount stamp, check, ticket, coupon or other similar device, which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, unless each of said stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar devices shall have legibly printed or written upon the face thereof the redeemable value thereof in cents. [1907 c 253 § 1; RRS § 5837.]

19.84.020 Must redeem at cash value. Any person who shall sell or issue to any person engaged in any trade, business or profession, any stamp, trading stamp, cash discount stamp, check, ticket, coupon, or other similar device which will entitle the holder thereof, on presentation thereof either singly or in definite number, to receive either directly from the vendor or indirectly through any other person, money or goods, wares or merchandise, shall, upon presentation, redeem the same either in goods, wares or merchandise, or in cash, good and lawful money of the United States, at the option of the holder thereof, and any number of such stamps, trading stamps, cash discount stamps, checks, tickets, coupons, or other similar devices shall be redeemed as hereinbefore set forth, at the value in cents printed upon the face thereof, and it shall not be necessary for the holder thereof to have any stipulated number of the same before demand for redemption may be made, but they shall be redeemed in any number, when presented, at the value in cents printed upon the face thereof, as hereinbefore provided. [1907 c 253 § 2; RRS § 5838.]

19.84.030 Distributor liable. Any person engaged in any trade, business or profession who shall distribute, deliver or present to any person dealing with him, in consideration of any article or thing purchased, any stamp, trading stamp, cash discount stamp, check, ticket, coupon or other similar device, which will entitle the holder thereof, on presentation thereof, either singly or in definite number, to receive, either directly from the person issuing or selling the same, as set forth in RCW 19.84.020, or indirectly through any other person, shall, upon the refusal or failure of the said person issuing or selling same to redeem the same, as set forth in RCW 19.84.020, be liable to the holder thereof for the face value thereof, and shall upon presentation redeem the same, either in goods, wares or merchandise, or in cash, good and lawful money of the United States of America, at the option of the holder thereof, and in such case any number of such stamps, trading stamps, cash discount stamps, checks, tickets, coupons or other similar devices, shall be redeemed as

hereinbefore set forth, at the value in cents printed upon the face thereof, and it shall not be necessary for the holder thereof to have any stipulated number of the same before demand for redemption may be made, but they shall be redeemed in any number, when presented, at the value in cents printed upon the face thereof, as hereinbefore provided. [1907 c 253 § 3; RRS § 5839.]

19.84.040 Criminal penalty. Any person, firm or corporation who shall violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than one thousand dollars for each offense. [1907 c 253 § 4; RRS § 5840.]

Chapter 19.85

REGULATORY FAIRNESS ACT

Sections

- 19.85.011 Finding.
- 19.85.020 Definitions.
- 19.85.025 Application of chapter—Limited.
- 19.85.030 Agency rules—Small business economic impact statement—Reduction of costs imposed by rule.
- 19.85.040 Small business economic impact statement—Purpose—Contents.
- 19.85.050 Agency plan for review of business rules—Scope—Factors applicable to review—Annual list.
- 19.85.061 Compliance with federal law.
- 19.85.070 Small business economic impact statement—Notice of proposed rule.
- 19.85.900 Severability—1982 c 6.

Rules coordinator duties regarding business: RCW 43.17.310.

19.85.011 Finding. The legislature finds that administrative rules adopted by state agencies can have a disproportionate impact on the state's small businesses because of the size of those businesses. This disproportionate impact reduces competition, innovation, employment, and new employment opportunities, and threatens the very existence of some small businesses. The legislature therefore enacts the Regulatory Fairness Act with the intent of reducing the disproportionate impact of state administrative rules on small business. [1994 c 249 § 9.]

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

19.85.020 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply through this chapter.

(1) "Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees.

(2) "Small business economic impact statement" means a statement meeting the requirements of RCW 19.85.040 prepared by a state agency pursuant to RCW 19.85.030.

(3) "Industry" means all of the businesses in this state in any one four-digit standard industrial classification as published by the United States department of commerce. However, if the use of a four-digit standard industrial classification would result in the release of data that would

violate state confidentiality laws, "industry" means all businesses in a three-digit standard industrial classification. [1994 c 249 § 10; 1993 c 280 § 34; 1989 c 374 § 1; 1982 c 6 § 2.]

Effective date—1994 c 249 § 10: "Section 10 of this act shall take effect July 1, 1994." [1994 c 249 § 37.]

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

19.85.025 Application of chapter—Limited. (1) Unless an agency receives a written objection to the expedited repeal of a rule, this chapter does not apply to a rule proposed for expedited repeal pursuant to RCW 34.05.354. If an agency receives a written objection to expedited repeal of the rule, this chapter applies to the rule-making proceeding.

(2) This chapter does not apply to the adoption of a rule described in RCW 34.05.310(4).

(3) An agency is not required to prepare a separate small business economic impact statement under RCW 19.85.040 if it prepared an analysis under RCW 34.05.328 that meets the requirements of a small business economic impact statement, and if the agency reduced the costs imposed by the rule on small business to the extent required by RCW 19.85.030(3). The portion of the analysis that meets the requirements of RCW 19.85.040 shall be filed with the code reviser and provided to any person requesting it in lieu of a separate small business economic impact statement. [1995 c 403 § 401.]

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

19.85.030 Agency rules—Small business economic impact statement—Reduction of costs imposed by rule.

(1) In the adoption of a rule under chapter 34.05 RCW, an agency shall prepare a small business economic impact statement: (a) If the proposed rule will impose more than minor costs on businesses in an industry; or (b) if requested to do so by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW 34.05.320. However, if the agency has completed the pilot rule process as defined by RCW 34.05.313 before filing the notice of a proposed rule, the agency is not required to prepare a small business economic impact statement.

An agency shall prepare the small business economic impact statement in accordance with RCW 19.85.040, and file it with the code reviser along with the notice required under RCW 34.05.320. An agency shall file a statement prepared at the request of the joint administrative rules review committee with the code reviser upon its completion before the adoption of the rule. An agency shall provide a copy of the small business economic impact statement to any person requesting it.

An agency may request assistance from the *business assistance center in the preparation of the small business economic impact statement.

(2) The *business assistance center shall develop guidelines to assist agencies in determining whether a proposed rule will impose more than minor costs on businesses in an industry and therefore require preparation of a small business economic impact statement. The *business assistance center may review an agency determination that a proposed rule will not impose such costs, and shall advise the joint administrative rules review committee on disputes involving agency determinations under this section.

(3) Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses. Methods to reduce the costs on small businesses may include:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or

(f) Any other mitigation techniques. [1995 c 403 § 402; 1994 c 249 § 11. Prior: 1989 c 374 § 2; 1989 c 175 § 72; 1982 c 6 § 3.]

***Reviser's note:** The business assistance center and its powers and duties were terminated June 30, 1995. See RCW 43.31.091 and 43.31.092.

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1989 c 175: See note following RCW 34.05.010.

Publication of small business economic impact statement in Washington State Register: RCW 34.08.020.

19.85.040 Small business economic impact statement—Purpose—Contents. (1) A small business economic impact statement must include a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements. It shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW 34.05.320, including costs of equipment, supplies, labor, and increased administrative costs. It shall consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue. To determine whether the proposed rule will have a disproportionate impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required

to comply with the proposed rules using one or more of the following as a basis for comparing costs:

- (a) Cost per employee;
- (b) Cost per hour of labor; or
- (c) Cost per one hundred dollars of sales.

(2) A small business economic impact statement must also include:

(a) A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as required by RCW 19.85.030(3), or reasonable justification for not doing so, addressing the options listed in RCW 19.85.030(3);

(b) A description of how the agency will involve small businesses in the development of the rule; and

(c) A list of industries that will be required to comply with the rule. However, this subsection (2)(c) shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply.

(3) To obtain information for purposes of this section, an agency may survey a representative sample of affected businesses or trade associations and should, whenever possible, appoint a committee under RCW 34.05.310(2) to assist in the accurate assessment of the costs of a proposed rule, and the means to reduce the costs imposed on small business. [1995 c 403 § 403; 1994 c 249 § 12. Prior: 1989 c 374 § 3; 1989 c 175 § 73; 1982 c 6 § 4.]

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Severability—Application—1994 c 249: See notes following RCW 34.05.310.

Effective date—1989 c 175: See note following RCW 34.05.010.

Publication in Washington State Register: RCW 34.08.020.

19.85.050 Agency plan for review of business rules—Scope—Factors applicable to review—Annual list.

(1) Within one year after June 10, 1982, each agency shall publish and deliver to the office of financial management and to all persons who make requests of the agency for a copy of a plan to periodically review all rules then in effect and which have been issued by the agency which have an economic impact on more than twenty percent of all industries or ten percent of the businesses in any one industry. Such plan may be amended by the agency at any time by publishing a revision to the review plan and delivering such revised plan to the office of financial management and to all persons who make requests of the agency for the plan. The purpose of the review is to determine whether such rules should be continued without change or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize the economic impact on small businesses as described by this chapter. The plan shall provide for the review of all such agency rules in effect on June 10, 1982, within ten years of that date.

(2) In reviewing rules to minimize any significant economic impact of the rule on small businesses as described by this chapter, and in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors:

- (a) The continued need for the rule;

(b) The nature of complaints or comments received concerning the rule from the public;

(c) The complexity of the rule;

(d) The extent to which the rule overlaps, duplicates, or conflicts with other state or federal rules, and, to the extent feasible, with local governmental rules; and

(e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the rule.

(3) Each year each agency shall publish a list of rules which are to be reviewed pursuant to this section during the next twelve months and deliver a copy of the list to the office of financial management and all persons who make requests of the agency for the list. The list shall include a brief description of the legal basis for each rule as described by RCW 34.05.360, and shall invite public comment upon the rule. [1989 c 175 § 74; 1982 c 6 § 5.]

Effective date—1989 c 175: See note following RCW 34.05.010.

19.85.061 Compliance with federal law. Unless so requested by a majority vote of the joint administrative rules review committee under RCW 19.85.030, an agency is not required to comply with this chapter when adopting any rule solely for the purpose of conformity or compliance, or both, with federal statute or regulations. In lieu of the statement required under RCW 19.85.030, the agency shall file a statement citing, with specificity, the federal statute or regulation with which the rule is being adopted to conform or comply, and describing the consequences to the state if the rule is not adopted. [1995 c 403 § 404.]

Application—1995 c 403 §§ 201, 301-305, 401-405, and 801: See note following RCW 34.05.328.

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

19.85.070 Small business economic impact statement—Notice of proposed rule. When any rule is proposed for which a small business economic impact statement is required, the adopting agency shall provide notice to small businesses of the proposed rule through any of the following:

(1) Direct notification of known interested small businesses or trade organizations affected by the proposed rule; or

(2) Providing information of the proposed rule making to publications likely to be obtained by small businesses of the types affected by the proposed rule. [1992 c 197 § 1.]

19.85.900 Severability—1982 c 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 6 § 11.]

Chapter 19.86

UNFAIR BUSINESS PRACTICES—CONSUMER PROTECTION

Sections

- 19.86.010 Definitions.
- 19.86.020 Unfair competition, practices, declared unlawful.
- 19.86.023 Violation of RCW 15.86.030 constitutes violation of RCW 19.86.020.
- 19.86.030 Contracts, combinations, conspiracies in restraint of trade declared unlawful.
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- 19.86.140 Civil penalties.
- 19.86.145 Penalties—Animals used in biomedical research.
- 19.86.150 Dissolution, forfeiture of corporate franchise for violations.
- 19.86.160 Personal service of process outside state.
- 19.86.170 Exempted actions or transactions—Stipulated penalties and remedies are exclusive.
- 19.86.900 Severability—1961 c 216.
- 19.86.910 Short title.
- 19.86.920 Purpose—Interpretation—Liberal construction—Saving—1985 c 401; 1983 c 288; 1983 c 3; 1961 c 216.

Adult family homes: Chapter 70.128 RCW.

Advertisement of children for adoption: RCW 26.33.400.

Agriculture—Declarations of "Washington state grown": RCW 15.04.410.

Athlete agents: RCW 18.175.080.

Auctioneers: Chapter 18.11 RCW.

Automotive repair: Chapter 46.71 RCW.

Bail bond agents—Records—Finances—Disposition of security—Application of consumer protection act: RCW 18.185.210.

Business opportunity fraud act: Chapter 19.110 RCW.

Camping resorts: RCW 19.105.405, 19.105.500.

Cemetery board—Violation—Penalty—Unfair practice—Other laws applicable: RCW 68.05.330.

Chain distributor schemes: RCW 19.102.020.

Charitable solicitations, regulation: RCW 19.09.340.

Check cashers and sellers: Chapter 31.45 RCW.

Cigarettes—Sales below cost: RCW 19.91.300.

Collection agencies: RCW 19.16.120, 19.16.440.

Commercial telephone solicitation: Chapter 19.158 RCW.

Consumer leases: RCW 63.10.050.

Contractors: Chapter 18.27 RCW.

Credit—Fair credit reporting act: Chapter 19.182 RCW.

Credit services organization act: RCW 19.134.070.

Debt adjusting: RCW 18.28.185.
Degree-granting institutions: Chapter 28B.85 RCW.
Embalmers and funeral directors: RCW 18.39.350.
Employment agencies—Enforcement: RCW 19.31.210.
Equity skimming: Chapter 61.34 RCW.
Escrow agents—Advertisement, statement, or reference to existence of financial responsibility requirements prohibited—Referral fees prohibited: RCW 18.44.070, 18.44.145.
Fair credit reporting act: Chapter 19.182 RCW.
Franchise investment protection: RCW 19.100.030, 19.100.160, 19.100.190, 19.100.200.
Going out of business sales: Chapter 19.178 RCW.
Health studio services: Chapter 19.142 RCW.
Hearing instrument dispensing, advertising, etc.—Application: RCW 18.35.110, 18.35.120, 18.35.180.
Heating oil pollution liability protection act: RCW 70.149.100.
House-to-house sales by minors: RCW 49.12.310.
Immigration assistants: RCW 19.154.090.
International student exchange: Chapter 19.166 RCW.
Kosher food products: Chapter 69.90 RCW.
Land development law: RCW 58.19.270.
Law against discrimination: RCW 49.60.030.
Lease-purchase agreements: Chapter 63.19 RCW.
Leases: RCW 62A.2A-104.
Mechanics' and materialmen's liens—Acts of coercion: RCW 60.04.035.
Medicaid patient discrimination: RCW 74.42.055.
Mobile home installation service and warranty standards: RCW 43.22.440.
Mortgage brokers: Chapter 19.146 RCW.
Motor vehicle dealers: Chapter 46.70 RCW.
Motor vehicle service contracts: Chapter 48.96 RCW.
Motor vehicle subleasing or transfer: Chapter 19.116 RCW.
Motor vehicle warranties: Chapter 19.118 RCW.
Nursing homes—Discrimination against medicaid recipients: RCW 74.42.055.
On-site sewage additive manufacturers: RCW 70.118.080.
Operator services: RCW 80.36.360, 80.36.400, 80.36.530, 80.36.540.
Pay-per-call information delivery services: Chapter 19.162 RCW.
Private vocational schools: Chapter 28C.10 RCW.
Promotional advertising of prizes: Chapter 19.170 RCW.
Radio communications service companies not regulated by utilities and transportation commission: RCW 80.66.010.
Roofing and siding contractors and salespersons: Chapter 19.186 RCW.
Sellers of travel: Chapter 19.138 RCW.
Telephone buyers' protection act: Chapter 19.130 RCW.
Timeshare act: Chapter 64.36 RCW.
Unsolicited goods or services: Chapter 19.56 RCW.
Usurious contracts: RCW 19.52.036.
Viatical settlements act: Chapter 48.102 RCW.
Water companies exempt from utilities and transportation commission regulation: RCW 80.04.010.
Weatherization of leased or rented residences: RCW 70.164.060.

19.86.010 Definitions. As used in this chapter:

(1) "Person" shall include, where applicable, natural persons, corporations, trusts, unincorporated associations and partnerships.

(2) "Trade" and "commerce" shall include the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.

(3) "Assets" shall include any property, tangible or intangible, real, personal, or mixed, and wherever situate, and any other thing of value. [1961 c 216 § 1.]

19.86.020 Unfair competition, practices, declared unlawful. Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. [1961 c 216 § 2.]
Hearing instrument dispensing, advertising, etc.—Application: RCW 18.35.180.

19.86.023 Violation of RCW 15.86.030 constitutes violation of RCW 19.86.020. Any violation of RCW 15.86.030 shall also constitute a violation under RCW 19.86.020. [1985 c 247 § 7.]

19.86.030 Contracts, combinations, conspiracies in restraint of trade declared unlawful. Every contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is hereby declared unlawful. [1961 c 216 § 3.]

Monopolies and trusts prohibited: State Constitution Art. 12 § 22.

19.86.040 Monopolies and attempted monopolies declared unlawful. It shall be unlawful for any person to monopolize, or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of trade or commerce. [1961 c 216 § 4.]

19.86.050 Transactions and agreements not to use or deal in commodities or services of competitor declared unlawful when lessens competition. It shall be unlawful for any person to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, or services, whether patented or unpatented, for use, consumption, enjoyment, or resale, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity or services of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for such sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce. [1961 c 216 § 5.]

19.86.060 Acquisition of corporate stock by another corporation to lessen competition declared unlawful—Exceptions—Judicial order to divest. It shall be unlawful for any corporation to acquire, directly or indirectly, the whole or any part of the stock or assets of another corporation where the effect of such acquisition may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation from causing the formation of subsidiary corporations for the

actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

In addition to any other remedy provided by this chapter, the superior court may order any corporation to divest itself of the stock or assets held contrary to this section, in the manner and within the time fixed by said order. [1961 c 216 § 6.]

19.86.070 Labor not an article of commerce—Chapter not to affect mutual, nonprofit organizations. The labor of a human being is not a commodity or article of commerce. Nothing contained in this chapter shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof. [1961 c 216 § 7.]

Labor regulations: Title 49 RCW.

19.86.080 Attorney general may restrain prohibited acts—Costs—Restoration of property. The attorney general may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful; and the prevailing party may, in the discretion of the court, recover the costs of said action including a reasonable attorney's fee.

The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any act herein prohibited or declared to be unlawful. [1970 ex.s. c 26 § 1; 1961 c 216 § 8.]

19.86.090 Civil action for damages—Treble damages authorized—Action by governmental entities. Any person who is injured in his or her business or property by a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or any person so injured because he or she refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, may bring a civil action in the superior court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee, and the court may in its discretion, increase the award of damages to an amount not to exceed three times the actual damages sustained: PROVIDED, That such increased damage award for violation of RCW 19.86.020 may not exceed ten thousand dollars: PROVIDED FURTHER, That such person may bring a civil action in the district court to recover his or her actual damages, except for damages which exceed the amount specified in RCW 3.66.020, and the costs of the suit, including reasonable attorney's fees. The district court may, in its discretion, increase the award of damages to an amount not more than three times the actual damages sustained, but such increased damage award shall not exceed the amount

specified in RCW 3.66.020. For the purpose of this section "person" shall include the counties, municipalities, and all political subdivisions of this state.

Whenever the state of Washington is injured by reason of a violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, it may sue therefor in the superior court to recover the actual damages sustained by it and to recover the costs of the suit including a reasonable attorney's fee. [1987 c 202 § 187; 1983 c 288 § 3; 1970 ex.s. c 26 § 2; 1961 c 216 § 9.]

Intent—1987 c 202: See note following RCW 2.04.190.

Short title—Purposes—1983 c 288: "This act may be cited as the antitrust/consumer protection improvements act. Its purposes are to strengthen public and private enforcement of the unfair business practices-consumer protection act, chapter 19.86 RCW, and to repeal the unfair practices act, chapter 19.90 RCW, in order to eliminate a statute which is unnecessary in light of the provisions and remedies of chapter 19.86 RCW. In repealing chapter 19.90 RCW, it is the intent of the legislature that chapter 19.86 RCW should continue to provide appropriate remedies for predatory pricing and other pricing practices which constitute violations of federal antitrust law." [1983 c 288 § 1.] For codification of 1983 c 288, see Codification Tables, Volume 0.

19.86.095 Request for injunctive relief—Appellate proceeding—Service on the attorney general. In any proceeding in which there is a request for injunctive relief under RCW 19.86.090, the attorney general shall be served with a copy of the initial pleading alleging a violation of this chapter. In any appellate proceeding in which an issue is presented concerning a provision of this chapter, the attorney general shall, within the time provided for filing the brief with the appellate court, be served with a copy of the brief of the party presenting such issue. [1983 c 288 § 5.]

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

19.86.100 Assurance of discontinuance of prohibited act—Approval of court—Not considered admission. In the enforcement of this chapter, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county.

Such assurance of discontinuance shall not be considered an admission of a violation for any purpose; however, proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter. [1970 ex.s. c 26 § 3; 1961 c 216 § 10.]

19.86.110 Demand to produce documentary materials for inspection, answer written interrogatories, or give oral testimony—Contents—Service—Unauthorized disclosure—Return—Modification, vacation—Use—Penalty. (1) Whenever the attorney general believes that any person (a) may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate, which he believes to be relevant to the subject matter of an investigation of a possible violation of

RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or federal statutes dealing with the same or similar matters that the attorney general is authorized to enforce, or (b) may have knowledge of any information which the attorney general believes relevant to the subject matter of such an investigation, he may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon such a person, a civil investigative demand requiring such person to produce such documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony, or any combination of such demands pertaining to such documentary material or information: PROVIDED, That this section shall not be applicable to criminal prosecutions.

(2) Each such demand shall:

(a) State the statute and section or sections thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) If the demand is for the production of documentary material, describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

(c) Prescribe a return date within which the documentary material is to be produced, the answers to written interrogatories are to be made, or a date, time, and place at which oral testimony is to be taken; and

(d) Identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying, to whom answers to written interrogatories are to be made, or who are to conduct the examination for oral testimony.

(3) No such demand shall:

(a) Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum, a request for answers to written interrogatories, or a request for deposition upon oral examination issued by a court of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if such person is not a natural person, to any officer or managing agent of the person to be served; or

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if said person has no place of business in this state, to his principal office or place of business.

(5)(a) Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the attorney general;

(b) Written interrogatories in a demand served under this section shall be answered in the same manner as provided in the civil rules for superior court;

(c) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the same manner as provided in the civil rules for superior court for the taking of depositions. In the course of the deposition, the assistant attorney general conducting the examination may exclude from the place where the examination is held all persons other than the person being examined, the person's counsel, and the officer before whom the testimony is to be taken;

(d) Any person compelled to appear pursuant to a demand for oral testimony under this section may be accompanied by counsel;

(e) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the county within which the person resides, is found, or transacts business, or in such other place as may be agreed upon between the person served and the attorney general.

(6) If, after prior court approval, a civil investigative demand specifically prohibits disclosure of the existence or content of the demand, unless otherwise ordered by a superior court for good cause shown, it shall be a misdemeanor for any person if not a bank, trust company, mutual savings bank, credit union, or savings and loan association organized under the laws of the United States or of any one of the United States to disclose to any other person the existence or content of the demand, except for disclosure to counsel for the recipient of the demand or unless otherwise required by law.

(7) No documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, other than an authorized employee of the attorney general, without the consent of the person who produced such material, answered written interrogatories, or gave oral testimony, except as otherwise provided in this section: PROVIDED, That:

(a) Under such reasonable terms and conditions as the attorney general shall prescribe, the copies of such documentary material, answers to written interrogatories, or transcripts of oral testimony shall be available for inspection and copying by the person who produced such material, answered written interrogatories, or gave oral testimony, or any duly authorized representative of such person;

(b) The attorney general may provide copies of such documentary material, answers to written interrogatories, or transcripts of oral testimony to an official of this state, the federal government, or other state, who is charged with the enforcement of federal or state antitrust or consumer protection laws, if before the disclosure the receiving official agrees in writing that the information may not be disclosed to anyone other than that official or the official's authorized employees. The material provided under this subsection (7)(b) is subject to the confidentiality restrictions set forth in this section and may not be introduced as evidence in a criminal prosecution; and

(c) The attorney general or any assistant attorney general may use such copies of documentary material,

answers to written interrogatories, or transcripts of oral testimony as he determines necessary in the enforcement of this chapter, including presentation before any court: PROVIDED, That any such material, answers to written interrogatories, or transcripts of oral testimony which contain trade secrets shall not be presented except with the approval of the court in which action is pending after adequate notice to the person furnishing such material, answers to written interrogatories, or oral testimony.

(8) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside a demand issued pursuant to subsection (1), stating good cause, may be filed in the superior court for Thurston county, or in such other county where the parties reside. A petition, by the person on whom the demand is served, stating good cause, to require the attorney general or any person to perform any duty imposed by the provisions of this section, and all other petitions in connection with a demand, may be filed in the superior court for Thurston county, or in the county where the parties reside. The court shall have jurisdiction to impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

(9) Whenever any person fails to comply with any civil investigative demand for documentary material, answers to written interrogatories, or oral testimony duly served upon him under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the attorney general may file, in the trial court of general jurisdiction of the county in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one county such petition shall be filed in the county in which such person maintains his principal place of business, or in such other county as may be agreed upon by the parties to such petition. Whenever any petition is filed in the trial court of general jurisdiction of any county under this section, such court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry into effect the provisions of this section, and may impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions. [1993 c 125 § 1; 1990 c 199 § 1; 1987 c 152 § 1; 1982 c 137 § 1; 1970 ex.s. c 26 § 4; 1961 c 216 § 11.]

Rules of court: See Superior Court Civil Rules.

19.86.115 Materials from a federal agency or other state's attorney general. Whenever the attorney general receives documents or other material from:

(1) A federal agency, pursuant to its subpoena or Hart-Scott-Rodino authority; or

(2) Another state's attorney general, pursuant to that state's presuit investigative subpoena powers, the documents or materials are subject to the same restrictions as and may be used for all the purposes set forth in RCW 19.86.110. [1993 c 125 § 2.]

19.86.120 Limitation of actions—Tolling. Any action to enforce a claim for damages under RCW 19.86.090 shall be forever barred unless commenced within four years after the cause of action accrues: PROVIDED, That whenever any action is brought by the attorney general for a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, except actions for the recovery of a civil penalty for violation of an injunction or actions under RCW 19.86.090, the running of the foregoing statute of limitations, with respect to every private right of action for damages under RCW 19.86.090 which is based in whole or part on any matter complained of in said action by the attorney general, shall be suspended during the pendency thereof. [1970 ex.s. c 26 § 5; 1961 c 216 § 12.]

Action to enforce claim for civil damages under chapter 19.86 RCW must be commenced within six years. Unfair motor vehicles business practices act: RCW 46.70.220.

Limitation of actions: Chapter 4.16 RCW.

19.86.130 Final judgment to restrain is prima facie evidence in civil action—Exceptions. A final judgment or decree rendered in any action brought under RCW 19.86.080 by the state of Washington to the effect that a defendant has violated RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060 shall be prima facie evidence against such defendant in any action brought by any party against such defendant under RCW 19.86.090 as to all matters which said judgment or decree would be an estoppel as between the parties thereto: PROVIDED, That this section shall not apply to consent judgments or decrees where the court makes no finding of illegality. [1970 ex.s. c 26 § 6; 1961 c 216 § 13.]

19.86.140 Civil penalties. Every person who shall violate the terms of any injunction issued as in this chapter provided, shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

Every person, other than a corporation, who violates RCW 19.86.030 or 19.86.040 shall pay a civil penalty of not more than one hundred thousand dollars. Every corporation which violates RCW 19.86.030 or 19.86.040 shall pay a civil penalty of not more than five hundred thousand dollars.

Every person who violates RCW 19.86.020 shall forfeit and pay a civil penalty of not more than two thousand dollars for each violation: PROVIDED, That nothing in this paragraph shall apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer or distributor of any newspaper, magazine, billboard or other advertising medium who publishes, prints or distributes, advertising in good faith without knowledge of its false, deceptive or misleading character.

For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties.

With respect to violations of RCW 19.86.030 and 19.86.040, the attorney general, acting in the name of the state, may seek recovery of such penalties in a civil action. [1983 c 288 § 2; 1970 ex.s. c 26 § 7; 1961 c 216 § 14.]

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

19.86.145 Penalties—Animals used in biomedical research. Any violation of RCW 9.08.070 or 16.52.220 constitutes an unfair or deceptive practice in violation of this chapter. The relief available under this chapter for violations of RCW 9.08.070 or 16.52.220 by a research institution shall be limited to only monetary penalties in an amount not to exceed two thousand five hundred dollars. [1989 c 359 § 4.]

19.86.150 Dissolution, forfeiture of corporate franchise for violations. Upon petition by the attorney general, the court may, in its discretion, order the dissolution, or suspension or forfeiture of franchise, of any corporation which shall violate RCW 19.86.030 or 19.86.040 or the terms of any injunction issued as in this chapter provided. [1961 c 216 § 15.]

19.86.160 Personal service of process outside state. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185. [1961 c 216 § 16.]

19.86.170 Exempted actions or transactions—Stipulated penalties and remedies are exclusive. Nothing in this chapter shall apply to actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state, the Washington utilities and transportation commission, the federal power commission or actions or transactions permitted by any other regulatory body or officer acting under statutory authority of this state or the United States: PROVIDED, HOWEVER, That actions and transactions prohibited or regulated under the laws administered by the insurance commissioner shall be subject to the provisions of RCW 19.86.020 and all sections of chapter 216, Laws of 1961 and chapter 19.86 RCW which provide for the implementation and enforcement of RCW 19.86.020 except that nothing required or permitted to be done pursuant to Title 48 RCW shall be construed to be a violation of RCW 19.86.020: PROVIDED, FURTHER, That actions or transactions specifically permitted within the statutory authority granted to any regulatory board or commission established within Title 18 RCW shall not be construed to be a violation of chapter 19.86 RCW: PROVIDED, FURTHER, That this chapter shall apply to actions and transactions in connection with the disposition of human remains.

RCW 9A.20.010(2) shall not be applicable to the terms of this chapter and no penalty or remedy shall result from a violation of this chapter except as expressly provided herein. [1977 c 49 § 1; 1974 ex.s. c 158 § 1; 1967 c 147 § 1; 1961 c 216 § 17.]

Radio communications: RCW 80.04.530.

Telecommunications: RCW 80.36.360.

19.86.900 Severability—1961 c 216. If any provision of this act is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the

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constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1961 c 216 § 18.]

19.86.910 Short title. This act shall be known and designated as the "Consumer Protection Act." [1961 c 216 § 19.]

19.86.920 Purpose—Interpretation—Liberal construction—Saving—1985 c 401; 1983 c 288; 1983 c 3; 1961 c 216. The legislature hereby declares that the purpose of this act is to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition. It is the intent of the legislature that, in construing this act, the courts be guided by final decisions of the federal courts and final orders of the federal trade commission interpreting the various federal statutes dealing with the same or similar matters and that in deciding whether conduct restrains or monopolizes trade or commerce or may substantially lessen competition, determination of the relevant market or effective area of competition shall not be limited by the boundaries of the state of Washington. To this end this act shall be liberally construed that its beneficial purposes may be served.

It is, however, the intent of the legislature that this act shall not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business or which are not injurious to the public interest, nor be construed to authorize those acts or practices which unreasonably restrain trade or are unreasonable per se. [1985 c 401 § 1; 1983 c 288 § 4; 1983 c 3 § 25; 1961 c 216 § 20.]

Reviser's note: "This act" originally appears in 1961 c 216.

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

Chapter 19.91

UNFAIR CIGARETTE SALES BELOW COST ACT

Sections

19.91.300 Cigarettes—Sales below cost prohibited.

19.91.300 Cigarettes—Sales below cost prohibited. No person licensed to sell cigarettes under chapter 82.24 RCW may sell cigarettes below the actual price paid. Violations of this section constitute unfair or deceptive acts or practices under the consumer protection act, chapter 19.86 RCW. [1986 c 321 § 13.]

Policy—Intent—Savings—Effective date—1986 c 321: See notes following RCW 82.24.500.

Chapter 19.92

WEIGHTS AND MEASURES—BREAD AND HOPS

Sections

19.92.100 Bread—Standard loaves.

19.92.110 Bread—Open top or "hearth" loaves—Exceptions.

19.92.120 Bread—"Pullman" loaves.

19.92.240 Hops—Bale—Tare.

Weighing commodities transported for sale: Chapter 15.80 RCW.

19.92.100 Bread—Standard loaves. No person shall manufacture for sale, sell or offer or expose for sale, any bread except in the following weights, which shall be the net weights twelve hours after baking: "standard small loaf", which shall weigh not less than fifteen ounces and not more than seventeen ounces; "standard large loaf", which shall weigh not less than twenty-two and one-half ounces and not more than twenty-five and one-half ounces; "standard partial loaf", which shall weigh not less than eight ounces and not more than twelve ounces; or multiples of the foregoing weights for the "standard small loaf" and "standard large loaf": PROVIDED, That variations at the rate of one ounce over and one ounce under the foregoing, per "standard small loaf", or one and one-half ounce over or under per "standard large loaf", or any multiple of the foregoing variations per each multiple type loaf, in the above specified unit weights are permitted in individual loaves, but the average weight of not less than twelve loaves of any one kind of loaf shall not be less than the weight hereinabove prescribed. It shall be unlawful to sell or expose for sale bread in a loaf of such form that it has the appearance and size of a loaf of greater weight. [1983 c 89 § 1; 1955 c 61 § 1; 1937 c 214 § 1; 1927 c 194 § 10; RRS § 11626.]

19.92.110 Bread—Open top or "hearth" loaves—Exceptions. "Open top" or "hearth" means bread baked in pans or forms the top or top and sides of which are not enclosed.

"Open top" or "hearth bread" shall be baked in pans or forms the length and width of which shall not exceed the following:

"Standard small loaf", length, nine inches, width, four and one-half inches;

"Standard large loaf", length, twelve and one-quarter inches, width, four and one-half inches.

This section does not apply to standard partial loaves of bread or odd-shaped, ethnic, or specialty loaves of bread or to the equipment used to bake such loaves of bread. [1983 c 89 § 2; 1955 c 61 § 3. Prior: (i) 1937 c 214 § 2, part; RRS § 11626-1, part. (ii) 1937 c 214 § 3; RRS § 11626-2.]

19.92.120 Bread—"Pullman" loaves. "Pullman bread" means bread baked in pans all six sides of which are enclosed.

"Pullman bread" shall be baked in pans the length and cubic content of which shall not exceed the following:

"Standard small Pullman loaf", length, nine inches; cubic content, one hundred forty-four cubic inches;

"Standard large Pullman loaf", length, thirteen inches; cubic content, two hundred and eight cubic inches;

"Standard large multiple Pullman loaf 'a'", length, sixteen inches; cubic content, two hundred fifty-six cubic inches;

"Standard large multiple Pullman loaf 'b'", length, twenty inches; cubic content, four hundred five cubic inches. [1955 c 61 § 4. Prior: (i) 1937 c 214 § 2, part; RRS § 11626-1, part. (ii) 1937 c 214 § 4; RRS § 11626-3.]

19.92.240 Hops—Bale—Tare. The amount of tare to be deducted from the gross weight of each bale of hops grown and hereafter sold in this state is hereby fixed at five pounds per bale. Five yards of baling cloth is the maximum quantity to be used in making the bale, and the standard weight of each yard of baling cloth is hereby fixed at from twenty-four to thirty ounces. The standard weight for a bale of hops is hereby fixed at from one hundred and seventy-five to two hundred and ten pounds. Any vendor of hops using heavier sacking than that specified in this section, or using any extraneous matter in the baling thereof, shall have the same deducted as additional tare. [1890 p 522 § 1. No RRS.]

Chapter 19.94

WEIGHTS AND MEASURES

Sections

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19.94.005 Findings. The legislature finds:

(1) The accuracy of weighing and measuring instruments and devices used in commerce in the state of Washington affects every consumer throughout the state and is of vital importance to the public interest.

(2) Fair weights and measures are equally important to business and the consumer.

(3) This chapter safeguards the consuming public and ensures that businesses receive proper compensation for the commodities they deliver. [1995 c 355 § 3; 1992 c 237 § 1.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

Intent—1992 c 237: "Until such time as the study in section 38, chapter 237, Laws of 1992, is completed, it is the intent of the legislature that consumer protection activities of the department of agriculture weights and measures program be funded by the general fund and that device inspection related activities be funded on a fee-for-service basis." [1992 c 237 § 2.]

19.94.010 Definitions—Director may prescribe by rule. (1) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter and to any rules adopted pursuant to this chapter.

(a) "City" means a first class city with a population of over fifty thousand persons.

(b) "City sealer" means the person duly authorized by a city to enforce and administer the weights and measures program within such city and any duly appointed deputy sealer acting under the instructions and at the direction of the city sealer.

(c) "Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale, exclusive, however, of an auxiliary shipping container enclosing packages that

individually conform to the requirements of this chapter. An individual item or lot of any commodity not in packaged form, but on which there is marked a selling price based on established price per unit of weight or of measure, shall be construed to be a commodity in package form.

(d) "Consumer package" or "package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by persons, or used by persons for the purpose of personal care or in the performance of services ordinarily rendered in or about a household or in connection with personal possessions.

(e) "Cord" means the measurement of wood intended for fuel or pulp purposes that is contained in a space of one hundred twenty-eight cubic feet, when the wood is ranked and well stowed.

(f) "Department" means the department of agriculture of the state of Washington.

(g) "Director" means the director of the department or duly authorized representative acting under the instructions and at the direction of the director.

(h) "Fish" means any waterbreathing animal, including shellfish, such as, but not limited to, lobster, clam, crab, or other mollusca that is prepared, processed, sold, or intended for sale.

(i) "Net weight" means the weight of a commodity excluding any materials, substances, or items not considered to be part of such commodity. Materials, substances, or items not considered to be part of a commodity shall include, but are not limited to, containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, and coupons.

(j) "Nonconsumer package" or "package of nonconsumer commodity" means a commodity in package form other than a consumer package and particularly a package designed solely for industrial or institutional use or for wholesale distribution only.

(k) "Meat" means and shall include all animal flesh, carcasses, or parts of animals, and shall also include fish, shellfish, game, poultry, and meat food products of every kind and character, whether fresh, frozen, cooked, cured, or processed.

(l) "Official seal of approval" means the seal or certificate issued by the director or city sealer which indicates that a secondary weights and measures standard or a weighing or measuring instrument or device conforms with the specifications, tolerances, and other technical requirements adopted in RCW 19.94.195.

(m) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise.

(n) "Poultry" means all fowl, domestic or wild, that is prepared, processed, sold, or intended or offered for sale.

(o) "Service agent" means a person who for hire, award, commission, or any other payment of any kind, installs, tests, inspects, checks, adjusts, repairs, reconditions, or systematically standardizes the graduations of a weighing or measuring instrument or device.

(p) "Ton" means a unit of two thousand pounds avoirdupois weight.

(q) "Weighing or measuring instrument or device" means any equipment or apparatus used commercially to establish the size, quantity, capacity, count, extent, area, heaviness, or measurement of quantities, things, produce, or articles for distribution or consumption, that are purchased, offered or submitted for sale, hire, or award on the basis of weight, measure or count, including any accessory attached to or used in connection with a weighing or measuring instrument or device when such accessory is so designed or installed that its operation affects, or may effect, the accuracy or indication of the device. This definition shall be strictly limited to those weighing or measuring instruments or devices governed by Handbook 44 as adopted under RCW 19.94.195.

(r) "Weight" means net weight as defined in this section.

(s) "Weights and measures" means the recognized standards or units of measure used to indicate the size, quantity, capacity, count, extent, area, heaviness, or measurement of any consumable commodity.

(t) "Secondary weights and measures standard" means the physical standards that are traceable to the primary standards through comparisons, used by the director, a city sealer, or a service agent that under specified conditions defines or represents a recognized weight or measure during the inspection, adjustment, testing, or systematic standardization of the graduations of any weighing or measuring instrument or device.

(2) The director shall prescribe by rule other definitions as may be necessary for the implementation of this chapter. [1995 c 355 § 4; 1992 c 237 § 3; 1969 c 67 § 1.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.015 Commercial use of instrument or device—Registration—Fees. (1) Except as provided in subsection (4) of this section for the initial registration of an instrument or device, no weighing or measuring instrument or device may be used for commercial purposes in the state unless its commercial use is registered annually. If its commercial use is within a city that has a city sealer and a weights and measures program as provided by RCW 19.94.280, the commercial use of the instrument or device shall be registered with the city if the city has adopted fees pursuant to subsection (2) of this section. If its commercial use is outside of such a city, the commercial use of the instrument or device shall be registered with the department.

(2) A city with such a sealer and program may establish an annual fee for registering the commercial use of such a weighing or measuring instrument or device with the city. The annual fee shall not exceed the fee established in RCW 19.94.175 for registering the use of a similar instrument or device with the department. Fees upon weighing or measuring instruments or devices within the jurisdiction of the city that are collected under this subsection by city sealers shall be deposited into the general fund, or other account, of the city as directed by the governing body of the city.

(3) Registrations with the department are accomplished as part of the master license system under chapter 19.02 RCW. Payment of the registration fee for a weighing or

measuring instrument or device under the master license system constitutes the registration required by this section.

(4) The fees established by or under RCW 19.94.175 for registering a weighing or measuring instrument or device shall be paid to the department of licensing concurrently with an application for a master license or with the annual renewal of a master license under chapter 19.02 RCW. A weighing or measuring instrument or device shall be initially registered with the state at the time the owner applies for a master license for a new business or at the first renewal of the license that occurs after the instrument or device is first placed into commercial use. However, the use of an instrument or device that is in commercial use on *the effective date of this act shall be initially registered at the time the first renewal of the master license of the owner of the instrument or device is due following *the effective date of this act. The department of licensing shall remit to the department of agriculture all fees collected under this provision less reasonable collection expenses.

(5) Each city charging registration fees under this section shall notify the department of agriculture at the time such fees are adopted and whenever changes in the fees are adopted. [1995 c 355 § 1.]

***Reviser's note:** 1995 c 355 has different effective dates. The effective date for sections 1 and 7 is January 1, 1996, and the effective date for sections 2 through 6 and 8 through 25 is July 1, 1995.

Application—1995 c 355: "This act applies prospectively only and not retroactively. It applies only to causes of action that arise or that are commenced on or after *the effective date of this act. This act does not affect any liability or obligation arising prior to *the effective date of this act." [1995 c 355 § 27.]

***Reviser's note:** For "the effective date of this act" see note following RCW 19.94.015.

Effective dates—1995 c 355: "(1) Sections 2 through 6 and 8 through 25 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995.

(2) Sections 1 and 7 of this act shall take effect January 1, 1996." [1995 c 355 § 28.]

19.94.150 Standards recognized. The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of these systems shall be used for all commercial purposes in this state. The definitions of basic units of weight and measure and weights and measures equivalents, as published by the national institute of standards and technology or any successor organization, are recognized and shall govern weighing or measuring instruments or devices used in commercial activities and other transactions involving weights and measures within this state. [1992 c 237 § 4; 1991 sp.s. c 23 § 4; 1969 c 67 § 15.]

Legislative findings—1991 sp.s. c 23: "The legislature finds:

(1) Accurate weights and measures are essential for the efficient operation of commerce in Washington, and weights and measures are important to both consumers and businesses.

(2) Legislation to expand the weights and measures program and fund the program with license fees on weights and measures devices has been considered.

(3) Additional information is necessary before further action can be taken." [1991 sp.s. c 23 § 1.]

Intent—1991 sp.s. c 23: "It is the intent of the legislature to fund the current weights and measures program only through the first year of the 1991-93 fiscal biennium, and to base funding of the program for the second

year of the biennium and ensuing biennia upon the recommendations of the study performed under section 3, chapter 23, Laws of 1991 1st sp. sess." [1991 sp.s. c 23 § 2.]

19.94.160 State standards. Weights and measures standards that are in conformity with the standards of the United States as have been supplied to the state by the federal government or otherwise obtained by the state for use as state weights and measures standards, shall, when the same shall have been certified as such by the national institute of standards and technology or any successor organization, be the primary standards of weight and measure. The state weights and measures standards shall be kept in a place designated by the director and shall be maintained in such calibration as prescribed by the national institute of standards and technology or any successor organization. [1995 c 355 § 5; 1992 c 237 § 5; 1991 sp.s. c 23 § 5; 1969 c 67 § 16.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.163 Testing by department—Ensuring enforcement—Issuance of seal of approval—Exception.

(1) Except as provided in subsection (3) of this section and RCW 19.94.190(1)(d), the department shall test and inspect each biennium a sufficient number of weighing and measuring instruments and devices to ensure that the provisions of this chapter are enforced.

(2) The department may issue an official seal of approval for each weighing or measuring instrument or device that has been tested and inspected and found to be correct.

(3) Except as provided in RCW 19.94.216, this section does not apply to weighing or measuring instruments or devices located in an area of the state that is within a city that has a city sealer and a weights and measures program pursuant to RCW 19.94.280 unless the city sealer does not possess the equipment necessary to test and inspect the weighing or measuring instrument or device. [1995 c 355 § 2.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.165 Commercial instruments or devices to be correct. All weighing or measuring instruments or devices used for commercial purposes within this state shall be correct. [1995 c 355 § 6; 1992 c 237 § 6.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.175 Registration—Inspection and testing—Fees. (1) Pursuant to RCW 19.94.015, the following annual registration fees shall be charged for each weighing or measuring instrument or device used for commercial purposes in this state:

- (a) Weighing devices:
 - (i) Small scales "zero to four hundred pounds capacity" \$ 5.00

- (ii) Intermediate scales "four hundred one pounds to five thousand pounds capacity" \$ 20.00
- (iii) Large scales "over five thousand pounds capacity" \$ 52.00
- (iv) Large scales with supplemental devices \$ 52.00
- (v) Railroad track scales \$800.00
- (b) Liquid fuel metering devices:
 - (i) Motor fuel meters with flows of less than twenty gallons per minute \$ 5.00
 - (ii) Motor fuel meters with flows of more than twenty but not more than one hundred fifty gallons per minute \$ 16.00
 - (iii) Motor fuel meters with flows over one hundred fifty gallons per minute \$ 25.00
- (c) Liquid petroleum gas meters:
 - (i) With one inch diameter or smaller dispensers \$ 10.00
 - (ii) With greater than one inch diameter dispensers \$ 30.00
- (d) Fabric meters \$ 5.00
- (e) Cordage meters \$ 5.00
- (f) Mass flow meters \$ 14.00
- (g) Taxi meters \$ 5.00

(2) With the exception of subsection (3) of this section, no person shall be required to pay more than the established fee adopted under this section for any weighing or measuring instrument or device in any one year.

(3) The department or a city sealer may establish reasonable inspection and testing fees for each type or class of weighing or measuring instrument or device specially requested to be inspected or tested by the device owner. These inspection and testing fees shall be limited to those amounts necessary for the department or city sealer to cover the direct costs associated with such inspection and testing. The fees established under this subsection shall not be set so as to compete with service agents normally engaged in such services. [1995 c 355 § 7; 1992 c 237 § 7.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.185 Deposit of moneys—Weights and measures account—General fund—Report of revenues. (1)

Except as provided in subsection (2) of this section, all moneys collected under this chapter shall be payable to the director and placed in the weights and measures account hereby established in the agricultural local fund. Moneys deposited in this account shall be used solely for the purposes of implementing or enforcing this chapter. No appropriation is required for the disbursement of moneys from the weights and measures account by the director.

(2) Civil penalties collected by the department under RCW 19.94.510, 19.94.515, and 19.94.517 shall be deposited in the state general fund.

(3) By January 1st of each odd-numbered year, the department shall provide a written report on the amount of revenues by major category received under this chapter, including the metrology laboratory, for the administration of the weights and measures program by the department. The report shall include the amount of revenue generated for the two previous biennia, an estimate of the amount of funds to

be received during the current biennium, and an estimate of the amount of funds to be generated during the next ensuing biennium. The report shall be submitted to the office of financial management and to each committee in the legislature with jurisdiction over programs administered by the department in the house and the senate. [1995 c 355 § 8; 1992 c 237 § 8.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.190 Enforcement—Rules. (1) The director and duly appointed city sealers shall enforce the provisions of this chapter. The director shall adopt rules for enforcing and carrying out the purposes of this chapter including but not limited to the following:

(a) Establishing state standards of weight, measure, or count, and reasonable standards of fill for any commodity in package form;

(b) The establishment of technical and reporting procedures to be followed, any necessary report and record forms, and marks of rejection to be used by the director and city sealers in the discharge of their official duties as required by this chapter;

(c) The establishment of technical test procedures, reporting procedures, and any necessary record and reporting forms to be used by service agents when testing and inspecting instruments or devices under RCW 19.94.255(3) or when otherwise installing, repairing, inspecting, or standardizing the graduations of any weighing or measuring instruments or devices;

(d) The establishment of exemptions from the marking or tagging requirements of RCW 19.94.250 with respect to weighing or measuring instruments or devices of such character or size that such marking or tagging would be inappropriate, impracticable, or damaging to the apparatus in question;

(e) The establishment of exemptions from the inspection and testing requirements of RCW 19.94.163 with respect to classes of weighing or measuring instruments or devices found to be of such character that periodic inspection and testing is unnecessary to ensure continued accuracy;

(f) The establishment of inspection and approval techniques, if any, to be used with respect to classes of weighing or measuring instruments or devices that are designed specifically to be used commercially only once and then discarded, or are uniformly mass-produced by means of a mold or die and are not individually adjustable; and

(g) The establishment of inspection and testing procedures to be used for classes of weighing or measuring instruments or devices found to be few in number, highly complex, and of such character that differential or special inspection and testing is necessary, including railroad track scales. The department's procedures shall include requirements for the provision, maintenance, and transport of any weight or measure necessary for the inspection and testing at no expense to the state.

(2) These rules shall also include specifications and tolerances for the acceptable range of accuracy required of weighing or measuring instruments or devices and shall be designed to eliminate from use, without prejudice to weighing or measuring instruments or devices that conform as closely as practicable to official specifications and tolerances,

those (a) that are of such construction that they are faulty, that is, that are not reasonably permanent in their adjustment or will not repeat their indications correctly, or (b) that facilitate the perpetration of fraud. [1995 c 355 § 9; 1992 c 237 § 9; 1991 sp.s. c 23 § 6; 1989 c 354 § 36; 1977 ex.s. c 26 § 5; 1969 c 67 § 19.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

Severability—1989 c 354: See note following RCW 15.36.012.

19.94.195 Specifications, tolerances, technical requirements—Adoption—Hearing—Notice. (1) The department shall adopt the specifications, tolerances, and other technical requirements for commercial weighing or measuring instruments or devices, together with amendments thereto, as recommended by the most recent edition of Handbook 44 published by the national institute of standards and technology or any successor organization as the specifications, tolerances, and other technical requirements for commercial weighing or measuring instruments or devices commercially used in this state.

(2)(a) To promote uniformity, any supplements or amendments to Handbook 44 or any similar subsequent publication of the national institute of standards and technology or any successor organization shall be deemed to have been adopted under this section.

(b) The director may, however, within thirty days of the publication or effective date of Handbook 44 or any supplements, amendments, or similar publications give public notice that a hearing will be held to determine if such publications should not be applicable under this section. Any such hearing shall be conducted under chapter 34.05 RCW. [1992 c 237 § 10.]

19.94.205 Correct and incorrect—Instruments, devices, weights, measures—When deemed. For the purposes of this chapter, weighing or measuring instruments or devices and weights and measures standards shall be deemed to be "correct" when they conform to all applicable requirements of this chapter or the requirements of any rule adopted by the department under the authority granted in this chapter; all other weighing or measuring instruments or devices and weights and measures standards shall be deemed to be "incorrect." [1992 c 237 § 11.]

19.94.216 Department inspection—City sealer—Agencies, institutions—Fees. The department shall:

(1) Biennially inspect and test the secondary weights and measures standards of any city for which the appointment of a city sealer is provided by this chapter and shall issue an official seal of approval for same when found to be correct. The department shall, by rule, establish a reasonable fee for this and any other inspection and testing services performed by the department's metrology laboratory. Each such fee shall recover at least seventy-five percent of the laboratory's costs incurred in performing the service governed by the fee on or before June 30, 1998. The fees established under this subsection may be increased in excess of the fiscal growth factor as provided in RCW 43.135.055

for the fiscal year ending 1996, 1997, and 1998. For fiscal year 1999 and thereafter, the fees established under this subsection may not be increased by an amount greater than the fiscal growth factor as provided in RCW 43.135.055.

(2) Biennially inspect and test any weighing or measuring instrument or device used in an agency or institution to which moneys are appropriated by the legislature or of the federal government and shall report any findings in writing to the executive officer of the agency or institution concerned. The department shall collect a reasonable fee, to be set by rule, for testing any such weighing or measuring instrument or device. [1995 c 355 § 10; 1992 c 237 § 12.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.220 Investigations. In promoting the general objective of ensuring accuracy of weighing or measuring instruments or devices and the proper representation of weights and measures in commercial transactions, the director or a city sealer shall, upon his or her own initiative and as he or she deems appropriate and advisable, investigate complaints made concerning violations of the provisions of this chapter. [1992 c 237 § 13; 1991 sp.s. c 23 § 8; 1969 c 67 § 22.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.230 Inspections and tests to determine conformity to law—Off sale order—Marks, tags, stamps.

(1) The director or a city sealer may, from time to time, inspect and test packages or amounts of commodities kept, offered, exposed for sale, sold, or in the process of delivery to determine whether the same contain the amounts represented and whether they are kept, offered, exposed for sale or sold in accordance with law. When such packages or amounts of commodities are found not to contain the amounts represented or are found to be kept, offered, or exposed for sale or sold in violation of law, the director or city sealer may order them off sale and may mark, tag, or stamp them in a manner prescribed by the department.

(2) In carrying out the provisions of this section, the director or city sealer may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of a result obtained on a sample selected from and representative of such lot.

(3) No person shall (a) sell, keep, offer, or expose for sale any package or amount of commodity that has been ordered off sale as provided in this section unless and until such package or amount of commodity has been brought into full compliance with legal requirements or (b) dispose of any package or amount of commodity that has been ordered off sale and that has not been brought into compliance with legal requirements in any manner except with the specific written approval of the director or city sealer who issued such off sale order. [1992 c 237 § 14; 1969 c 67 § 23.]

19.94.240 Stop-use, stop-removal, and removal orders. (1) The director or a city sealer shall have the power to issue stop-use orders, stop-removal orders, and removal orders with respect to weighing or measuring

devices being, or susceptible of being, commercially used within this state.

(2) The director or a city sealer shall also have the power to issue stop-removal orders and removal orders with respect to packages or amounts of commodities kept, offered, exposed for sale, sold, or in process of delivery.

(3) The director or a city sealer shall issue such orders whenever in the course of his or her enforcement of the provisions of this chapter or rules adopted hereunder he or she deems it necessary or expedient to issue such orders.

(4) No person shall use, remove from the premises specified, or fail to remove from any premises specified any weighing or measuring instrument or device, commodity in packaged form, or amount of commodity contrary to the terms of a stop-use order, stop-removal order or removal order, issued under the authority of this section. [1992 c 237 § 15; 1991 sp.s. c 23 § 9; 1969 c 67 § 24.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.250 Inspection of instrument or device to determine if correct—Rejection or seizure—Confiscation or destruction—Use of incorrect instrument or device—Notice. (1) If the director or a city sealer discovers upon inspection that a weighing or measuring instrument or device is "incorrect," but in his or her best judgment is susceptible of satisfactory repair, he or she shall reject and mark or tag as rejected any such weighing or measuring instrument or device.

(2) The director or a city sealer may reject or seize any weighing or measuring instrument or device found to be incorrect that, in his or her best judgment, is not susceptible of satisfactory repair.

(3) Weighing or measuring instruments or devices that have been rejected under subsection (1) of this section may be confiscated and may be destroyed by the director or a city sealer if not corrected as required by RCW 19.94.255 or if used or disposed of contrary to the requirements of that section.

(4) The director or a city sealer shall permit the use of an incorrect weighing or measuring instrument or device, pending repairs, if the device is incorrect to the economic benefit of the consumer and the consumer is not the seller. However, if the director or city sealer finds such an error, the director or city sealer shall notify the owner of the instrument or device, or the owner's representative at the business location, regarding the error. [1995 c 355 § 11; 1992 c 237 § 16; 1991 sp.s. c 23 § 10; 1969 c 67 § 25.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.255 Correction of rejected weights and measures. (1) Weighing or measuring instruments or devices that have been rejected under the authority of the director or a city sealer shall remain subject to the control of the rejecting authority until such time as suitable repair or disposition thereof has been made as required by this section.

(2) The owner of any weighing or measuring instrument or device that has been marked or tagged as rejected by the

director or a city sealer shall cause the same to be made correct within thirty days or such longer period as may be authorized by the rejecting authority. In lieu of correction, the owner of such weighing and measuring instrument or device may dispose of the same, but only in the manner specifically authorized by the rejecting authority.

(3) Weighing and measuring instruments or devices that have been rejected shall not again be used commercially until they have been reexamined and found to be correct by the department, city sealer, or a service agent registered with the department.

(4) If a weighing or measuring instrument or device marked or tagged as rejected is placed back into commercial service by a service agent registered with the department, the agent shall provide a signed certification to the owner or operator of the instrument or device so indicating and shall report to the rejecting authority as provided by rule under RCW 19.94.190(1)(c). [1995 c 355 § 12; 1992 c 237 § 17; 1991 sp.s. c 23 § 14; 1969 c 67 § 33. Formerly RCW 19.94.330.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.258 Service agent—Registration certificate.

(1) Except as authorized by the department, a service agent who intends to provide the examination that permits a weighing or measuring instrument or device to be placed back into commercial service under RCW 19.94.255(3) shall receive an official registration certificate from the director prior to performing such a service. This registration requirement does not apply to the department or a city sealer.

(2) Except as provided in *RCW 19.94.035, a registration certificate is valid for one year. It may be renewed by submitting a request for renewal to the department. [1995 c 355 § 15.]

***Reviser's note:** RCW 19.94.035 was recodified as RCW 19.94.2584 pursuant to RCW 1.08.015(2)(k), September 1996.

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.2582 Service agent—Registration certificate—Fee—Decision—Denial—Notice—Refund. (1) Each request for an official registration certificate shall be in writing, under oath, and on a form prescribed by the department and shall contain any relevant information as the director may require, including but not limited to the following:

(a) The name and address of the person, corporation, partnership, or sole proprietorship requesting registration;

(b) The names and addresses of all individuals requesting an official registration certificate from the department; and

(c) The tax registration number as required under RCW 82.32.030 or uniform business identifier provided on a master license issued under RCW 19.02.070.

(2) Each individual when submitting a request for an official registration certificate or a renewal of such a certificate shall pay a fee to the department in the amount of eighty dollars per individual.

(3) The department shall issue a decision on a request for an official registration certificate within twenty days of receipt of the request. If an individual is denied their request for an official registration certificate, the department must notify that individual in writing stating the reasons for the denial and shall refund any payments made by that individual in connection with the request. [1995 c 355 § 16. Formerly RCW 19.94.025.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.2584 Service agent—Registration certificate—Revocation, suspension, refusal to renew—Appeal. (1) The department shall have the power to revoke, suspend, or refuse to renew the official registration certificate of any service agent for any of the following reasons:

(a) Fraud or deceit in obtaining an official registration certificate under this chapter;

(b) A finding by the department of a pattern of intentional fraudulent or negligent activities in the installation, inspection, testing, checking, adjusting, or systematically standardizing and approving the graduations of any weighing or measuring instrument or device;

(c) Knowingly placing back into commercial service any weighing or measuring instrument or device that is incorrect;

(d) A violation of any provision of this chapter; or

(e) Conviction of a crime or an act constituting a crime under the laws of this state, the laws of another state, or federal law.

(2) Upon the department's revocation of, suspension of, or refusal to renew [renew] an official registration certificate, an individual shall have the right to appeal this decision in accordance with the administrative procedure act, chapter 34.05 RCW. [1995 c 355 § 17. Formerly RCW 19.94.035.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.260 Rejection—Seizure for use as evidence—Entry of premises—Search warrant. (1) With respect to the enforcement of this chapter and any other acts dealing with weights and measures that he or she is, or may be empowered to enforce, the director or a city sealer may reject or seize for use as evidence incorrect weighing or measuring instruments or devices or packages of commodities to be used, retained, offered, exposed for sale, or sold in violation of the law.

(2) In the performance of his or her official duties conferred under this chapter, the director or a city sealer is authorized at reasonable times during the normal business hours of the person using a weighing or measuring instrument or device to enter into or upon any structure or premises where such weighing or measuring instrument or device is used or kept for commercial purposes. If the director or a city sealer is denied access to any premises or establishment where such access was sought for the purposes set forth in this chapter, the director or a city sealer may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises or establishment for such purposes. The court may, upon such application, issue the search warrant for the purposes requested. [1992 c 237 § 18; 1991 sp.s. c 23 § 11; 1969 c 67 § 26.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.265 Grievances—Procedure—Notice—Hearing—Rules. (1) Any person aggrieved by any official action of the department or a city sealer conferred under this chapter, including but not limited to, "stop-use orders," "stop-removal orders," "removal orders," "condemnation," or "off sale order" may within thirty days after an order is given or any action is taken, petition the director for a hearing to determine the matter. Such proceedings and any appeal therefrom shall be taken in accordance with the administrative procedure act, chapter 34.05 RCW.

(2) The director shall give due notice and hold a hearing within ten days after the confiscation or seizure of any weighing or measuring instrument or device or commodity under RCW 19.94.250 or the seizure of any weighing or measuring instrument or device for evidence under RCW 19.94.260. This hearing shall be for the purposes of determining whether any such weighing or measuring instrument or device or commodity was properly confiscated or seized, to determine whether or not such weighing or measuring instrument or device or commodity was used for, or is in, violation of any provision of this chapter or to determine the disposition to be made of such weighing or measuring instrument or device or commodity. Such proceedings and any appeal therefrom shall be taken in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) The department may by rule establish procedures for the administration of this section. [1992 c 237 § 19.]

19.94.280 City sealers and deputies—Appointment, removal—Record, report—Testing of devices and instruments—Seal of approval. (1) There may be a city sealer in every city and such deputies as may be required by ordinance of each such city to administer and enforce the provisions of this chapter.

(2) Each city electing to have a city sealer shall adopt rules for the appointment and removal of the city sealer and any deputies required by local ordinance. The rules for appointment of a city sealer and any deputies must include provisions for the advice and consent of the local governing body of such city and, as necessary, any provisions for local civil service laws and regulations.

(3) A city sealer shall keep a complete and accurate record of all official acts performed under the authority of this chapter and shall submit an annual report to the governing body of his or her city and shall make any reports as may be required by the director.

(4) The city sealer shall test and inspect a sufficient number of weighing and measuring instruments and devices to ensure that the provisions of this chapter are enforced in the city. This subsection does not apply to weighing or measuring instruments or devices for which the sealer does not have the necessary testing or inspection equipment or to instruments or devices that are to be inspected by the department under RCW 19.94.216(2).

(5) A city sealer may issue an official seal of approval for each weighing or measuring instrument or device that has been inspected and tested and found to be correct. [1995 c 355 § 13; 1992 c 237 § 20; 1969 c 67 § 28.]

Application—Effective dates—1995 c.355: See notes following RCW 19.94.015.

19.94.310 City sealers and deputies—Duties of governing body—Sealer to have standards comparison made every two years. (1) The governing body of each city for which a city sealer has been appointed as provided for by RCW 19.94.280 shall:

(a) Procure at the expense of the city the official weights and measures standards and any field weights and measures standards necessary for the administration and enforcement of the provisions of this chapter or any rule that may be prescribed by the director;

(b) Provide a suitable office for the city sealer and any deputies that have been duly appointed; and

(c) Make provision for the necessary clerical services, supplies, transportation and for defraying contingent expenses incidental to the official activities of the city sealer and his or her deputies in carrying out the provisions of this chapter.

(2) When the acquisition of the official weights and measures standards required under subsection (1)(a) of this section has been made and such weights and measures standards have been examined and approved by the director, they shall be the certified weights and measures standards for such city.

(3) In order to maintain field weights and measure[s] standards in accurate condition, the city sealer shall, at least once every two years, compare the field weights and measures standards used within his or her city to the certified weights and measures standards of such city or to the official weights and measures standards of this state. [1992 c 237 § 21; 1969 c 67 § 31.]

19.94.320 City sealers—Director—General oversight powers, concurrent authority—Powers and duties of chapter are additional. (1) In cities for which city sealers have been appointed as provided for in this chapter, the director shall have general oversight powers over city weights and measures programs and may, when he or she deems it reasonably necessary, exercise concurrent authority to carry out the provisions of this chapter.

(2) When the director elects to exercise concurrent authority within a city with a duly appointed city sealer, the director's powers and duties relative to this chapter shall be in addition to the powers granted in any such city by law or charter. [1995 c 355 § 14; 1992 c 237 § 22; 1969 c 67 § 32.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.325 Service agent—Inspection and testing of weights and measures—Seal of approval—Fees—Violation—Penalty. (1) Except as otherwise provided for in this chapter or in any rule adopted under the authority of this chapter, any person who engages in business within this state as a service agent shall biennially submit to the department for inspection and testing all weights and measures standards used by the service agent, or any agent or employee of the service agent. If the department finds such weights and measures standards to be correct, the

director shall issue an official seal of approval for each such standard.

(2) The department may by rule adopt reasonable fees for the inspection and testing services performed by the weights and measures laboratory pursuant to this section.

(3) A service agent shall not use in the installation, inspection, adjustment, repair, or reconditioning of any weighing or measuring instrument or device any weight or measure standard that does not have a valid, official seal of approval from the director. Any service agent who violates this section is subject to a civil penalty of no more than five hundred dollars. [1992 c 237 § 23.]

19.94.340 Sale of commodities—Measurement—Exceptions—Rules to assure good practice and accuracy.

(1) Except as provided in subsection (2) of this section, commodities in liquid form shall be sold only by liquid measure or by weight, and, except as otherwise provided in this chapter, commodities not in liquid form shall be sold only by weight, by measure of length or area, or by count.

(2) Liquid commodities may be sold by weight and commodities not in liquid form may be sold by count only if such methods provide accurate information as to the quantity of commodity sold.

(3) The provisions of this section shall not apply to:

- (a) Commodities that are sold for immediate consumption on the premises where sold;
- (b) Vegetables when sold by the head or bunch;
- (c) Commodities in containers standardized by a law of this state or by federal law;
- (d) Commodities in package form when there exists a general consumer usage to express the quantity in some other manner;

(e) Concrete aggregates, concrete mixtures, and loose solid materials such as earth, soil, gravel, crushed stone, and the like, when sold by cubic measure; or

(f) Unprocessed vegetable and animal fertilizer when sold by cubic measure.

(4) The director may issue such reasonable rules as are necessary to assure that amounts of commodity sold are determined in accordance with good commercial practice and are so determined and represented to be accurate and informative to all interested parties. [1992 c 237 § 24; 1991 sp.s. c 23 § 15; 1969 c 67 § 34.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.350 Packaged commodities in intrastate commerce—Declaration of contents on outside—Rules.

(1) Except as otherwise provided in this chapter, any commodity in package form introduced or delivered for introduction into or received in intrastate commerce, kept for the purpose of sale, offered or exposed for sale or sold in intrastate commerce, shall bear on the outside of the package such definite, plain, and conspicuous declaration of:

(a) The identity of the commodity contained within the package unless the same can easily be identified through the package;

(b) The net quantity of the contents in terms of weight, measure or count; and

(c) In the case of any package not sold on the premises where packed, the name and place of business of the manufacturer, packer, or distributor, as may be prescribed by rule issued by the director.

(2) In connection with the declaration required under subsection (1)(b) of this section, neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure, or count (for example, "jumbo", "giant", "full", "or over", and the like) that tends to exaggerate the amount of commodity in a package, shall be used.

(3) With respect to the declaration required under subsection (1)(b) of this section the director shall by rule establish: (a) Reasonable variations to be allowed, (b) exemptions as to small packages, and (c) exemptions as to commodities put up in variable weights or sizes for sale to the consumer intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer. [1992 c 237 § 25; 1991 sp.s. c 23 § 16; 1969 c 67 § 35.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.360 Declaration of price on outside of package. In addition to the declarations required by RCW 19.94.350, any commodity in package form, the package being one of a lot containing random weights, measures or counts of the same commodity at the time it is exposed for sale at retail, shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight, measure, or count and the total selling price of the package. [1995 c 355 § 18; 1969 c 67 § 36.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.370 Misleading wrappers, containers of packaged commodities—Standards of fill required. No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed or filled as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standards of fill as may have been prescribed by the director for the commodity in question. [1992 c 237 § 26; 1969 c 67 § 37.]

19.94.390 Price not to be misleading, deceiving, misrepresented—Fractions—Examination procedure standard—Department may revise—Electronic scanner screen visibility. (1) Whenever any commodity or service is sold, or is offered, exposed, or advertised for sale, by weight, measure, or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser. Whenever an advertised, poster [posted] or labeled price per unit of weight, measure, or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and one-half the width of the numerals representing the whole cents.

(2) The examination procedure recommended for price verification by the price verification working group of the laws and regulations committee of the national conference on weights and measures (as reflected in the fourth draft, dated November 1, 1994) for devices such as electronic scanners shall govern such examinations conducted under this chapter. The procedure shall be deemed to be adopted under this chapter. However, the department may revise the procedure as follows: The department shall provide notice of and conduct a public hearing pursuant to chapter 34.05 RCW to determine whether any revisions to this procedure made by the national institute of standards and technology or its successor organization for incorporating the examination procedure into an official handbook of the institute or its successor, or any subsequent revisions of the handbook regarding such procedures shall also be adopted under this chapter. If the department determines that the procedure should be so revised, it may adopt the revisions. Violations of this section regarding the use of devices such as electronic scanners may be found only as provided by the examination procedures adopted by or under this subsection.

(3) Electronic scanner screens installed after January 1, 1996, and used in retail establishments must be visible to the consumer at the checkout line. [1995 c 355 § 20; 1969 c 67 § 39.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.400 Meat, fish, poultry to be sold by weight—Exceptions. Except for immediate consumption on the premises where sold or as one of several elements comprising a meal sold as a unit, for consumption elsewhere than on the premises where sold, all meat, meat products, fish and poultry offered or exposed for sale or sold as food, unless otherwise provided for by the laws of the state of Washington, shall be offered or exposed for sale and sold by weight. [1969 c 67 § 40.]

19.94.410 Butter, margarine to be sold by weight. Butter, oleomargarine and margarine shall be offered and exposed for sale and sold by weight. [1995 c 355 § 19; 1988 c 63 § 1; 1969 c 67 § 41.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.420 Fluid dairy products to be packaged for retail sale in certain units. All fluid dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream and buttermilk and all fluid imitation and fluid substitute dairy products shall be packaged for retail sale only in units as provided by the director of the department of agriculture by rule pursuant to the provisions of chapter 34.05 RCW. [1991 sp.s. c 23 § 17; 1975 1st ex.s. c 51 § 1; 1969 c 67 § 42.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.430 Packaged flour to be kept, sold, etc., in certain units. When in package form and when packed, kept, offered, exposed for sale or sold, flour such as, but not limited to, wheat flour, whole wheat flour, graham flour,

self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meal and hominy grits shall be packaged only in units of five, ten, twenty-five, fifty and one hundred pounds avoirdupois weight: PROVIDED, That packages in units of less than five pounds or more than one hundred pounds shall be permitted. [1969 c 67 § 43.]

19.94.440 Commodities sold in bulk—Delivery tickets. (1) When a vehicle delivers to an individual purchaser a commodity in bulk, and the commodity is sold in terms of weight units, the delivery must be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or other indelible marking equipment and, in clarity, equal to type or printing:

(a) The name and address of the vendor;

(b) The name and address of the purchaser; and

(c) The weight of the delivery expressed in pounds, and, if the weight is derived from determinations of gross and tare weights, such gross and tare weights also must be stated in terms of pounds.

(2) One of the delivery tickets shall be retained by the vendor, and the other shall be delivered to the purchaser at the time of delivery of the commodity, or shall be surrendered on demand to the director or the city sealer who, if he or she elects to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser.

(3) If the purchaser himself or herself carries away the purchase, the vendor shall be required only to give the purchaser at the time of sale a delivery ticket stating the number of pounds of commodity delivered. [1992 c 237 § 27; 1991 sp.s. c 23 § 18; 1969 c 67 § 44.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.450 Solid fuels to be sold by weight, cubic measure—Delivery tickets. (1) Except as provided in subsection (2) of this section, all solid fuels such as, but not limited to, coal, coke, charcoal, broiler chips, pressed fuels and briquets shall be sold by weight.

(2) All solid fuels such as hogged fuel, sawdust and similar industrial fuels may be sold or purchased by cubic measure.

(3) Unless a fuel is delivered to the purchaser in package form, each delivery of such fuel to an individual purchaser must be accompanied by a duplicate delivery ticket with the following information clearly stated, in ink or other indelible marking equipment and, in clarity equal to type or printing:

(a) The name and address of the vendor;

(b) The name and address of the purchaser; and

(c) The weight of the delivery and the gross and tare weights from which the weight is computed, each expressed in pounds.

(4) One of the delivery tickets shall be retained by the vendor and the other shall be delivered to the purchaser at the time of delivery of the fuel, or shall be surrendered, on demand, to the director or the city sealer who, if he or she elects to retain it as evidence, shall issue a weight slip in lieu thereof for delivery to the purchaser.

(5) If the purchaser himself or herself carries away the purchase, the vendor shall be required only to give to the purchaser at the time of sale a delivery ticket stating the number of pounds of fuel delivered. [1992 c 237 § 28; 1991 sp.s. c 23 § 19; 1969 c 67 § 45.]

Legislative findings—Intent—1991 sp.s. c 23: See notes following RCW 19.94.150.

19.94.460 Heating oils—Delivery tickets—Statements. (1) All stove and furnace oil shall be sold by liquid measure or by weight in accordance with the provisions of RCW 19.94.340.

(2) Unless such fuel is delivered to the purchaser in package form, each delivery of such fuel in an amount greater than ten gallons in the case of sale by liquid measure or one hundred pounds in the case of sale by weight must be accompanied by a delivery ticket or a written statement on which, in ink or other indelible substance, there shall be clearly and legibly stated:

- (a) The name and address of the vendor;
- (b) The name and address of the purchaser;
- (c) The identity of the type of fuel comprising the delivery;

(d) The unit price (that is, price per gallon or per pound, as the case may be), of the fuel delivered;

(e) In the case of sale by liquid measure, the liquid volume of the delivery together with any meter readings from which such liquid volume has been computed, expressed in terms of the gallon and its binary or decimal subdivisions; and

(f) In the case of sale by weight, the net weight of the delivery, together with any weighing scale readings from which such net weight has been computed, expressed in terms of tons or pounds avoirdupois.

(3) The delivery ticket required under this section must be delivered at the time of delivery unless an agreement, written or otherwise, between the vendor and the purchaser has been reached regarding the delivery of such delivery ticket. [1992 c 237 § 29; 1969 c 67 § 46.]

19.94.470 Berries and small fruit. Berries and small fruit shall be offered and exposed for sale and sold by weight, or by measure in open containers having capacities of one-half dry pint, one dry pint or one dry quart: PROVIDED, That the marking provisions of RCW 19.94.340 shall not apply to such dry volume containers. [1969 c 67 § 47.]

19.94.480 Fractional units as fractional value. Fractional parts of any unit of weight or measure shall mean like fractional parts of the value of such unit as prescribed in RCW 19.94.150. [1992 c 237 § 30; 1969 c 67 § 48.]

19.94.485 Contracts—Construction. All contracts concerning the sale of commodities and services by weight, measure, or count, will be construed in accordance with the weights and measures adopted under this chapter. [1992 c 237 § 31.]

19.94.490 Obstruction of director or sealer in performance of duties—Penalty. Any person who shall

hinder or obstruct in any way the director or a city sealer in the performance of his or her official duties under this chapter is subject to a civil penalty of no more than five hundred dollars. [1992 c 237 § 32; 1969 c 67 § 49.]

19.94.500 Impersonation of director or sealer—Penalty. Any person who shall impersonate in any way the director or a city sealer, by using an official seal of approval without specific authorization to do so or by using a counterfeit seal of approval, or in any other manner, is subject to a civil penalty of no more than one thousand dollars. [1992 c 237 § 33; 1969 c 67 § 50.]

19.94.505 Gasoline containing alcohol—Dispensing device label required—Carbon monoxide nonattainment area—Penalty. (1) It is unlawful for any dealer or service station, as both are defined in RCW 82.36.010, to sell ethanol and/or methanol at one percent, by volume, or greater in gasoline for use as motor vehicle fuel unless the dispensing device has a label stating the type and maximum percentage of alcohol contained in the motor vehicle fuel.

(2) In any county, city, or other political subdivision designated as a carbon monoxide nonattainment area pursuant to the provisions of subchapter I of the clean air act amendments of 1990, P.L. 101-549, and in which the sale of oxygenated petroleum products is required by section 211(m) of the clean air act amendments of 1990, 42 U.S.C. 7545(m), any dealer or service station, as both are defined in RCW 82.36.010, who sells or dispenses a petroleum product that contains at least one percent, by volume, ethanol, methanol, or other oxygenate, shall post only such label or notice as may be required pursuant to 42 U.S.C. 7545(m)(4) or any amendments thereto or any successor provision thereof. This provision shall be applicable only during such portion of the year as oxygenated petroleum product sales are required pursuant to 42 U.S.C. 7545(m).

(3) Any person who violates this section is subject to a civil penalty of no more than five hundred dollars. [1992 c 237 § 34; 1984 c 61 § 1.]

19.94.507 Gasoline delivered to service stations—Invoice required. Persons delivering gasoline to retail service stations shall supply the station with an invoice which shall include the following information: (1) The gross volume of gasoline and the net volume of gasoline at sixty degrees Fahrenheit; (2) the time and temperature of the gasoline as loaded onto the delivery truck; and (3) the time of delivery to the retail service station. [1987 c 42 § 2.]

Intent—1987 c 42: "The legislature finds: That leaking underground storage tanks containing petroleum products may pose a significant and widespread problem to human health and the environment, that current inventory procedures are inadequately suited to identify leaking underground storage tanks, and that new measures are needed to properly determine which tanks may be leaking." [1987 c 42 § 1.]

19.94.510 Unlawful practices—Penalty. (1) Any person who, by himself or herself, by his or her agent or employee, or as the agent or employee of another person, performs any one of the acts enumerated in (a) through (I) of this subsection is subject to a civil penalty of no more than one thousand dollars:

(a) Use or have in possession for the purpose of using for any commercial purpose a weighing or measuring instrument or device that is intentionally calculated to falsify any weight, measure, or count of any commodity, or to sell, offer, expose for sale or hire or have in possession for the purpose of selling or hiring an incorrect weighing or measuring instrument or device or any weighing or measuring instrument or device calculated to falsify any weight or measure.

(b) Knowingly use or have in possession for current use in the buying or selling of any commodity or thing, for hire or award, or in the computation of any basic charge or payment for services rendered on the basis of weight, measurement, or count, or in the determination of weight, measurement or count, when a charge is made for such determination, any incorrect weighing or measuring instrument or device.

(c) Dispose of any rejected weighing or measuring instrument or device in a manner contrary to law or rule.

(d) Remove from any weighing or measuring instrument or device, contrary to law or rule, any tag, seal, stamp or mark placed thereon by the director or a city sealer.

(e) Sell, offer or expose for sale less than the quantity he or she represents of any commodity, thing or service.

(f) Take more than the quantity he or she represents of any commodity, thing, or service when, as buyer, he or she furnishes the weight, measure, or count by means of which the amount of the commodity, thing or service is determined.

(g) Keep for the purpose of sale, advertise, offer or expose for sale or sell any commodity, thing or service known to be in a condition or manner contrary to law or rule.

(h) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weighing or measuring instrument or device that is not so positioned that its indications may be accurately read and the weighing or measuring operation observable from some position which may reasonably be assumed by a customer.

(i) Knowingly approve or issue an official seal of approval for any weighing or measuring instrument or device known to be incorrect.

(j) Find a weighing or measuring instrument or device to be correct under RCW 19.94.255 when the person knows the instrument or device is incorrect.

(k) Fails to disclose to the department or a city sealer any knowledge of information relating to, or observation of, any device or instrument added to or modifying any weighing or measuring instrument or device for the purpose of selling, offering, or exposing for sale, less than the quantity represented of a commodity or calculated to falsify weight or measure, if the person is a service agent.

(1) Violate any other provision of this chapter or of the rules adopted under the provisions of this chapter for which a specific penalty has not been prescribed.

(2) Any person who, by himself or herself, by his or her agent or employee, or as the agent or employee of another person, violates RCW 19.94.390 as determined by the examination procedure adopted by or under RCW 19.94.390(2) is subject to a civil penalty of not more than one thousand dollars.

(3) Any person who, by himself or herself, by his or her agent or employee, or as the agent or employee of another person, performs any of the following acts is subject to a civil penalty of no more than five thousand dollars:

(a) Knowingly adds to or modifies any weighing or measuring instrument or device by the addition of a device or instrument that would allow the sale, or the offering or exposure for sale, of less than the quantity represented of a commodity or falsification of weight or measure.

(b) Commits as a fourth or subsequent infraction any of the acts listed in subsection (1) or (2) of this section. [1995 c 355 § 21; 1992 c 237 § 35; 1969 c 67 § 51.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.515 Unlawful commercial use of instrument or device—Penalty. A person who owns a weighing or measuring instrument or device and uses or permits the use of the instrument for commercial purposes in violation of RCW 19.94.015 is subject to a civil penalty of fifty dollars for each such instrument or device used or permitted to be used in violation of RCW 19.94.015. [1995 c 355 § 22.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.517 Incorrect commercial instrument or device to benefit of owner/operator—Penalties—Appeal.

(1) Whenever the department or a city sealer tests or inspects a weighing or measuring instrument or device and finds the instrument or device to be incorrect to the economic benefit of the owner/operator of the weighing or measuring instrument or device and to the economic detriment of the customer, the owner of the weighing or measuring instrument or device may be subject to the following civil penalties:

Device deviations outside the tolerances stated in Handbook 44.

	<u>Penalty</u>
Small weighing or measuring instruments or devices:	
First violation	\$ 50.00
Second or subsequent violation within one year of first violation	\$150.00
Medium weighing or measuring instruments or devices:	
First violation	\$100.00
Second or subsequent violation within one year of first violation	\$300.00
Large weighing or measuring instruments or devices:	
First violation	\$200.00
Second or subsequent violation within one year of first violation	\$500.00

(2) For the purposes of this section:

(a) The following are small weighing or measuring instruments or devices: Scales of zero to four hundred pounds capacity, liquid fuel metering devices with flows of not more than twenty gallons per minute, liquid petroleum gas meters with one inch in diameter or smaller dispensers, fabric meters, cordage meters, and taxi meters.

(b) The following are medium weighing or measuring instruments or devices: Scales of four hundred one to five thousand pounds capacity, liquid fuel metering devices with

flows of more than twenty but not more than one hundred fifty gallons per minute, and mass flow meters.

(c) The following are large weighing or measuring instruments or devices: Liquid petroleum gas meters with greater than one inch diameter dispensers, liquid fuel metering devices with flows over one hundred fifty gallons per minute, and scales of more than five thousand pounds capacity and scales of more than five thousand pounds capacity with supplemental devices.

(3) The director or a city sealer shall issue the appropriate civil penalty concurrently with the conclusion of the test or inspection.

(4) The weighing or measuring instrument or device owner shall have the right to appeal the civil penalty in accordance with the administrative procedure act, chapter 34.05 RCW. [1995 c 355 § 23.]

Application—Effective dates—1995 c 355: See notes following RCW 19.94.015.

19.94.520 Injunction against violations. The director is authorized to apply to any court of competent jurisdiction for, and such court upon hearing and for cause shown may grant, a temporary or permanent injunction restraining any person from violating any provision of this chapter. [1969 c 67 § 52.]

19.94.530 Proof of existence of weighing or measuring instrument or device presumed proof of regular use. For the purposes of this chapter, proof of the existence of a weighing or measuring instrument or device in or about any building, enclosure, stand, or vehicle in which or from which it is shown that buying or selling is commonly carried on, shall, in the absence of conclusive evidence to the contrary, be presumptive proof of the regular use of such weighing or measuring instrument or device for commercial purposes and of such use by the person in charge of such building, enclosure, stand or vehicle. [1992 c 237 § 36; 1969 c 67 § 53.]

19.94.900 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law. [1969 c 67 § 54.]

19.94.910 Severability—1969 c 67. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional. [1969 c 67 § 55.]

19.94.920 Effective date—1992 c 237. This act shall take effect July 1, 1992. [1992 c 237 § 41.]

Chapter 19.98

FARM IMPLEMENTS, MACHINERY, PARTS

Sections

19.98.010	Contract between retailer and wholesaler—Cancellation—Repurchase payments for unsold merchandise—Amounts—Return—Application of section.
19.98.020	Repurchase payments—Liens and claims.
19.98.030	Prices—How determined.
19.98.040	Failure or refusal to make payments—Civil action.
19.98.100	Findings.
19.98.110	Definitions.
19.98.120	Violations.
19.98.130	Termination, cancellation, or nonrenewal of dealer agreement—Notice.
19.98.140	Actions against suppliers—Remedies.
19.98.150	Successors in interest.
19.98.900	Effective date—1975 1st ex.s. c 277.
19.98.910	Severability—1975 1st ex.s. c 277.
19.98.911	Severability—1990 c 124.
19.98.912	Effective date—Application—1990 c 124.

19.98.010 Contract between retailer and wholesaler—Cancellation—Repurchase payments for unsold merchandise—Amounts—Return—Application of section. Whenever any person, firm, or corporation engaged in the retail sale of farm implements and repair parts therefor enters into a written contract with any wholesaler, manufacturer, or distributor of farm implements, machinery, attachments, accessories, or repair parts whereby such retailer agrees to maintain a stock of parts or complete or whole machines, attachments, or accessories, and either party to such contract desires to cancel or discontinue the contract, unless the retailer should desire to keep such merchandise the manufacturer, wholesaler, or distributor shall pay the retailer for the merchandise. Such payment shall be in the amount of one hundred percent of the net cost of all current unused complete farm implements, machinery, attachments, and accessories, including transportation charges paid by the retailer, and eighty-five percent of the current net prices on repair parts, including superseded parts listed in current price lists or catalogs which parts had previously been purchased from such wholesaler, manufacturer, or distributor and held by such retailer on the date of the cancellation or discontinuance of such contract or thereafter received by such retailer from the wholesaler, manufacturer, or distributor. The wholesaler, manufacturer, or distributor shall also pay such retailer a sum equal to five percent of the current net price of all parts returned for the handling, packing, and loading of such parts for return: PROVIDED, That the provisions of this section shall apply only to repair parts which are new, unused, and in good condition. Upon the payment of such amounts, the title to such farm implements, farm machinery, attachments, accessories, or repair parts, shall pass to the manufacturer, wholesaler, or distributor making such payment, and such manufacturer, wholesaler, or distributor shall be entitled to the possession of such merchandise.

The provisions of this section shall apply to any annual part return adjustment agreement made between a seller or retailer and a manufacturer, wholesaler, or distributor.

The provisions of this section shall be supplemental to any agreement between the retailer and the manufacturer, wholesaler, or distributor covering the return of farm implements, machinery, attachments, accessories, and repair

parts so that the retailer can elect to pursue either his contract remedy or the remedy provided herein, and an election by the retailer to pursue his contract remedy shall not bar his right to the remedy provided herein as to those farm implements, machinery, attachments, accessories, and repair parts not affected by the contract remedy.

The provisions of this section shall apply to all contracts now in effect which have no expiration date and are a continuing contract, and all other contracts entered into or renewed after January 1, 1976. Any contract in force and effect on January 1, 1976, which by its own terms will terminate on a date subsequent thereto shall be governed by the law as it existed prior to this chapter: PROVIDED, That no contract covered by this chapter may be canceled by any party without good cause. Good cause shall include, but shall not be restricted to, the failure of any party to comply with the lawful provisions of the contract, the adjudication of any party to a contract as a bankrupt, wrongful refusal of manufacturer, wholesaler, or distributor to supply farm machinery, farm implements and repair parts therefor. [1975 1st ex.s. c 277 § 1.]

19.98.020 Repurchase payments—Liens and claims. All repurchase payments to retailers and sellers made pursuant to RCW 19.98.010 shall be less amounts owed on any lien or claim then outstanding upon such items covered by this section. Any wholesaler, manufacturer, or distributor making repurchase payments covered by this chapter to any retailer or seller shall satisfy such secured liens or claims pursuant to chapter [article] 62A.9 RCW less any interest owed to the lienholder arising from the financing of such items which shall be paid to any such secured lienholder by the retailer or seller. In no case shall the wholesaler, manufacturer, or distributor, in making payments covered by RCW 19.98.010, pay in excess of those amounts prescribed therein. [1975 1st ex.s. c 277 § 2.]

19.98.030 Prices—How determined. The prices of farm implements, machinery and repair parts therefor, required to be paid to any retail dealer as provided in RCW 19.98.010 shall be determined by taking one hundred percent of the net cost on farm implements, machinery, and attachments, and eighty-five percent of the current net price of repair parts therefor as shown upon the manufacturer's, wholesaler's, or distributor's price lists or catalogues in effect at the time such contract is canceled or discontinued. [1975 1st ex.s. c 277 § 3.]

19.98.040 Failure or refusal to make payments—Civil action. In the event that any manufacturer, wholesaler, or distributor of farm machinery, farm implements, and repair parts therefor, upon cancellation or discontinuation of a contract by either a retailer or a manufacturer, wholesaler, or distributor, fails or refuses to make payment to such dealer as is required by RCW 19.98.010, such manufacturer, wholesaler, or distributor shall be liable in a civil action to be brought by such retailer for such payments as are required by RCW 19.98.010. [1975 1st ex.s. c 277 § 4.]

19.98.100 Findings. The legislature of this state finds that the retail distribution and sales of agricultural equip-

ment, utilizing independent retail business operating under agreements with the manufacturers and distributors, vitally affects the general economy of the state, public interests, and public welfare and that it is necessary to regulate the business relations between the independent dealers and the equipment manufacturers, wholesalers, and distributors. [1990 c 124 § 1.]

19.98.110 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 19.98.100 through 19.98.150 and 19.98.911:

(1) "Equipment" means machinery consisting of a framework, various fixed and moving parts, driven by an internal combustion engine, and all other implements associated with this machinery that are designed for or adapted and used for agriculture, horticulture, livestock, or grazing use.

(2) "Equipment dealer" or "equipment dealership" means any person, partnership, corporation, association, or other form of business enterprise, primarily engaged in retail sale or service of equipment in this state, pursuant to any oral or written agreement for a definite or indefinite period of time in which there is a continuing commercial relationship in the marketing of the equipment or related services, but does not include dealers covered by chapter 46.70 or 46.94 RCW.

(3) "Supplier" means the manufacturer, wholesaler, or distributor of the equipment to be sold by the equipment dealer.

(4) "Dealer agreement" means a contract or agreement, either expressed or implied, whether oral or written, between a supplier and an equipment dealer, by which the equipment dealer is granted the right to sell, distribute, or service the supplier's equipment where there is a continuing commercial relationship between the supplier and the equipment dealer.

(5) "Continuing commercial relationship" means any relationship in which the equipment dealer has been granted the right to sell or service equipment manufactured by [the] supplier.

(6) "Good cause" means failure by an equipment dealer to substantially comply with essential and reasonable requirements imposed upon the equipment dealer by the dealer agreement, provided such requirements are not different from those requirements imposed on other similarly situated equipment dealers in the state either by their terms or in the manner of their enforcement. [1990 c 124 § 2.]

19.98.120 Violations. It shall be a violation of this chapter for a supplier to:

(1) Require or attempt to require any equipment dealer to order or accept delivery of any equipment or parts or any equipment with special features or accessories not included in the base list price of such equipment as publicly advertised by the supplier which the equipment dealer has not voluntarily ordered;

(2) Require or attempt to require any equipment dealer to enter into any agreement, whether written or oral, supplementary to an existing dealer agreement with the supplier, unless such supplementary agreement is imposed on other similarly situated dealers in the state;

(3) Refuse to deliver in reasonable quantities and within a reasonable time after receipt of the equipment dealer's order, to any equipment dealer having a dealer agreement for the retail sale of new equipment sold or distributed by the supplier, equipment covered by the dealer agreement specifically advertised or represented by the supplier to be available for immediate delivery. However, the failure to deliver any such equipment shall not be considered a violation of this chapter when deliveries are based on prior ordering histories, the priority given to the sequence in which the orders are received, or manufacturing schedules or if the failure is due to prudent and reasonable restriction on extension of credit by the supplier to the equipment dealer, an act of God, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the supplier has no control;

(4) Terminate, cancel, or fail to renew the dealer agreement of any equipment dealer or substantially change the equipment dealer's competitive circumstances, attempt to terminate or cancel, or threaten to not renew the dealer agreement or to substantially change the competitive circumstances without good cause;

(5) Condition the renewal, continuation, or extension of a dealer agreement on the equipment dealer's substantial renovation of the equipment dealer's place of business or on the construction, purchase, acquisition, or rental of a new place of business by the equipment dealer unless: The supplier has advised the equipment dealer in writing of its demand for such renovation, construction, purchase, acquisition, or rental within a reasonable time prior to the effective date of the proposed date of renewal or extensions, but in no case less than one year; the supplier demonstrates the need for such change in the place of business and the reasonableness of the demand with respect to marketing and servicing the supplier's product and any economic conditions existing at the time in the dealer's trade area; and the equipment dealer does not make a good faith effort to complete the construction or renovation plans within one year;

(6) Discriminate in the prices charged for equipment of like grade and quality sold by the supplier to similarly situated dealers in this state. This subsection does not prevent the use of differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are sold or delivered: **PROVIDED**, That nothing shall prevent a seller from offering a lower price in order to meet an equally low price of a competitor, or the services or facilities furnished by a competitor;

(7) Unreasonably withhold consent for an equipment dealer to change the capital structure of the equipment dealership or the means by which it is financed: **PROVIDED**, That the equipment dealer meets the reasonable capital requirements of the manufacturer;

(8) Prevent, by contract or otherwise, any equipment dealer or any officer, member, partner, or stockholder of any equipment dealer from selling or transferring any part of the interest in the equipment dealership of any of them to any other person or persons or party or parties. However, no equipment dealer, officer, partner, member, or stockholder shall have the right to sell, transfer, or assign the equipment dealership or power of management or control thereunder

without the written consent of the supplier. Such consent shall not be unreasonably withheld if the person or persons or party or parties meets the reasonable financial, business experience, and character standards of the supplier;

(9) Require an equipment dealer to assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability imposed by this chapter; or

(10)(a) Unreasonably withhold consent, in the event of the death of the equipment dealer or the principal owner of the equipment dealership, to the transfer of the equipment dealer's interest in the equipment dealership to a member or members of the family of the equipment dealer, the principal owner of the equipment dealership, or to another qualified individual if the family member or other qualified individual meets the reasonable financial, business experience, and character standards required by the supplier. Should a supplier determine that the designated family member or other qualified individual does not meet those reasonable standards, it shall provide the equipment dealer with written notice of its objection and specific reasons for withholding its consent. A supplier shall have sixty days to consider an equipment dealer's request to make a transfer to a family member or other qualified individual. If the family member or other qualified individual reasonably satisfies the supplier's objections within sixty days, the supplier shall approve the transfer. As used in this section, "family" includes a spouse, parents, siblings, children, stepchildren, sons-in-law, daughters-in-law, and lineal descendants, including those by adoption, of the equipment dealer or principal owner of the equipment dealership. Nothing in this section shall entitle a family member or other qualified individual of a deceased dealer or principal owner of the equipment dealership to continue to operate the dealership without the consent of the supplier.

(b) If a supplier and equipment dealer have duly executed an agreement concerning succession rights prior to the equipment dealer's death and the agreement has not been revoked, the agreement shall be observed even if it designates someone other than the surviving spouse or heirs of the decedent as the successor. [1990 c 124 § 3.]

19.98.130 Termination, cancellation, or nonrenewal of dealer agreement—Notice. (1) Except where a grounds for termination or nonrenewal of a dealer agreement or a substantial change in an equipment dealer's competitive circumstances are contained in subsection (2)(a), (b), (c), (d), (e), or (f) of this section, a supplier shall give an equipment dealer ninety days' written notice of the supplier's intent to terminate, cancel, or not renew a dealer agreement or substantially change the equipment dealer's competitive circumstances. The notice shall state all reasons constituting good cause for termination, cancellation, or nonrenewal and shall provide, except for termination pursuant to subsection (2)(a), (b), (c), (d), or (e) of this section, that the equipment dealer has sixty days in which to cure any claimed deficiency. If the deficiency is rectified within sixty days, the notice shall be void. The contractual terms of the dealer agreement shall not expire or the equipment dealer's competitive circumstances shall not be substantially changed without the written consent of the equipment dealer prior to the expiration of at least ninety days following such notice.

(2) As used in RCW 19.98.100 through 19.98.150 and 19.98.911, a termination by a supplier of a dealer agreement shall be with good cause when the equipment dealer:

(a) Has transferred a controlling ownership interest in the equipment dealership without the supplier's consent;

(b) Has made a material misrepresentation to the supplier;

(c) Has filed a voluntary petition in bankruptcy or has had an involuntary petition in bankruptcy filed against the equipment dealer which has not been discharged within sixty days after the filing, is in default under the provisions of a security agreement in effect with the supplier, or is insolvent or in receivership;

(d) Has been convicted of a crime, punishable for a term of imprisonment for one year or more;

(e) Has failed to operate in the normal course of business for ten consecutive business days or has terminated the business;

(f) Has relocated the equipment dealer's place of business without supplier's consent;

(g) Has consistently engaged in business practices that are detrimental to the consumer or supplier by way of excessive pricing, misleading advertising, or failure to provide service and replacement parts or perform warranty obligations;

(h) Has inadequately represented the supplier over a measured period causing lack of performance in sales, service, or warranty areas and failed to achieve market penetration at levels consistent with similarly situated equipment dealerships in the state based on available record information;

(i) Has consistently failed to meet building and house-keeping requirements or failed to provide adequate sales, service, or parts personnel commensurate with the dealer agreement;

(j) Has consistently failed to comply with the applicable licensing laws pertaining to the products and services being represented for and on supplier's behalf; or

(k) Has consistently failed to comply with the terms of the dealer agreement. [1990 c 124 § 4.]

19.98.140 Actions against suppliers—Remedies.

Any equipment dealer may bring an action against a supplier in any court of competent jurisdiction for damages sustained by the equipment dealer as a consequence of the supplier's violation including requiring the supplier to repurchase at fair market value any data processing hardware and specialized repair tools and equipment previously purchased pursuant to requirements of the supplier, compensation for any loss of business, and the actual costs of the action, including reasonable attorneys' fees. The equipment dealer may also be granted injunctive relief against unlawful termination, cancellation, nonrenewal, or substantial change in competitive circumstances. The remedies set forth in this action shall not be deemed exclusive and shall be in addition to any other remedies permitted by law. Nothing in this section is intended to prevent any court from awarding to the supplier actual costs of the action, including reasonable attorney's fees if the action is deemed frivolous. [1990 c 124 § 5.]

19.98.150 Successors in interest. The obligations of any supplier under this chapter are applied to any successor in interest or assignee of the supplier. A successor in interest includes any purchaser of assets or stock, any surviving corporation resulting from merger or liquidation, and any receiver or any trustee of the original supplier. [1990 c 124 § 6.]

19.98.900 Effective date—1975 1st ex.s. c 277. This act shall take effect on January 1, 1976. [1975 1st ex.s. c 277 § 6.]

19.98.910 Severability—1975 1st ex.s. c 277. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 277 § 7.]

19.98.911 Severability—1990 c 124. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 124 § 7.]

19.98.912 Effective date—Application—1990 c 124. This act shall take effect July 1, 1990, and shall apply to all dealer agreements then in effect that have no expiration date and are a continuing agreement and to all other dealer agreements entered into or renewed on or after July 1, 1990. [1990 c 124 § 9.]

Chapter 19.100

FRANCHISE INVESTMENT PROTECTION

Sections

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- 19.100.020 Unlawful in certain instances to sell or offer to sell franchise if unregistered or not exempt.
- 19.100.030 Exemptions from registration requirements.
- 19.100.040 Application for registration—Contents—Filing.
- 19.100.050 Escrow or impoundment of franchise fees as registration condition—Rules or orders—Procedure to rescind.
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- 19.100.070 Registration—Claim of exemption filing—Duration—Renewal—Supplemental report.
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- 19.100.100 Advertisements—Copy to be filed.
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- 19.100.140 Registration of franchise brokers required.
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- 19.100.200 Pendency of other proceedings tolls limitation of action.
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- 19.100.230 Referral of evidence to attorney general or prosecuting attorney.
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- 19.100.242 Investigations by director.
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- 19.100.248 Cease and desist orders.
- 19.100.250 Powers of director as to rules, forms, orders and defining terms—Interpretive opinions.
- 19.100.252 Denial, suspension, or revocation of franchise broker by director.
- 19.100.255 Denial, suspension, or revocation of exemption by director.
- 19.100.260 Applicability of administrative procedure act.
- 19.100.270 Administrator of securities.
- 19.100.900 Chapter applicable to existing and future franchises and contracts.
- 19.100.910 Chapter cumulative and nonexclusive.
- 19.100.920 Effective date—1971 ex.s. c 252.
- 19.100.930 Severability—1971 ex.s. c 252.
- 19.100.931 Severability—1972 ex.s. c 116.
- 19.100.932 Severability—1979 ex.s. c 13.
- 19.100.940 Short title.

Reviser's note: Powers, duties, and functions of the department of licensing relating to franchises were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

Business opportunity fraud act: Chapter 19.110 RCW.

19.100.010 Definitions. When used in this chapter, unless the context otherwise requires:

(1) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communication media published in connection with an offer or sale of a franchise.

(2) "Affiliate" means a person controlling, controlled by, or under common control with another person, every officer or director of such person, and every person occupying a similar status or performing similar functions.

(3) "Director" means the director of financial institutions.

(4) "Franchise" means:

(a) An agreement, express or implied, oral or written, by which:

(i) A person is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan prescribed or suggested in substantial part by the grantor or its affiliate;

(ii) The operation of the business is substantially associated with a trademark, service mark, trade name, advertising, or other commercial symbol designating, owned by, or licensed by the grantor or its affiliate; and

(iii) The person pays, agrees to pay, or is required to pay, directly or indirectly, a franchise fee.

(b) The following shall not be construed as a franchise within the meaning of this chapter:

(i) The payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card or any transaction relating to a bank credit card plan;

(ii) Actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state;

(iii) Any motor vehicle dealer franchise subject to the provisions of chapter 46.70 RCW.

(5) "Marketing plan" means a plan or system concerning an aspect of conducting business. A marketing plan may include one or more of the following:

(a) Price specifications, special pricing systems or discount plans;

(b) Sales or display equipment or merchandising devices;

(c) Sales techniques;

(d) Promotional or advertising materials or cooperative advertising;

(e) Training regarding the promotion, operation, or management of the business; or

(f) Operational, managerial, technical, or financial guidelines or assistance.

(6) "Bank credit card plan" means a credit card plan in which the issuer of credit cards is a national bank, state bank, trust company or any other banking institution subject to the supervision of the director of financial institutions of this state or any parent or subsidiary of such bank.

(7) "Franchisee" means a person to whom a franchise is offered or granted.

(8) "Franchisor" means a person who grants a franchise to another person.

(9) "Subfranchise" means an agreement, express or implied, oral or written, by which a person pays or agrees to pay, directly or indirectly, a franchisor or affiliate for the right to grant, sell or negotiate the sale of a franchise.

(10) "Subfranchisor" means a person to whom a subfranchise is granted.

(11) "Franchise broker" means a person who directly or indirectly engages in the business of the offer or sale of franchises. The term does not include a franchisor, subfranchisor, or their officers, directors, or employees.

(12) "Franchise fee" means any fee or charge that a franchisee or subfranchisor is required to pay or agrees to pay for the right to enter into a business or to continue a business under a franchise agreement, including, but not limited to, the payment either in lump sum or by installments of an initial capital investment fee, any fee or charges based upon a percentage of gross or net sales whether or not referred to as royalty fees, any payment for the mandatory purchase of goods or services or any payment for goods or services available only from the franchisor, or any training fees or training school fees or charges; however, the following shall not be considered payment of a franchise fee: (a) the purchase or agreement to purchase goods at a bona fide wholesale price; (b) the purchase or agreement to purchase goods by consignment; if, and only if the proceeds remitted by the franchisee from any such sale shall reflect only the bona fide wholesale price of such goods; (c) a bona fide loan to the franchisee from the franchisor; (d) the purchase or agreement to purchase goods at a bona fide retail price subject to a bona fide commission or compensation plan that in substance reflects only a bona fide wholesale transaction; (e) the purchase or lease or agreement to purchase or lease supplies or fixtures necessary to enter into the business or to continue the business under the franchise agreement at their fair market or rental value; (f) the purchase or lease or agreement to purchase or lease real property necessary to enter into the business or to continue the business under the

franchise agreement at the fair market or rental value; (g) amounts paid for trading stamps redeemable in cash only; (h) amounts paid for trading stamps to be used as incentives only and not to be used in, with, or for the sale of any goods.

(13) "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

(14) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

(15) "Sale or sell" includes every contract of sale, contract to sell, or disposition of a franchise.

(16) "Offer or offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise. [1994 c 92 § 3; 1991 c 226 § 1; 1979 c 158 § 83; 1973 1st ex.s. c 33 § 3; 1972 ex.s. c 116 § 1; 1971 ex.s. c 252 § 1.]

Emergency—Effective date—1972 ex.s. c 116: "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on May 1, 1972." [1972 ex.s. c 116 § 17.]

19.100.020 Unlawful in certain instances to sell or offer to sell franchise if unregistered or not exempt. (1) It is unlawful for any franchisor or subfranchisor to sell or offer to sell any franchise in this state unless the offer of the franchise has been registered under this chapter or exempted under RCW 19.100.030.

(2) For the purpose of this section, an offer to sell a franchise is made in this state when: (a) The offer is directed by the offeror into this state from within or outside this state and is received where it is directed, (b) the offer originates from this state and violates the franchise or business opportunity law of the state or foreign jurisdiction into which it is directed, (c) the offeree is a resident of this state, or (d) the franchise business that is the subject of the offer is to be located or operated, wholly or partly, in this state.

(3) For the purpose of this section, a sale of any franchise is made in this state when: (a) An offer to sell is accepted in this state, (b) an offer originating from this state is accepted and violates the franchise or business opportunity law of the state or foreign jurisdiction in which it is accepted, (c) the purchaser of the franchise is a resident of this state, or (d) the franchise business that is the subject of the sale is to be located or operated, wholly or partly, in this state.

(4) For the purpose of this section, an offer to sell is not made in this state solely because the offer appears: (a) In a newspaper or other publication of general and regular circulation if the publication has had more than two-thirds of its circulation outside this state during the twelve months before the offer is published, or (b) in a broadcast or transmission originating outside this state. [1991 c 226 § 2; 1971 ex.s. c 252 § 2.]

19.100.030 Exemptions from registration requirements. The registration requirements of this chapter shall not apply to:

(1) The offer or sale or transfer of a franchise by a franchisee who is not an affiliate of the franchisor for the franchisee's own account if the franchisee's entire franchise is sold and the sale is not effected by or through the franchisor. A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove the sale or requires payment of a reasonable transfer fee. Such right to approve or disapprove the sale shall be exercised in a reasonable manner.

(2) The offer or sale of a franchise by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, conservator, or pursuant to a court-approved offer or sale, on behalf of a person other than the franchisor or the estate of the franchisor.

(3) The offer or sale of a franchise to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit sharing trust, or other financial institution or institutional buyer or to a broker dealer where the purchaser is acting for itself or in some fiduciary capacity.

(4) The offer or sale of a franchise by a franchisor:

(a) Who has delivered in writing to each prospective franchisee, at least ten business days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least ten business days prior to the receipt of any consideration, whichever occurs first, an offering circular complying with guidelines adopted by rule of the director. The director shall be guided in adopting such a rule by the guidelines for the preparation of the Uniform Franchise Offering Circular adopted by the North American Securities Administrators Association, Inc., or its successor, as such guidelines may be revised from time to time; and

(b) Who either:

(i)(A) Has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars or who has a net worth, according to its most recent audited financial statement, of not less than one million dollars and is at least eighty percent owned by a corporation which has a net worth on a consolidated basis, according to its most recent audited financial statement, of not less than five million dollars; and

(B) Has had at least twenty-five franchisees conducting business at all times during the five-year period immediately preceding the offer or sale or has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale or if any corporation which owns at least eighty percent of the franchisor, has had at least twenty-five franchisees conducting business at all times during the five-year period immediately preceding the offer or sale or such corporation has conducted business which is the subject of the franchise continuously for not less than five years preceding the offer or sale; and

(C) Requires an initial investment by the franchisee of more than one hundred thousand dollars; and

(D) Files annually with the director a statement prescribed by rule of the director giving notice of such claim, and pays a filing fee as set forth in RCW 19.100.240; or

(ii)(A) Has no outstanding franchises granted for businesses located or to be located outside the state of Washington; and

(B) Has granted and grants no more than three franchises for franchise businesses to be situated within the state of Washington; and

(C) Does not publish an advertisement or engage in general solicitation for the franchise offering; and

(D) The buyer is represented or advised in the transaction by independent legal counsel or certified public accountant; or

(iii) Does not charge a franchise fee, as defined in RCW 19.100.010(12), in excess of five hundred dollars; and

(c) Who has not been found by a court of competent jurisdiction to have been in violation of this chapter, chapter 19.86 RCW, or any of the various federal statutes dealing with the same or similar matters, within seven years of any sale or offer to sell franchise business under franchise agreement in the state of Washington.

(5) The offer or sale of a franchise to an accredited investor, as defined by rule adopted by the director. The director shall be guided in adopting such a rule by the rules defining accredited investor promulgated by the federal securities and exchange commission.

(6) The offer or sale of an additional franchise to an existing franchisee of the franchisor for the franchisee's own account that is substantially the same as the franchise that the franchisee has operated for at least two years at the time of the offer or sale, provided the prior sale to the franchisee was pursuant to a franchise offering that was registered in the state of Washington. [1991 c 226 § 3; 1972 ex.s. c 116 § 2; 1971 ex.s. c 252 § 3.]

19.100.040 Application for registration—Contents—Filing. (1) The application for registration of the offer, signed by the franchisor, subfranchisor, or by any person on whose behalf the offering is to be made, must be filed with the director and shall contain:

(a) A copy of the franchisor's or subfranchisor's offering circular which shall be prepared in compliance with guidelines adopted by rule of the director. The director shall be guided in adopting such rule by the guidelines for the preparation of the Uniform Franchise Offering Circular adopted by the North American Securities Administrators Association, Inc., or its successor, as such guidelines may be revised from time to time;

(b) A copy of all agreements to be proposed to franchisees;

(c) A consent to service of process as required by RCW 19.100.160;

(d) The application for registration of a franchise broker, if any;

(e) The applicable filing fee; and

(f) Such other information as the director determines, by rule or order, to be necessary or appropriate to facilitate the administration of this chapter.

(2) The director may require the filing of financial statements of the franchisor or subfranchisor audited by an independent certified public accountant and prepared in accordance with generally accepted accounting principles.

When the person filing the application for registration is a subfranchisor, the application shall also include the same information concerning the subfranchisor as is required from the franchisor pursuant to this section. [1991 c 226 § 4; 1972 ex.s. c 116 § 3; 1971 ex.s. c 252 § 4.]

19.100.050 Escrow or impoundment of franchise fees as registration condition—Rules or orders—Procedure to rescind. The director may by rule or order require as a condition to the effectiveness of the registration the escrow or impound of franchise fees if he finds that such requirement is necessary and appropriate to protect prospective franchisees. At any time after the issuance of such rule or order under this section the franchisor may in writing request the rule or order be rescinded. Upon receipt of such a written request, the matter shall be set down for hearing to commence within fifteen days after such receipt unless the person making the request consents to a later date. After such hearing, which shall be conducted in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW, the director shall determine whether to affirm and to continue or to rescind such order and the director shall have all powers granted under such act. [1972 ex.s. c 116 § 4; 1971 ex.s. c 252 § 5.]

19.100.060 Registration statement—Effective, when. If no stop order is in effect and no proceeding is pending under RCW 19.100.120, a registration statement becomes effective at 3:00 P.M. Pacific Standard Time on the afternoon of the fifteenth business day after the filing of the registration statement or the last amendment or at such earlier time as the director determines. [1971 ex.s. c 252 § 6.]

19.100.070 Registration—Claim of exemption filing—Duration—Renewal—Supplemental report. (1) A franchise offering shall be deemed duly registered, and a claim of exemption under RCW 19.100.030(4)(b)(i) shall be duly filed, for a period of one year from the effective date of registration or filing unless the director by rule or order specifies a different period.

(2) Registration of a franchise offer may be renewed for additional periods of one year each, unless the director by rule or order specifies a different period, by filing with the director no later than fifteen business days prior to the expiration thereof a renewal application containing such information as the director may require to indicate any substantial changes in the information contained in the original application or the previous renewal application and payment of the prescribed fee.

(3) If a material adverse change in the condition of the franchisor or the subfranchisor or any material change in the information contained in its offering circular should occur the franchisor or subfranchisor shall so amend the registration on file with the director as soon as reasonably possible and in any case, before the further sale of any franchise. [1991 c 226 § 5; 1972 ex.s. c 116 § 5; 1971 ex.s. c 252 § 7.]

19.100.080 Delivery of offering circular and amendments required. It is unlawful for any person to sell a

franchise that is registered or required to be registered under this chapter without first delivering to the offeree, at least ten business days prior to the execution by the offeree of any binding franchise or other agreement, or at least ten business days prior to the receipt of any consideration, whichever occurs first, a copy of the offering circular required under RCW 19.100.040, with any addition or amendment to the offering circular required by RCW 19.100.070, together with a copy of the proposed agreements relating to the sale of the franchise. [1991 c 226 § 6; 1972 ex.s. c 116 § 6; 1971 ex.s. c 252 § 8.]

19.100.090 Filings, registration, or finding of director—Construction. (1) Neither (a) the fact that application for registration under this law has been filed nor (b) the fact that such registration has become effective constitutes a finding by the director that any document filed under this law is true, complete, or not misleading. Neither any such fact or the fact that an exemption is available for a transaction means that the director has passed in any way on the merit or qualifications of or recommended or given approval to any person, franchise, or transaction.

(2) It is unlawful to make or cause to be made to any prospective purchaser or offeree any representation inconsistent with this section. [1971 ex.s. c 252 § 9.]

19.100.100 Advertisements—Copy to be filed. No person shall publish in this state any advertisements offering a franchise subject to the registration requirements of this law unless a true copy of the advertisement has been filed in the office of the director at least seven days prior to the publication or such shorter period as the director by rule or order may allow. [1991 c 226 § 7; 1971 ex.s. c 252 § 10.]

19.100.110 Advertisements—False or misleading—Notice—Procedure. No person shall publish in this state any advertisement concerning a franchise subject to the registration requirements of this chapter after the director finds that the advertisement contains any statements that are false or misleading or omits to make any statement necessary in order to make the statements made, in the light of the circumstances in which they were made, not misleading and so notifies the person in writing. Such notification may be given summarily without notice or hearing. At any time after the issuance of a notification under this section the person desiring to use the advertisement may in writing request the order be rescinded. Upon receipt of such a written request, the matter shall be set down for hearing to commence within fifteen days after such receipt unless the person making the request consents to a later date. After such hearing, which shall be conducted in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW, the director shall determine whether to affirm and to continue or to rescind such order and the director shall have all powers granted under such act. [1972 ex.s. c 116 § 7; 1971 ex.s. c 252 § 11.]

19.100.120 Registration statement—Stop order—Grounds. The director may issue a stop order denying effectiveness to or suspending or revoking the effectiveness

of any registration statement if he finds that the order is in the public interest and that:

(1) The registration statement as of its effective date, or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was in the light of the circumstances under which it was made false or misleading with respect to any material fact;

(2) Any provision of this chapter or any rule or order or condition lawfully imposed under this chapter has been violated in connection with the offering by:

(a) The person filing the registration statement but only if such person is directly or indirectly controlled by or acting for the franchisor; or

(b) The franchisor, any partner, officer or director of a franchisor, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling or controlled by the franchisor.

(3) The franchise offering registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any federal or state act applicable to the offering but the director may not:

(a) Institute a proceeding against an effective registration statement under this clause more than one year from the date of the injunctive relief thereon unless the injunction is thereafter violated; and

(b) Enter an order under this clause on the basis of an injunction entered under any other state act unless that order or injunction is based on facts that currently constitute a ground for stop order under this section;

(4) A franchisor's enterprise or method of business includes or would include activities which are illegal where performed;

(5) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) The applicant has failed to comply with any rule or order of the director issued pursuant to RCW 19.100.050.

(7) The applicant or registrant has failed to pay the proper registration fee but the director may enter only a denial order under this subsection and he shall vacate such order when the deficiency has been corrected. [1972 ex.s. c 116 § 8; 1971 ex.s. c 252 § 12.]

19.100.130 Registration statement—Stop order—Notice—Hearing—Modification or vacation of order. Upon the entry of a stop order under any part of RCW 19.100.120, the director shall promptly notify the applicant that the order has been entered and that the reasons therefor and that within fifteen days after receipt of a written request, the matter will be set down for hearing. If no hearing is requested within fifteen days and none is ordered by the director, the director shall enter his written findings of fact and conclusions of law and the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director after notice of an opportunity for hearings to the issuer and to the applicant or registrant shall enter his written findings of fact and conclusions of law and may modify or vacate the order. The director may modify or vacate a stop order if he finds that the conditions which prompted his entry have changed or

that it is otherwise in the public interest to do so. [1971 ex.s. c 252 § 13.]

19.100.140 Registration of franchise brokers required. (1) It is unlawful for any franchise broker to offer to sell or sell a franchise in this state unless the franchise broker is registered under this chapter. It is unlawful for any franchisor, subfranchisor, or franchisee to employ a franchise broker unless the franchise broker is registered.

(2) The franchise broker shall apply for registration by filing with the director an application together with a consent to service of process in such form as the director shall prescribe and payment of the fee prescribed in RCW 19.100.240.

(3) The application shall contain whatever information the director requires concerning such matters as:

- (a) The applicant's form and place of organization.
 - (b) The applicant's proposed method of doing business.
 - (c) The qualifications and business history of the applicant.
 - (d) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and
 - (e) The applicant's financial condition and history.
- [1991 c 226 § 8; 1972 ex.s. c 116 § 9; 1971 ex.s. c 252 § 14.]

19.100.150 Records and accounts—Reports. Every person offering franchises for sale shall at all times keep and maintain a complete set of books, records, and accounts of such and the disposition of the proceeds thereof and shall thereafter at such times as are required by the director make and file in the office of the director a report setting forth the franchises sold by it, the proceeds derived therefrom, and the disposition thereof. [1971 ex.s. c 252 § 15.]

19.100.160 Application of chapter—Jurisdiction—Service of process—Consent. Any person who is engaged or hereafter engaged directly or indirectly in the sale or offer to sell a franchise or a subfranchise or in business dealings concerning a franchise, either in person or in any other form of communication, shall be subject to the provisions of this chapter, shall be amenable to the jurisdiction of the courts of this state and shall be amenable to the service of process under RCW 4.28.180, 4.28.185 and 19.86.160. Every applicant for registration of a franchise under this law (by other than a Washington corporation) shall file with the director in such form as he by rule prescribed, an irrevocable consent appointing the director or his successor in office to be his attorney, to receive service or any lawful process in any noncriminal suit, action, or proceeding against him or his successors, executor, or administrator which arises under this law or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing consent. A person who has filed such a consent in connection with a previous registration under this law need not file another. Service may be made by leaving a copy of the process in the office of the director but it is not as effective unless:

(1) The plaintiff, who may be the director, in a suit, action, or proceeding instituted by him forthwith sends notice

of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last address on file with the director; and

(2) The plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further times the court allows. [1991 c 226 § 9; 1971 ex.s. c 252 § 16.]

19.100.170 Violations. It is unlawful for any person in connection with the offer, sale, or purchase of any franchise or subfranchise in this state directly or indirectly:

(1) To make any untrue statement of a material fact in any application, notice, or report filed with the director under this law or willfully to omit to state in any application, notice or report, any material fact which is required to be stated therein or fails to notify the director of any material change as required by RCW 19.100.070(3).

(2) To sell or offer to sell by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading.

(3) To employ any device, scheme, or artifice to defraud.

(4) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(5) To violate any order of the director. [1991 c 226 § 10; 1971 ex.s. c 252 § 17.]

19.100.180 Relation between franchisor and franchisee—Rights and prohibitions. Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the franchisor or subfranchisor and the franchisees:

(1) The parties shall deal with each other in good faith.

(2) For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and a violation of this chapter for any person to:

(a) Restrict or inhibit the right of the franchisees to join an association of franchisees.

(b) Require a franchisee to purchase or lease goods or services of the franchisor or from approved sources of supply unless and to the extent that the franchisor satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition: PROVIDED, That this provision shall not apply to the initial inventory of the franchise. In determining whether a requirement to purchase or lease goods or services constitutes an unfair or deceptive act or practice or an unfair method of competition the courts shall be guided by the decisions of the courts of the United States interpreting and applying the anti-trust laws of the United States.

(c) Discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that the franchisor satisfies the burden of proving that any classification of or discrimination between franchisees is: (i) Reasonable, (ii) based on

franchises granted at materially different times and such discrimination is reasonably related to such difference in time, or is based on other proper and justifiable distinctions considering the purposes of this chapter, and (iii) is not arbitrary. However, nothing in (c) of this subsection precludes negotiation of the terms and conditions of a franchise at the initiative of the franchisees.

(d) Sell, rent, or offer to sell to a franchisee any product or service for more than a fair and reasonable price.

(e) Obtain money, goods, services, anything of value, or any other benefit from any other person with whom the franchisee does business on account of such business unless such benefit is disclosed to the franchisee.

(f) If the franchise provides that the franchisee has an exclusive territory, which exclusive territory shall be specified in the franchise agreement, for the franchisor or subfranchisor to compete with the franchisee in an exclusive territory or to grant competitive franchises in the exclusive territory area previously granted to another franchisee.

(g) Require franchisee to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter, except as otherwise permitted by RCW 19.100.220.

(h) Impose on a franchisee by contract, rule, or regulation, whether written or oral, any standard of conduct unless the person so doing can sustain the burden of proving such to be reasonable and necessary.

(i) Refuse to renew a franchise without fairly compensating the franchisee for the fair market value, at the time of expiration of the franchise, of the franchisee's inventory, supplies, equipment, and furnishings purchased from the franchisor, and good will, exclusive of personalized materials which have no value to the franchisor, and inventory, supplies, equipment and furnishings not reasonably required in the conduct of the franchise business: PROVIDED, That compensation need not be made to a franchisee for good will if (i) the franchisee has been given one year's notice of nonrenewal and (ii) the franchisor agrees in writing not to enforce any covenant which restrains the franchisee from competing with the franchisor: PROVIDED FURTHER, That a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor.

(j) Terminate a franchise prior to the expiration of its term except for good cause. Good cause shall include, without limitation, the failure of the franchisee to comply with lawful material provisions of the franchise or other agreement between the franchisor and the franchisee and to cure such default after being given written notice thereof and a reasonable opportunity, which in no event need be more than thirty days, to cure such default, or if such default cannot reasonably be cured within thirty days, the failure of the franchisee to initiate within thirty days substantial and continuing action to cure such default: PROVIDED, That after three willful and material breaches of the same term of the franchise agreement occurring within a twelve-month period, for which the franchisee has been given notice and an opportunity to cure as provided in this subsection, the franchisor may terminate the agreement upon any subsequent willful and material breach of the same term within the twelve-month period without providing notice or opportunity to cure: PROVIDED FURTHER, That a franchisor may

terminate a franchise without giving prior notice or opportunity to cure a default if the franchisee: (i) Is adjudicated a bankrupt or insolvent; (ii) makes an assignment for the benefit of creditors or similar disposition of the assets of the franchise business; (iii) voluntarily abandons the franchise business; or (iv) is convicted of or pleads guilty or no contest to a charge of violating any law relating to the franchise business. Upon termination for good cause, the franchisor shall purchase from the franchisee at a fair market value at the time of termination, the franchisee's inventory and supplies, exclusive of (i) personalized materials which have no value to the franchisor; (ii) inventory and supplies not reasonably required in the conduct of the franchise business; and (iii), if the franchisee is to retain control of the premises of the franchise business, any inventory and supplies not purchased from the franchisor or on his express requirement: PROVIDED, That a franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor. [1991 c 226 § 11; 1980 c 63 § 1; 1973 1st ex.s. c 33 § 4; 1972 ex.s. c 116 § 10; 1971 ex.s. c 252 § 18.]

19.100.184 Terms and conditions from negotiations initiated by franchisee. This chapter does not preclude negotiation of the terms and conditions of a franchise at the initiative of the franchisee, provided that such negotiated terms and conditions do not violate any provision of this chapter. After the initial offer to a franchisee using the offering circular required by RCW 19.100.030, 19.100.040, or 19.100.070 a franchisor need not provide an amended offering circular to that franchisee by reason of a change in the terms and conditions of a franchise being negotiated at the initiative of that franchisee or amend the registration by reason of such change. [1991 c 226 s 12.]

19.100.190 Unfair or deceptive acts—Suits for damages—Violations of other acts, use in evidence. (1) The commission of any unfair or deceptive acts or practices or unfair methods of competition prohibited by RCW 19.100.180 as now or hereafter amended shall constitute an unfair or deceptive act or practice under the provisions of chapter 19.86 RCW.

(2) Any person who sells or offers to sell a franchise in violation of this chapter shall be liable to the franchisee or subfranchisor who may sue at law or in equity for damages caused thereby for rescission or other relief as the court may deem appropriate. In the case of a violation of RCW 19.100.170 rescission is not available to the plaintiff if the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know or if he had exercised reasonable care would not have known of the untruth or omission.

(3) The suit authorized under subsection (2) of this section may be brought to recover the actual damages sustained by the plaintiff and the court may in its discretion increase the award of damages to an amount not to exceed three times the actual damages sustained: PROVIDED, That the prevailing party may in the discretion of the court recover the costs of said action including a reasonable attorneys' fee.

(4) Any person who becomes liable to make payments under this section may recover contributions as in cases of contracts from any persons who, if sued separately, would have been liable to make the same payment.

(5) A final judgment, order, or decree heretofore or hereafter rendered against a person in any civil, criminal, or administrative proceedings under the United States anti-trust laws, under the Federal Trade Commission Act, under the Washington State Consumer Protection Act, or this chapter shall be regarded as evidence against such persons in any action brought by any party against such person under subsections (1) and (2) of this section as to all matters which said judgment or decree would be an estoppel between the parties thereto. [1972 ex.s. c 116 § 11; 1971 ex.s. c 252 § 19.]

19.100.200 Pendency of other proceedings tolls limitation of action. The pendency of any civil, criminal, or administrative proceedings against a person brought by the federal or Washington state governments or any of their agencies under the anti-trust laws, the Federal Trade Commission Act, the Consumer Protection Act, or any federal or state act related to anti-trust laws or to franchising, or under this chapter shall toll the limitation of this action if the action is then instituted within one year after the final judgment or order in such proceedings: PROVIDED, That said limitation of actions shall in any case toll the law so long as there is actual concealment on the part of the person. [1972 ex.s. c 116 § 12; 1971 ex.s. c 252 § 20.]

19.100.210 Violations—Injunctions—Assurance of discontinuance—Civil and criminal penalties—Chapter nonexclusive. (1) The attorney general or director may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The prevailing party may in the discretion of the court recover the costs of such action including a reasonable attorneys' fee.

(2) Every person who shall violate the terms of any injunction issued as in this chapter provided shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

Every person who violates RCW 19.100.020, 19.100.080, 19.100.150 and 19.100.170 as now or hereafter amended shall forfeit a civil penalty of not more than two thousand dollars for each violation.

For the purpose of this section the superior court issuing an injunction shall retain jurisdiction and the cause shall be continued and in such cases the attorney general or director acting in the name of the state may petition for the recovery of civil penalties.

In the enforcement of this chapter, the attorney general or director may accept an assurance of discontinuance with the provisions of this chapter from any person deemed by the attorney general or director in violation hereof. Any such assurance shall be in writing, shall state that the person giving such assurance does not admit to any violation of this

chapter or to any facts alleged by the attorney general or director, and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. Proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter.

(3) Any person who wilfully violates any provision of this chapter or who wilfully violates any rule adopted or order issued under this chapter shall upon conviction be fined not more than five thousand dollars or imprisoned for not more than ten years or both, but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation.

(4) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law. [1980 c 63 § 2; 1979 ex.s. c 13 § 1; 1972 ex.s. c 116 § 13; 1971 ex.s. c 252 § 21.]

19.100.220 Exceptions or exemptions—Burden of proof—Waivers of compliance void—Settlement release or waiver—Chapter as fundamental policy. (1) In any proceeding under this chapter, the burden of proving an exception from a definition or an exemption from registration is upon the person claiming it.

(2) Any agreement, condition, stipulation or provision, including a choice of law provision, purporting to bind any person to waive compliance with any provision of this chapter or any rule or order hereunder is void. A release or waiver executed by any person pursuant to a negotiated settlement in connection with a bona fide dispute between a franchisee and a franchisor, arising after their franchise agreement has taken effect, in which the person giving the release or waiver is represented by independent legal counsel, is not an agreement prohibited by this subsection.

(3) This chapter represents a fundamental policy of the state of Washington. [1991 c 226 s 13; 1972 ex.s. c 116 s 14; 1971 ex.s. c 252 s 22.]

19.100.230 Referral of evidence to attorney general or prosecuting attorney. The director may refer such evidence as may be available concerning violations of this chapter or any rule or order hereunder to the attorney general or the proper prosecuting attorney who may in his discretion with or without such a reference institute the appropriate criminal proceeding under this chapter. [1971 ex.s. c 252 § 23.]

19.100.240 Fees. The director shall charge and collect fees fixed by this section. All fees collected under this chapter shall be deposited in the state treasury and shall not be refundable except as herein provided:

(1) The fee for filing an application for registration on the sale of franchise under RCW 19.100.040 is six hundred dollars;

(2) The fee for filing an application for renewal of a registration under RCW 19.100.070 is one hundred dollars;

(3) The fee for filing an amendment to the application filed under RCW 19.100.040 is one hundred dollars;

(4) The fee for registration of a franchise broker shall be fifty dollars for original registration and twenty-five dollars for each annual renewal;

(5) The fee for filing a notice of claim of exemption is one hundred dollars for the original filing and one hundred dollars for each annual renewal. [1991 c 226 § 14; 1971 ex.s. c 252 § 24.]

19.100.242 Investigations by director. The director, in the director's discretion, may: (1) Annually, or more frequently, make such public or private investigations within or without this state as the director deems necessary to determine whether any registration should be granted, denied, revoked, or suspended, or whether any person has violated or is about to violate a provision of this chapter or any rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter; and (2) publish information concerning a violation of this chapter or a rule adopted or order issued under this chapter. [1979 ex.s. c 13 § 2.]

19.100.245 Investigatory powers—Proceedings for contempt. For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In case of wilful failure on the part of a person to comply with a subpoena lawfully issued by the director, or on the refusal of a witness to testify to matters regarding which the witness may be lawfully interrogated, the superior court of any county, on application of the director and after satisfactory evidence of wilful disobedience, may compel obedience by proceedings for contempt, as in the case of disobedience of a subpoena issued from the court or a refusal to testify therein. [1979 ex.s. c 13 § 3.]

19.100.248 Cease and desist orders. If it appears to the director that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter or a rule adopted or order issued under this chapter, the director may, in the director's discretion, issue an order directing the person to cease and desist from continuing the act or practice. Reasonable notice of and opportunity for a hearing shall be given. The director may issue a temporary order pending the hearing, which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within fifteen days after the receipt of the notice. [1979 ex.s. c 13 § 4.]

19.100.250 Powers of director as to rules, forms, orders and defining terms—Interpretive opinions. The director may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter including rules and forms

governing applications and reports and defining any terms whether or not used in this chapter insofar as the definitions are consistent with this chapter. The director in his discretion may honor requests from interested persons for interpretive opinions. [1972 ex.s. c 116 § 15; 1971 ex.s. c 252 § 25.]

19.100.252 Denial, suspension, or revocation of franchise broker by director. The director may by order deny, suspend, or revoke registration of any franchise broker if the director finds that the order is in the public interest and that the applicant or registrant, or any partner, officer, or director of the applicant or registrant:

(1) Has filed an application for registration as a franchise broker under RCW 19.100.140 which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Has willfully violated or willfully failed to comply with any provision of this chapter;

(3) Has been convicted, within the past five years of any misdemeanor involving a franchise, or any felony involving moral turpitude;

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any aspect of the franchise industry;

(5) Is the subject of an order of the director denying, suspending, or revoking registration as a franchise broker;

(6) Has engaged in dishonest or unethical practices in the franchise industry;

(7) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature.

The director may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. [1991 c 226 § 16.]

19.100.255 Denial, suspension, or revocation of exemption by director. The director may by order deny, suspend, or revoke any exemption from registration otherwise available under RCW 19.100.030 for the offer or sale of the franchise if he or she finds that the order is in the public interest and that:

(1) Any provision of this chapter or any rule or order or condition lawfully imposed under this chapter has been violated or is about to be violated in connection with the offering by the franchisor, any partner, officer, or director of a franchisor, or any person occupying a similar status or performing similar functions or any person directly or indirectly controlled by the franchisor, or any franchise broker offering or selling the offering;

(2) The franchise offering is the subject of a permanent or temporary injunction of a court of competent jurisdiction entered under any federal or state act applicable to the offering; but (a) the director may not enter an order of revocation or suspension under this subsection more than one year from the date of the injunction relied on, and (b) the director may not enter an order under this subsection on the basis of an injunction unless that injunction was based on

facts that currently constitute a ground for an order under this section;

(3) The franchisor's enterprise or method of business includes or would include activities which are illegal where performed;

(4) The offering has worked or tended to work or would tend to work a fraud on purchasers;

(5) The franchisor has failed to pay the required filing fee for a claim of exemption but the director may enter only a denial order under this subsection and shall vacate such order when the deficiency has been corrected;

(6) The franchisor has made a claim of exemption which is incomplete in a material respect or contains any statement which in the light of the circumstances under which it was made is false or misleading with respect to any material fact. [1991 c 226 § 17.]

19.100.260 Applicability of administrative procedure act. The administrative procedure act, chapter 34.05 RCW, shall wherever applicable herein govern the rights, remedies, and procedures respecting the administration of this chapter. [1971 ex.s. c 252 § 26.]

19.100.270 Administrator of securities. The director shall appoint a competent person to administer this chapter who shall be designated administrator of securities. The director shall delegate to the administrator such powers, subject to the authority of the director, as may be necessary to carry out the provisions of this chapter. The administrator shall hold office at the pleasure of the director. [1971 ex.s. c 252 § 27.]

19.100.900 Chapter applicable to existing and future franchises and contracts. The provisions of this chapter shall be applicable to all franchises and contracts existing between franchisors and franchisees and to all future franchises and contracts. [1971 ex.s. c 252 § 28.]

19.100.910 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law. [1971 ex.s. c 252 § 29.]

19.100.920 Effective date—1971 ex.s. c 252. This act shall become effective May 1, 1972: PROVIDED, That the director is authorized and empowered to undertake and perform duties and conduct activities necessary for the implementation of this act prior to that date. [1971 ex.s. c 252 § 30.]

19.100.930 Severability—1971 ex.s. c 252. If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provisions, or part thereof not adjudged invalid or unconstitutional. [1971 ex.s. c 252 § 31.]

19.100.931 Severability—1972 ex.s. c 116. If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of

the act, or the application of the provision to other persons or circumstances is not affected. [1972 ex.s. c 116 § 16.]

19.100.932 Severability—1979 ex.s. c 13. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 13 § 5.]

19.100.940 Short title. This chapter shall be known and designated as the "Franchise Investment Protection Act". [1971 ex.s. c 252 § 32.]

Chapter 19.102

CHAIN DISTRIBUTOR SCHEMES

Sections

19.102.010 Definitions.

19.102.020 Chain distributor schemes prohibited—Unfair practice.

Business opportunity fraud act: Chapter 19.110 RCW.

19.102.010 Definitions. (1) "Chain distributor scheme" is a sales device whereby a person, under a condition that he make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted such license or right upon condition of making an investment, and may further perpetuate the chain of persons who are granted such license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the above license or right to recruit or the receipt of profits therefrom, does not change the identity of the scheme as a chain distributor scheme.

(2) "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

(3) "Investment" is any acquisition, for a consideration other than personal services, of personal property, tangible or intangible, for profit or business purposes, and includes, without limitation, franchises, business opportunities, services and inventory for resale. It does not include sales demonstration equipment and materials, furnished at cost for use in making sales and not for resale. [1973 1st ex.s. c 33 § 1.]

19.102.020 Chain distributor schemes prohibited—Unfair practice. No person shall promote, offer or grant participation in a chain distributor scheme. Any violation of this chapter shall be construed for purposes of the application of the Consumer Protection Act, chapter 19.86 RCW, to constitute an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce. [1973 1st ex.s. c 33 § 2.]

Chapter 19.105
CAMPING RESORTS

Sections

- 19.105.300 Definitions.
- 19.105.310 Unlawful to offer or sell contract unless contract registered—Exemptions.
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- 19.105.430 Unlawful to act as salesperson without registering—Exemptions.
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- 19.105.450 Investigations—Scope—Publishing information.
- 19.105.460 Investigations—Powers relating to—Proceedings for contempt.
- 19.105.470 Cease and desist orders—Utilizing temporary order, injunction, restraining order, or writ of mandamus.
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- 19.105.530 Rules, forms, orders—Administration of chapter.
- 19.105.540 Administrative procedure act application.
- 19.105.550 Administration.
- 19.105.910 Construction—Chapter as cumulative and nonexclusive.
- 19.105.920 Severability—1982 c 69.
- 19.105.930 Effective date—1982 c 69.

Exemption of timeshares from chapter: RCW 64.36.290.

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

(1) "Camping resort" means any enterprise, other than one that is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that has as its primary purpose the ownership, operation, or promotion of campgrounds that includes or will include camping sites.

(2) "Camping resort contract" means an agreement evidencing a purchaser's title to, estate or interest in, or right or license to use for more than thirty days the campground of a camping resort.

(3) "Camping site" means a space designed and promoted for the purpose of locating a trailer, tent, tent trailer, pickup camper, or other similar device used for land-based portable housing.

(4) "Purchaser" means a person who enters into a camping resort contract and thereby obtains title to, an estate or interest in, or license or the right to use the campground of a camping resort.

(5) "Person" means any individual, corporation, partnership, trust, association, or other organization other than a government or a subdivision thereof.

(6) "Director" means the director of licensing.

(7) "Camping resort operator" means any person who establishes, promotes, owns, or operates a camping resort.

(8) "Advertisement" means any offer, written, printed, audio, or visual, by general solicitation, including all material used by an operator in a membership referral program.

(9) "Offer" means any solicitation reasonably designed to result in the entering into of a camping resort contract.

(10) "Sale" or "sell" means entering into, or other disposition, of a camping resort contract for value, but the term value does not include a reasonable fee to offset the ministerial costs of transfer of a camping resort contract if, in transferring the contract or membership, the terms of the original contract or membership are not changed by the camping resort operator.

(11) "Salesperson" means any individual, other than a camping resort operator, who is engaged in obtaining commitments of persons to enter into camping resort contracts by making a sales presentation to, or negotiating sales with, the persons, but does not include members of a camping resort engaged in the referral of persons without making a sales presentation to the persons.

(12) "Affiliate" means any person who, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control of a registrant or camping resort operator.

(13) "Campground" means real property owned or operated by a camping resort that is available for camping or outdoor recreation by purchasers of camping resort contracts.

(14) "Department" means the department of licensing.

(15) "Resale camping resort contract" means a camping resort contract offered or sold which is not the original offer, transfer, or sale of such contract, and not a forfeited contract being reoffered by an operator.

(16) "Start-up camping resort contract" means a camping resort contract that is being offered or sold for the first time or a forfeited contract being resold by a camping resort operator.

(17) "Blanket encumbrance" means any mortgage, deed of trust, option to purchase, vendor's lien or interest under a contract or agreement of sale, or other material financing lien or encumbrance granted by the camping resort operator

or affiliate that secures or evidences the obligation to pay money or to sell or convey any campgrounds made available to purchasers by the camping resort operator or any portion thereof and that authorizes, permits, or requires the foreclosure or other disposition of the campground affected.

(18) "Nondisturbance agreement" means an instrument by which the holder of a blanket encumbrance agrees that: (a) Its rights in any campground made available to purchasers, prior or subsequent to the agreement, by the camping resort operator shall be subordinate to the rights of purchasers from and after the recording of the instrument; (b) the holder and all successors and assignees, and any person who acquires the campground through foreclosure or by deed in lieu of foreclosure of such blanket encumbrance, shall take the campground subject to the use rights of purchasers; and (c) the holder or any successor acquiring the campground through the blanket encumbrance shall not discontinue use, or cause the campground to be used, in a manner which would materially prevent purchasers from using or occupying the campground in a manner contemplated by the purchasers' camping resort contracts. However, the holder has no obligation or liability to assume the responsibilities or obligations of the camping resort operator under camping resort contracts. [1988 c 159 § 1; 1982 c 69 § 1.]

19.105.310 Unlawful to offer or sell contract unless contract registered—Exemptions. Except in transactions exempt under RCW 19.105.325, it is unlawful for any person to offer or sell a camping resort contract in this state unless the camping resort contract is registered and the operator or registrant has received a permit to market the registered contracts under this chapter. [1988 c 159 § 2; 1982 c 69 § 2.]

19.105.320 Registration—Filings required upon application—Waiver. (1) To apply for registration an applicant shall file with the director:

(a) An application for registration on such a form as may be prescribed by the director. The director may, by rule or order, prescribe the contents of the application to include information (including financial statements) reasonably necessary for the director to determine if the requirements of this chapter have been met, whether any of the grounds for which a registration may be suspended or denied have occurred, and what conditions, if any, should be imposed under RCW 19.105.340, 19.105.350, or 19.105.336 in connection with the registration;

(b) Written disclosures, in any format the director is satisfied accurately, completely, and clearly communicates the required information, which include:

(i) The name and address of the camping resort applicant or operator and any material affiliate and, if the operator or registrant is other than a natural person, the identity of each person owning a ten percent or greater share or interest;

(ii) A brief description of the camping resort applicant's experience in the camping resort business;

(iii) A brief description of the nature of the purchaser's title to, estate or interest in, or right to use the camping resort property or facilities and whether or not the purchaser

will obtain an estate, title to, or interest in specified real property;

(iv) The location and a brief description of the significant facilities and recreation services then available for use by purchasers and those which are represented to purchasers as being planned, together with a statement whether any of the resort facilities or recreation services will be available to nonpurchasers or the general public;

(v) A brief description of the camping resort's ownership of or other right to use the camping resort properties or facilities represented to be available for use by purchasers, together with a brief description of any material encumbrance, the duration of any lease, real estate contract, license, franchise, reciprocal agreement, or other agreement entitling the camping resort applicant or operator to use the property, and any material provisions of the agreements which restrict a purchaser's use of the property;

(vi) A summary of any local or state health, environmental, subdivision, or zoning requirements or permits that have not been complied with for the resort property or facility represented to purchasers as in or planned for the campground;

(vii) A copy of the articles, by-laws, rules, restrictions, or covenants regulating the purchaser's use of each property, the facilities located on each property, and any recreation services provided;

(viii) A statement of whether and how the articles, declarations, by-laws, rules, restrictions, or covenants used in structuring the project may be changed and whether and how the members may participate in the decision on the changes;

(ix) A brief description of all payments of a purchaser under a camping resort contract, including initial fees and any further fees, charges, or assessments, together with any provisions for changing the payments;

(x) A description of any restraints on the transfer of camping resort contracts;

(xi) A brief description of the policies relating to the availability of camping sites and conditions under which reservations are required and the availability of the sites to guests and family members;

(xii) A disclosure covering the right of the camping resort operator or the registrant and their heirs, assigns, and successors in interest to change, substitute, or withdraw from use all or a portion of the camping resort properties or facilities and the extent to which the operator is obligated to replace camping resort facilities or properties withdrawn;

(xiii) A brief description of any grounds for forfeiture of a purchaser's camping resort contract;

(xiv) A statement concerning the effect upon membership camping resort contracts if there is a foreclosure affecting any of the operator's properties, a bankruptcy, or creditor or lienholder action affecting the operator or the camping resort properties; and

(xv) Any other information deemed necessary by the department for the protection of the public health, safety, and welfare;

(c) The prescribed registration fees;

(d) A statement of the total number of camping resort contracts then in effect, both within and without this state; and a statement of the total number of camping resort contracts intended to be sold, both within and without this

state, together with a commitment that the total number will not be exceeded unless disclosed by post-effective amendment to the registration as provided in RCW 19.105.420;

(e) Copies or prototypes of all camping resort contracts, and addendum thereto, and membership certificates, deeds, leases, or other evidences of interest, title, or estate, to be registered;

(f) An irrevocable consent to service of process on the director or the department, effective for the term of the statute of limitations covering the last sale in this state of a camping resort contract by the applicant or operator; and

(g) Any other material information the director deems necessary for the protection of the public health, welfare, or safety, or to effectively conduct an examination of an application.

(2) The director may waive for an applicant any of the information required in this section if it is not needed for the protection of the public health and welfare. [1988 c 159 § 3; 1982 c 69 § 3.]

Administrative procedure act application: RCW 19.105.540.

19.105.325 Exemptions from chapter. (1) The following transactions are exempt from registration under this chapter:

(a) An offer or sale by a government or governmental agency;

(b) A bona fide pledge of a camping resort contract; and

(c) Offerings and dispositions of resale camping resort contracts by purchasers thereof on their own behalf or by third parties brokering on behalf of purchasers, other than resale contracts forfeited by or placed into an operator's sale inventory.

(2) The director may, by rule or order, exempt any person, wholly or partially, from any or all requirements of this chapter if the director finds the requirements are not necessary for the protection of the public health, safety, and welfare. [1988 c 159 § 4.]

19.105.330 Registration—Effective, when—Completed form of application required. [(1)] Unless an order denying effectiveness under RCW 19.105.380 is in effect, or unless declared effective by order of the director prior thereto, the application for registration shall automatically become effective upon the expiration of the twentieth full business day following a filing with the director in complete and proper form, but an applicant may consent to the delay of effectiveness until such time as the director may by order declare registration effective or issue a permit to market.

(2) An application for registration, renewal of registration, or amendment is not in completed form and shall not be deemed a statutory filing until such time as all required fees, completed application forms, and the information and documents required pursuant to RCW 19.105.320(1) and departmental rules have been filed.

It is the operator's responsibility to see that required filing materials and fees arrive at the appropriate mailing address of the department. Within seven business days, excluding the date of receipt, of receiving an application or initial request for registration and the filing fees, the department shall notify the applicant of receipt of the application

and whether or not the application is complete and in proper form. If the application is incomplete, the department shall at the same time inform the applicant what additional documents or information is required.

If the application is not in a completed form, the department shall give immediate notice to the applicant. On the date the application is complete and properly filed, the statutory period for an in-depth examination of the filing, prescribed in subsection (1) of this section, shall begin to run, unless the applicant and the department have agreed to a stay of effectiveness or the department has issued a denial of the application or a permit to market. [1988 c 159 § 5; 1982 c 69 § 4.]

19.105.333 Signature of operator, trustee, or holder of power of attorney required on application documentation. Applications, consents to service, all affidavits required in connection with applications, and all final permits to market shall be signed by the operator, unless a trustee or power of attorney specifically granted such powers has signed on behalf of the operator. If a power of attorney or trustee signature is used, the filing shall contain a copy of the authorization, power of attorney, or trustee authorization. [1988 c 159 § 6.]

19.105.336 Availability of campgrounds to contract purchasers—Blanket encumbrances—Penalty for non-compliance. (1) With respect to every campground located within the state which was not made available to purchasers of camping resort contracts prior to June 20, 1988, and with respect to any new blanket encumbrance placed against any campground in this state or any prior blanket encumbrance against any campground in this state with respect to which the underlying obligation is refinanced after June 20, 1988, the camping resort operator shall not represent any such campground to be available to purchasers of its camping resort contracts until one of the following events has occurred with regard to each such blanket encumbrance:

(a) The camping resort operator obtains and records as covenants to run with the land a nondisturbance agreement from each holder of the blanket encumbrance. The nondisturbance agreement shall be executed by the camping resort operator and by each holder of the blanket encumbrance and shall include the provisions set forth in RCW 19.105.300(18) and the following:

(i) The instrument may be enforced by individual purchasers of camping resort contracts. If the camping resort operator is not in default under its obligations to the holder of the blanket encumbrance, the agreement may be enforced by the camping resort operator.

(ii) The agreement shall be effective as between each purchaser and the holder of the blanket encumbrance despite any rejection or cancellation of the purchaser's contract during any bankruptcy proceedings of the camping resort operator.

(iii) The agreement shall be binding upon the successors in interest of both the camping resort operator and the holder of the blanket encumbrance.

(iv) A holder of the blanket encumbrance who obtains title or possession or who causes a change in title or possession in a campground by foreclosure or otherwise and who

does not continue to operate the campground upon conditions no less favorable to members than existed prior to the change of title or possession shall either:

(A) Offer the title or possession to an association of members to operate the campground; or

(B) Obtain a commitment from another entity which obtains title or possession to undertake the responsibility of operating the campground.

(b) The camping resort operator posts a bond or irrevocable letter of credit with the director in a form satisfactory to the director in the amount of the aggregate principal indebtedness remaining due under the blanket encumbrance.

(c) The camping resort operator delivers an encumbrance trust agreement in a form satisfactory to the director, as provided in subsection (2) of this section.

(d) The camping resort operator delivers other financial assurances reasonably acceptable to the director.

(2) With respect to any campground located within the state other than a campground described in subsection (1) of this section, the camping resort operator shall not represent the campground to be available to purchasers of camping resort contracts after June 20, 1988, until one of the following events has occurred with regard to each blanket encumbrance:

(a) The camping resort operator obtains and records a nondisturbance agreement to run with the land pursuant to subsection (1) of this section from each holder of the blanket encumbrance.

(b) The camping resort operator posts a surety bond or irrevocable letter of credit with the director in a form satisfactory to the director in the amount of the aggregate principal indebtedness remaining due under the blanket encumbrance.

(c) The camping resort operator delivers to the director, in a form satisfactory to the director, an encumbrance trust agreement among the camping resort operator, a trustee (which can be either a corporate trustee licensed to act as a trustee under Washington law, licensed escrow agent, or a licensed attorney), and the director.

(d) The camping resort operator delivers evidence to the director that any financial institution that has made a hypothecation loan to the camping resort operator (the "hypothecation lender") shall have a lien on, or security interest in, the camping resort operator's interest in the campground, and the hypothecation lender shall have executed and recorded a nondisturbance agreement in the real estate records of the county in which the campground is located. Each person holding an interest in a blanket encumbrance superior to the interest held by the hypothecation lender shall have executed and recorded an instrument stating that such person shall give the hypothecation lender notice of, and at least thirty days to cure, any default under the blanket encumbrance before the person commences any foreclosure action affecting the campground. For the purposes of this subsection, a hypothecation loan to a camping resort operator is a loan or line of credit secured by the camping resort contracts receivable arising from the sale of camping resort contracts by the camping resort operator, which exceeds in the aggregate all outstanding indebtedness secured by blanket encumbrances superior to the interest held by the hypothecation lender.

(e) The camping resort operator delivers other financial assurances reasonably acceptable to the director.

(3) Any camping resort operator which does not comply at all times with subsection (1) or (2) of this section with regard to any blanket encumbrance in connection with any applicable campground is prohibited from offering any camping resort contracts for sale in Washington during the period of noncompliance. [1988 c 159 § 7.]

Effective date—1988 c 159: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and, with the exception of section 7 of this act, shall take effect immediately [March 20, 1988]. Section 7 of this act shall take effect ninety days thereafter [June 20, 1988]." [1988 c 159 § 29.] "Section 7 of this act" is codified as RCW 19.105.336.

19.105.340 Impounding proceeds from contract sales—Conditional release of impounded funds—Funds not subject to lien—No assignment of impounded or reserved assets.

(1) If the director finds that the applicant or registrant has not by other means assured future availability to and quiet enjoyment of the campgrounds and facilities, as required under this chapter, the director may, notwithstanding the provisions of RCW 19.105.336, require impoundment of the funds or membership receivables, or both, from camping resort contract sales, including the impoundment of periodic dues or assessments required of purchasers under the contracts, or provide other assurances acceptable to the director, until sufficient funds have been impounded or arrangements made to alleviate the inadequacy. The director may, upon finding it reasonable and necessary, for compliance with RCW 19.105.336 and 19.105.365, and not inconsistent with the protection of purchasers or owners of camping resort contracts, provide for release to the applicant, registrant, or others of all or a portion of the impounded funds, membership receivables, or other assets in the impound. The director may take appropriate measures to assure that the impounded funds will be applied as required by this chapter.

(2) Funds placed in impounds under this section or reserve accounts under RCW 19.105.350 are not subject to lien, attachment, or the possession of lenders or creditors of the operator, trustees in bankruptcy, receivers, or other third parties. In instances of bankruptcy, foreclosure, attachment, or other contingency where the ownership or beneficiary status of funds in depositories, or the receivables and funds to be collected from receivables, may be at issue, the purchasers of contracts under this chapter, as a class, shall be deemed the beneficiary. No individual purchaser or group of purchasers, other than the purchasers as a class, have any right to possession, attachment, lien, or right of partition of funds or receivables in the impound or reserve.

(3) It is unlawful for an operator or other person to assign, hypothecate, sell, or pledge any contract or other asset placed into an impound or reserve under this chapter without the express written approval of the director or a court of competent jurisdiction. [1988 c 159 § 8; 1982 c 69 § 5.]

19.105.345 Persons licensed under chapter 18.85 RCW exempt from salesperson registration requirements. Persons licensed under chapter 18.85 RCW are exempt from

the camping resort salesperson registration requirements of this chapter for camping resort contracts offered through the licensed brokerage. [1988 c 159 § 9.]

19.105.350 Director may require reserve fund by order—Denial or suspension of registration. (1) If the purchaser will own or acquire title to specified real property or improvements to be acquired by the camping resort, the director may by order require to the extent necessary to protect the interests of the purchasers or owners of camping resort contracts, that an appropriate portion of the proceeds paid under those camping resort contracts be placed in a separate reserve fund to be set aside and applied toward the purchase price of the real property, improvements, or facilities.

(2) The director may deny or suspend a registration in which the registrant is advertising or offering annual or periodic dues or assessments by members that the director finds would result in the registrant's future inability to fund operating costs. [1988 c 159 § 10; 1982 c 69 § 6.]

19.105.360 Filing of sales literature, contract form, disclosure supplements. The camping resort operator or other registrant of offerings of camping resort contracts shall file with the director at least five business days prior to the first use thereof in the state of Washington (1) the proposed text of all advertisements and sales promotion literature, (2) its proposed form of camping resort contract, and (3) the text of any supplements or amendments to the written disclosures required to be furnished prospective purchasers under RCW 19.105.370: PROVIDED, That if the text in lieu of definitive copies of any materials are filed, definitive copies shall be filed with the director within five business days following the date of first use of the materials. [1988 c 159 § 11; 1982 c 69 § 7.]

19.105.365 Advertising promises of free gifts, awards, or prizes—Provision of gift or substitute—Security arrangements after violation—Advance fees placed in trust—Membership referral programs considered promotional programs. (1) It is unlawful for a camping resort operator or other person, in connection with an advertisement or offer for sale of a camping resort contract in this state, to promise or offer a free gift, award, prize, or other item of value if the operator or person knows or has reason to know that the offered item is unavailable in a sufficient quantity based upon the reasonably anticipated response to the advertisement or offer.

(2) A person who responds to an advertisement or offer in the manner specified, who performs all stated requirements, and who meets the qualifications disclosed shall receive the offered item subject to chapter 19.170 RCW.

(3) The director may, upon making a determination that a violation of subsection (1) or (2) of this section has occurred, require any person, including an operator or other registrant found in violation, who continues, or proposes to continue, offering a free gift, award, prize, or other item of value in this state for purposes of advertising a camping resort or inducing persons to purchase a camping resort contract, to provide evidence of the ability to deliver on promised gifts, prizes, or awards by means such as bonds,

irrevocable letters of credit, cash deposits, or other security arrangements acceptable to the director.

(4) The director may require that any fees or funds of any description collected in advance from persons for purposes of obtaining promised gifts, awards, prizes, or other items of value, be placed in trust in a depository in this state until after delivery of the promised gift, prize, award, or other item of value.

(5) Operators or other registrants or persons promising gifts, prizes, awards, or other items of consideration as part of a membership referral program shall be considered to be offering or selling promotional programs.

(6) Chapter 19.170 RCW applies to free gifts, awards, or prizes regulated under this chapter. [1991 c 227 § 9; 1988 c 159 § 12.]

Severability—1991 c 227: See RCW 19.170.900.

19.105.370 Purchaser to receive written disclosures from operator or department—Exemptions. Except in a transaction exempt under RCW 19.105.325, any operator who offers or sells camping resort contracts in this state shall provide the prospective purchaser with the written disclosures required to be filed under RCW 19.105.320(1)(b) in a form that is materially accurate and complete before the prospective purchaser signs a camping resort contract or gives any item of value for the purchase of a camping resort contract. The department may provide its own disclosures, supplementing those of the operator, in any format it deems appropriate. The department shall not be held liable for any alleged failure to disclose information or for deficiencies in the content of its disclosures when such disclosures are based upon information provided by the operator or a registrant. [1988 c 159 § 13; 1982 c 69 § 8.]

19.105.380 Registration or application—Conditions for denial, suspension, or revocation by order—Fine—Reimbursement of costs—Notices, hearings, and findings—Summary orders—Assurances of discontinuance.

(1) A registration or an application for registration of camping resort contracts or renewals thereof may by order be denied, suspended, or revoked if the director finds that:

(a) The advertising, sales techniques, or trade practices of the applicant, registrant, or its affiliate or agent have been or are deceptive, false, or misleading;

(b) The applicant or registrant has failed to file copies of the camping resort contract form under RCW 19.105.360;

(c) The applicant, registrant, or affiliate has failed to comply with any provision of this chapter, the rules adopted or the conditions of a permit granted under this chapter, or a stipulation or final order previously entered into by the operator or issued by the department under this chapter;

(d) The applicant's, registrant's, or affiliate's offering of camping resort contracts has worked or would work a fraud upon purchasers or owners of camping resort contracts;

(e) The camping resort operator or any officer, director, or affiliate of the camping resort operator has been within the last five years convicted of or pleaded nolo contendere to any misdemeanor or felony involving conversion, embezzlement, theft, fraud, or dishonesty, has been enjoined from or had any civil penalty assessed for a finding of dishonest dealing or fraud in a civil suit, or been found to have

engaged in any violation of any act designed to protect consumers, or has been engaged in dishonest practices in any industry involving sales to consumers;

(f) The applicant or registrant has represented or is representing to purchasers in connection with the offer or sale of a camping resort contract that a camping resort property, facility, amenity camp site, or other development is planned, promised, or required, and the applicant or registrant has not provided the director with a security or assurance of performance as required by this chapter;

(g) The applicant or registrant has not provided or is no longer providing the director with the necessary security arrangements to assure future availability of titles or properties as required by this chapter or agreed to in the permit to market;

(h) The applicant or registrant is or has been employing unregistered salespersons or offering or proposing a membership referral program not in compliance with this chapter;

(i) The applicant or registrant has breached any escrow, impound, reserve account, or trust arrangement or the conditions of an order or permit to market required by this chapter;

(j) The applicant or registrant has breached any stipulation or order entered into in settlement of the department's filing of a previous administrative action;

(k) The applicant or registrant has filed or caused to be filed with the director any document or affidavit, or made any statement during the course of a registration or exemption procedure with the director, that is materially untrue or misleading;

(l) The applicant or registrant has engaged in a practice of failing to provide the written disclosures to purchasers or prospective purchasers as required under this chapter;

(m) The applicant, registrant, or any of its officers, directors, or employees, if the operator is other than a natural person, have wilfully done, or permitted any of their salespersons or agents to do, any of the following:

(i) Engage in a pattern or practice of making untrue or misleading statements of a material fact, or omitting to state a material fact;

(ii) Employ any device, scheme, or artifice to defraud purchasers or members;

(iii) Engage in a pattern or practice of failing to provide the written disclosures to purchasers or prospective purchasers as required under this chapter;

(n) The applicant or registrant has failed to provide a bond, letter of credit, or other arrangement to assure delivery of promised gifts, prizes, awards, or other items of consideration, as required under this chapter, breached such a security arrangement, or failed to maintain such a security arrangement in effect because of a resignation or loss of a trustee, impound, or escrow agent;

(o) The applicant or registrant has engaged in a practice of selling contracts using material amendments or codicils that have not been filed or are the consequences of breaches or alterations in previously filed contracts;

(p) The applicant or registrant has engaged in a practice of selling or proposing to sell contracts in a ratio of contracts to sites available in excess of that filed in the affidavit required by this chapter;

(q) The camping resort operator has withdrawn, has the right to withdraw, or is proposing to withdraw from use all

or any portion of any camping resort property devoted to the camping resort program, unless:

(i) Adequate provision has been made to provide within a reasonable time thereafter a substitute property in the same general area that is at least as desirable for the purpose of camping and outdoor recreation;

(ii) The property is withdrawn because, despite good faith efforts by the camping resort operator, a nonaffiliate of the camping resort has exercised a right of withdrawal from use by the camping resort (such as withdrawal following expiration of a lease of the property to the camping resort) and the terms of the withdrawal right have been disclosed in writing to all purchasers at or prior to the time of any sales of camping resort contracts after the camping resort has represented to purchasers that the property is or will be available for camping or recreation purposes;

(iii) The specific date upon which the withdrawal becomes effective has been disclosed in writing to all purchasers and members prior to the time of any sales of camping resort contracts after the camping resort has represented to purchasers that the property is or will be available for camping or recreation purposes;

(iv) The rights of members and owners of the camping resort contracts under the express terms of the camping resort contract have expired, or have been specifically limited, upon the lapse of a stated or determinable period of time, and the director by order has found that the withdrawal is not otherwise inconsistent with the protection of purchasers or the desire of the majority of the owners of camping resort contracts, as expressed in their previously obtained vote of approval;

(r) The format, form, or content of the written disclosures provided therein is not complete, full, or materially accurate, or statements made therein are materially false, misleading, or deceptive;

(s) The applicant or registrant has failed or declined to respond to any subpoena lawfully issued and served by the department under this chapter;

(t) The applicant or registrant has failed to file an amendment for a material change in the manner or at the time required under this chapter or its implementing rules;

(u) The applicant or registrant has filed voluntarily or been placed involuntarily into a federal bankruptcy or is proposing to do so; or

(v) A camping resort operator's rights or interest in a campground has been terminated by foreclosure or the operations in a camping resort have been terminated in a manner contrary to contract provisions.

(2) Any applicant or registrant who has violated subsection (1)(a), (b), (c), (f), (h), (i), (j), (l), (m), or (n) of this section may be fined by the director in an amount not to exceed one thousand dollars for each such violation. Proceedings seeking such fines shall be held in accordance with chapter 34.05 RCW and may be filed either separately or in conjunction with other administrative proceedings to deny, suspend, or revoke registrations authorized under this chapter. Fines collected from such proceedings shall be deposited in the state general fund.

(3) An operator, registrant, or applicant against whom administrative or legal proceedings have been filed shall be responsible for and shall reimburse the state, by payment into the general fund, for all administrative and legal costs

actually incurred by the department in issuing, processing, and conducting any such administrative or legal proceeding authorized under this chapter that results in a final legal or administrative determination of any type or degree in favor of the department.

(4) No order may be entered under this section without appropriate prior notice to the applicant or registrant of opportunity for a hearing and written findings of fact and conclusions of law, except that the director may by order summarily deny an application for registration or renewal under any of the above subsections and may summarily suspend or revoke a registration under subsection (1)(d), (f), (g), (h), (i), (k), (l), (m), and (n) of this section. No fine may be imposed by summary order.

(5) The proceedings to deny an application or renewal, suspend or revoke a registration or permit, whether summarily or otherwise, or impose a fine shall be held in accordance with chapter 34.05 RCW.

(6) The director may enter into assurances of discontinuance in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing under this chapter. The assurances shall consist of a statement of the law in question and an agreement not to violate the stated provision. The applicant or registrant shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violating or breaching an assurance under this subsection is grounds for suspension or revocation of registration or imposition of a fine. [1988 c 159 § 14; 1982 c 69 § 9.]

19.105.390 Resort contracts—Purchaser's cancellation—Notice—Statement of right to cancel. Any camping resort contract may be canceled at the option of the purchaser, if the purchaser sends notice of the cancellation by certified mail (return receipt requested) to the camping resort operator at the address contained in the camping resort contract and if the notice is postmarked not later than midnight of the third business day following the day on which the contract is signed. In addition to this cancellation right, any purchaser who signs a camping resort contract of any description required to be registered with the department without having received the written disclosures required by this chapter has cancellation rights until three business days following eventual receipt of the written disclosures. Purchasers shall request cancellation of contracts by sending the notice of cancellation by certified mail (return receipt requested), postmarked not later than midnight of the third business day following the day on which the contract is signed or the day on which the disclosures were actually received, whichever event is later to the camping resort operator at the address contained in the camping resort contract. In computing the number of business days, the day on which the contract was signed shall not be included as a "business day," nor shall Saturday, Sunday, or legal holidays be included. Within three business days following receipt of timely and proper notice of cancellation from the purchaser, the camping resort operator shall provide evidence that the contract has been cancelled. Thereafter, any money or other consideration paid by the purchaser shall be promptly refunded.

Every camping resort contract, other than those being offered and registered as resales, shall include the following statement in at least ten-point bold-face type immediately prior to the space for the purchaser's signature:

"Purchaser's right to cancel: You may cancel this contract without any cancellation fee or other penalty, or stated reason for doing so, by sending notice of cancellation by certified mail, return receipt requested, to (insert name and address of camping resort operator). The notice must be postmarked by midnight of the third business day following the day on which the contract is signed. In computing the three business days, the day on which the contract is signed shall not be included as a "business day," nor shall Saturday, Sunday, or legal holidays be included."

If the purchaser has not inspected a camping resort property or facility at which camping resort sites are located or planned, the notice must contain the following additional language:

"If you sign this contract without having inspected a property at which camping sites are located or planned, you may cancel this contract by giving this notice within six (6) business days following the day on which you signed the contract." [1988 c 159 § 15; 1982 c 69 § 10.]

19.105.400 Resort contracts—Voidable—Estoppel. Any camping resort contract entered into in violation of this chapter may be voided by the purchaser and the purchaser's entire consideration recovered at the option of the purchaser, but no suit under this section may be brought after two years from the date the contract is signed. [1988 c 159 § 16; 1982 c 69 § 11.]

19.105.405 Purchaser lists—Authorized uses. (1) The legislature recognizes the proprietary interest camping resort operators have in purchaser lists. The legislature also recognizes that purchasers of camping resort contracts have a legitimate interest in being able to contact other resort purchasers for the purpose of forming a members' association. In balancing these competing interests, the legislature believes that purchaser lists can be made available to camping resort purchasers with reasonable restrictions on the dissemination of those lists.

(2) Upon request of a purchaser, the camping resort operator shall provide to the purchaser a list of the names, addresses, and unit, site, or purchaser number of all purchasers. The camping resort operator may charge for the reasonable costs for preparing the list. The operator shall require the purchaser to sign an affidavit agreeing not to use the list for any commercial purpose.

(3) It is a violation of this chapter and chapter 19.86 RCW for any person to use a membership list for commercial purposes unless authorized to do so by the operator.

(4) It is a violation of this chapter and chapter 19.86 RCW for a camping resort operator to fail to provide a list of purchasers as provided in this section. [1988 c 159 § 17.]

19.105.411 Fees. Applicants or registrants under this chapter shall pay fees determined by the director as provided in RCW 43.24.086. The fees shall be prepaid and the director may determine fees for the following activities or events:

(1) A fee for the initial application and an additional fee for each camping resort contract registered;

(2) Renewals of camping resort registrations and an additional fee for each additional camping resort contract registered;

(3) An initial and annual fee for processing and administering any required impound, trust, reserve, or escrow arrangement and security arrangements for such programs;

(4) The review and processing of advertising or promotional materials;

(5) Registration and renewal of registrations of salespersons;

(6) The transfer of a salesperson's permit from one operator to another;

(7) Administering examinations for salespersons;

(8) Amending the registration or the public offering statement;

(9) Conducting site inspections;

(10) Granting exemptions under this chapter;

(11) Penalties for registrants in any situation where a registrant has failed to file an amendment to the registration or the public offering statement in a timely manner for material changes, as required in this chapter and its implementing rules. [1988 c 159 § 18.]

19.105.420 Resort contracts—Registration, duration—Renewal, amendment—Renewal of prior permits.

A registration of camping resort contracts shall be effective for a period of one year and may, upon application, be renewed for successive periods of one year each, unless the director prescribes a shorter period for a permit or registration. A camping resort contract registration shall be amended if there is to be an increase in inventory or consolidation to the number of camping resort contracts registered, or in instances in which new contract forms are to be offered. Consolidations, new contract forms, the adding of resorts to the program, or amendments for material changes shall become effective in the manner provided by RCW 19.105.330. The written disclosures required to be furnished prospective purchasers under RCW 19.105.370 shall be supplemented by amendment request in writing as necessary to keep the required information reasonably current and reflective of material changes. Amendments shall be filed with the director as provided in RCW 19.105.360. The foregoing notwithstanding, however, the camping resort operator or registrant shall file an amendment to the registration disclosing any event which will have a material effect on the conduct of the operation of the camping resort, the financial condition of the camping resort, or the future availability of the camping resort properties to purchasers. The amendment shall be filed within thirty days following the event. The amendment shall be treated as an original application for registration, except that until the director has acted upon the application for amendment the applicant's registration shall continue to be deemed effective for the purposes of RCW 19.105.310.

Any permit to sell camping resort memberships issued prior to November 1, 1982, shall be deemed a camping resort registration subject to the renewal provisions of this chapter upon the anniversary date of the issuance of the original permit. [1988 c 159 § 19; 1982 c 69 § 13.]

19.105.430 Unlawful to act as salesperson without registering—Exemptions. Unless the transaction is exempt under RCW 19.105.325, it is unlawful for any person to act as a camping resort salesperson in this state without first registering under this chapter as a salesperson or being licensed as a salesperson under chapter 18.85 RCW or a broker licensed under that chapter. [1988 159 § 20; 1982 c 69 § 14.]

19.105.440 Registration as salesperson—Application—Denial, suspension, or revocation of registration or application by order—Fine—Notices, hearings, and findings—Summary orders—Assurances of discontinuance—Renewal of registration. (1) A salesperson may apply for registration by filing in a complete and readable form with the director an application form provided by the director which includes the following:

(a) A statement whether or not the applicant within the past five years has been convicted of, pleaded nolo contendere to, or been ordered to serve probation for a period of a year or more for any misdemeanor or felony involving conversion, embezzlement, theft, fraud, or dishonesty or the applicant has been enjoined from, had any civil penalty assessed for, or been found to have engaged in any violation of any act designed to protect consumers;

(b) A statement fully describing the applicant's employment history for the past five years and whether or not any termination of employment during the last five years was the result of any theft, fraud, or act of dishonesty;

(c) A consent to service comparable to that required of operators under this chapter; and

(d) Required filing fees.

(2) The director may by order deny, suspend, or revoke a camping resort salesperson's registration or application for registration under this chapter or the person's license or application under chapter 18.85 RCW, or impose a fine on such persons not exceeding two hundred dollars per violation, if the director finds that the order is necessary for the protection of purchasers or owners of camping resort contracts and the applicant or registrant is guilty of:

(a) Obtaining registration by means of fraud, misrepresentation, or concealment, or through the mistake or inadvertence of the director;

(b) Violating any of the provisions of this chapter or any lawful rules adopted by the director pursuant thereto;

(c) Being convicted in a court of competent jurisdiction of this or any other state, or federal court, of forgery, embezzlement, obtaining money under false pretenses, bribery, larceny, extortion, conspiracy to defraud, or any similar offense or offenses. For the purposes of this section, "being convicted" includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction, and all proceedings in which the sentence has been deferred or suspended;

(d) Making, printing, publishing, distributing, or causing, authorizing, or knowingly permitting the making, printing, publication, or distribution of false statements, descriptions, or promises of such character as to reasonably induce any person to act thereon, if the statements, descriptions, or promises purport to be made or to be performed by either the applicant or registrant and the applicant or registrant then

knew or, by the exercise of reasonable care and inquiry, could have known, of the falsity of the statements, descriptions, or promises;

(e) Knowingly committing, or being a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, trick, scheme, or device whereby any other person lawfully relies upon the work, representation, or conduct of the applicant or registrant;

(f) Failing, upon demand, to disclose to the director or the director's authorized representatives acting by authority of law any information within his or her knowledge or to produce for inspection any document, book or record in his or her possession, which is material to the salesperson's registration or application for registration;

(g) Continuing to sell camping resort contracts in a manner whereby the interests of the public are endangered, if the director has, by order in writing, stated objections thereto;

(h) Committing any act of fraudulent or dishonest dealing or a crime involving moral turpitude, and a certified copy of the final holding of any court of competent jurisdiction in such matter shall be conclusive evidence in any hearing under this chapter;

(i) Misrepresentation of membership in any state or national association; or

(j) Discrimination against any person in hiring or in sales activity on the basis of race, color, creed, or national origin, or violating any state or federal antidiscrimination law.

(3) No order may be entered under this section without appropriate prior notice to the applicant or registrant of opportunity for a hearing and written findings of fact and conclusions of law, except that the director may by order summarily deny an application for registration under this section.

(4) The proceedings to deny an application or renewal, suspend or revoke a registration or permit, whether summarily or otherwise, or impose a fine shall be held in accordance with chapter 34.05 RCW.

(5) The director, subsequent to any complaint filed against a salesperson or pursuant to an investigation to determine violations, may enter into stipulated assurances of discontinuances in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement not to violate the stated provision. The salesperson shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation of an assurance under this subsection is grounds for a disciplinary action, a suspension of registration, or a fine not to exceed one thousand dollars.

(6) The director may by rule require such further information or conditions for registration as a camping resort salesperson, including qualifying examinations and fingerprint cards prepared by authorized law enforcement agencies, as the director deems necessary to protect the interests of purchasers.

(7) Registration as a camping resort salesperson shall be effective for a period of one year unless the director specifies otherwise or the salesperson transfers employment to a different registrant. Registration as a camping resort salesperson shall be renewed annually, or at the time of

transferring employment, whichever occurs first, by the filing of a form prescribed by the director for that purpose.

(8) It is unlawful for a registrant of camping resort contracts to employ or a person to act as a camping resort salesperson covered under this section unless the salesperson has in effect with the department and displays a valid registration in a conspicuous location at each of the sales offices at which the salesperson is employed. It is the responsibility of both the operator and the salesperson to notify the department when and where a salesperson is employed, his or her responsibilities and duties, and when the salesperson's employment or reported duties are changed or terminated. [1988 c 159 § 21; 1982 c 69 § 15.]

19.105.450 Investigations—Scope—Publishing information. The director may make such public or private investigations or may make such requests for information, within or without this state, as the director deems necessary to determine whether any registration should be granted, denied, suspended, or revoked, or a fine imposed, or whether any person has violated or is about to violate any of the provisions of this chapter or any rule, order, or permit under this chapter, or to aid in the enforcement of this chapter or in prescribing of rules and forms under, and amendments to, this chapter and may publish information concerning any violation of this chapter or any rule or order under this chapter. [1988 c 159 § 22; 1982 c 69 § 16.]

19.105.460 Investigations—Powers relating to—Proceedings for contempt. For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In the case of any person who disobeys any subpoena lawfully issued by the director, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, the superior court of any county or the judge thereof, on application by the director, and after satisfactory evidence of wilful disobedience, may compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such a court on a refusal to testify therein. [1982 c 69 § 17.]

19.105.470 Cease and desist orders—Utilizing temporary order, injunction, restraining order, or writ of mandamus. (1) Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter, any withdrawal of a camping resort property in violation of *RCW 19.105.380(1)(j), or any rule, order, or permit issued under this chapter, the director may in his or her discretion issue an order directing the person to cease and desist from continuing the act or practice. Reasonable notice of and opportunity for a hearing shall be given. However, the director may issue a temporary order pending the hearing which shall be effective immediately upon

delivery to the person affected and which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within fifteen days after receipt of notice.

(2) If it appears necessary in order to protect the interests of members and purchasers, whether or not the director has issued a cease and desist order, the attorney general in the name of the state, the director, the proper prosecuting attorney, an affiliated members' common-interest association, or a group of members as a class, may bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule, order, or permit under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant, for the defendant's assets, or to protect the interests or assets of a members' common-interest association or the members of a camping resort as a class. The state, the director, a members' common-interest association, or members as a class shall not be required to post a bond in such proceedings. [1988 c 159 § 23; 1982 c 69 § 18.]

***Reviser's note:** The reference to RCW 19.105.380(1)(j) appears to be erroneous. Before March 20, 1988, the reference was to RCW 19.105.380(9). Chapter 159, Laws of 1988 placed the text of RCW 19.105.380(9) in RCW 19.105.380(1)(q), effective March 20, 1988.

19.105.480 Violations—As gross misdemeanors—Statute of limitations. Any person who wilfully fails to register an offering of camping resort contracts under this chapter is guilty of a gross misdemeanor. It is a gross misdemeanor for any person in connection with the offer or sale of any camping resort contracts wilfully and knowingly:

(1) To make any untrue or misleading statement of a material fact, or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(2) To employ any device, scheme, or artifice to defraud;

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(4) To file, or cause to be filed, with the director any document which contains any untrue or misleading information;

(5) To breach any impound, escrow, trust, or other security arrangement provided for by this chapter;

(6) To cause the breaching of any trust, escrow, impound, or other arrangement placed in a registration for compliance with RCW 19.105.336; or

(7) To employ unlicensed salespersons or permit salespersons or employees to make misrepresentations or violate this chapter.

No indictment or information may be returned under this chapter more than five years after the date of the event alleged to have been a violation. [1988 c 159 § 24; 1982 c 69 § 19.]

19.105.490 Violations—Referral to attorney general or prosecuting attorney. The director may refer such evidence as may be available concerning violations of this

chapter or of any rule or order under this chapter to the attorney general or the proper prosecuting attorney who may in his discretion, with or without such a reference, institute the appropriate civil or criminal proceedings under this chapter. [1982 c 69 § 20.]

19.105.500 Violations—Application of consumer protection act. For the purposes of application of the consumer protection act, chapter 19.86 RCW, any material violation of the provisions of this chapter shall be construed to constitute an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce. [1982 c 69 § 21.]

19.105.510 Resort contracts—Nonapplicability of certain laws—County and city powers. Camping resort contracts registered under this chapter are exempt from the provisions of chapters 21.20 and 58.19 RCW and any act in this state regulating the offer and sale of land developments, real estate cooperatives, or time shares. Nothing in this chapter prevents counties or cities from enacting ordinances or resolutions setting platting or subdivision requirements solely for camping resorts or for camping resorts as subdivisions or binding site plans if appropriate to chapter 58.17 RCW or local ordinances. [1988 c 159 § 25; 1982 c 69 § 22.]

19.105.520 Unlawful to represent director's administrative approval as determination as to merits of resort—Penalty. Neither the fact that an application for registration nor the written disclosures required by this chapter have been filed, nor the fact that a camping resort contract offering has been effectively registered or exempted, constitutes a finding by the director that the offering or any document filed under this chapter is true, complete, and not misleading, nor does the fact mean that the director has determined in any way the merits or qualifications of or recommended or given approval to any person, camping resort operator, or camping resort contract transaction. It is a gross misdemeanor to make or cause to be made to any prospective purchaser any representation inconsistent with this section. [1988 c 159 § 26; 1982 c 69 § 24.]

19.105.530 Rules, forms, orders—Administration of chapter. (1) The director may make, amend, and repeal rules, forms, and orders when necessary to carry out the provisions of this chapter.

(2) The director may appoint those persons within the department deemed necessary to administer this chapter. The director may delegate to such persons any powers, subject to the authority of the director, that may be necessary to carry out this chapter, including the issuance and processing of administrative proceedings and entering into stipulations under RCW 19.105.380. [1988 c 159 § 27; 1982 c 69 § 25.]

19.105.540 Administrative procedure act application. Chapter 34.05 RCW shall apply to any administrative procedures carried out by the director under this chapter unless otherwise provided in this chapter. [1982 c 69 § 26.]

19.105.550 Administration. This chapter shall be administered by the director of licensing. [1982 c 69 § 27.]

19.105.910 Construction—Chapter as cumulative and nonexclusive. Except as specifically provided in RCW 19.105.510, the provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy available at law. [1982 c 69 § 23.]

19.105.920 Severability—1982 c 69. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 69 § 29.]

19.105.930 Effective date—1982 c 69. This act shall take effect on November 1, 1982. [1982 c 69 § 32.]

Chapter 19.108

UNIFORM TRADE SECRETS ACT

Sections

- 19.108.010 Definitions.
- 19.108.020 Remedies for misappropriation—Injunction, royalty.
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Requiring assignment of employee's rights to inventions: RCW 49.44.140, 49.44.150.

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

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means;

(2) "Misappropriation" means:

(a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) Used improper means to acquire knowledge of the trade secret; or

(ii) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was (A) derived from or through a person who had utilized improper means to acquire it, (B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use, or (C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) Before a material change of his or her position, knew or had reason to know that it was a trade secret and

that knowledge of it had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. [1981 c 286 § 1.]

19.108.020 Remedies for misappropriation—Injunction, royalty. (1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) If the court determines that it would be unreasonable to prohibit future use, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time the use could have been prohibited.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order. [1981 c 286 § 2.]

19.108.030 Remedies for misappropriation—Damages. (1) In addition to or in lieu of injunctive relief, a complainant may recover damages for the actual loss caused by misappropriation. A complainant also may recover for the unjust enrichment caused by misappropriation that is not taken into account in computing damages for actual loss.

(2) If wilful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under subsection (1). [1981 c 286 § 3.]

19.108.040 Award of attorney's fees. If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or wilful and malicious misappropriation exists, the court may award reasonable attorney's fees to the prevailing party. [1981 c 286 § 4.]

19.108.050 Court orders to preserve secrecy of alleged trade secrets. In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval. [1981 c 286 § 5.]

19.108.060 Actions for misappropriation—Time limitation. An action for misappropriation must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim. [1981 c 286 § 6.]

19.108.900 Effect of chapter on other law. (1) This chapter displaces conflicting tort, restitutionary, and other law of this state pertaining to civil liability for misappropriation of a trade secret.

(2) This chapter does not affect:

(a) Contractual or other civil liability or relief that is not based upon misappropriation of a trade secret; or

(b) Criminal liability for misappropriation of a trade secret. [1981 c 286 § 7.]

Theft of trade secrets: RCW 9A.56.010(5), 9A.56.020.

19.108.910 Construction of uniform act. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1981 c 286 § 8.]

19.108.920 Short title. This chapter may be known and cited as the uniform trade secrets act. [1981 c 286 § 9.]

19.108.930 Effective date—Application—1981 c 286. This chapter takes effect on January 1, 1982, and does not apply to misappropriation occurring prior to the effective date. [1981 c 286 § 12.]

19.108.940 Severability—1981 c 286. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 286 § 10.]

Chapter 19.110

BUSINESS OPPORTUNITY FRAUD ACT

Sections

- 19.110.010 Legislative declaration.
- 19.110.020 Definitions.
- 19.110.030 Sale or lease of business opportunity—Offer to sell or lease business opportunity—Occurrence in Washington.
- 19.110.040 Application of chapter.
- 19.110.050 Persons proposing to sell or lease business opportunity—Registration required—Application—Renewal—Denial, suspension, or revocation of registration.
- 19.110.060 Registration fees.
- 19.110.070 Disclosure document required—Contents.
- 19.110.080 Disclosure document—Director authorized to accept alternative.
- 19.110.090 Persons proposing to sell or lease business opportunity—Service of process.
- 19.110.100 Seller to provide surety bond or trust account—Action by state or injured person—Damages.
- 19.110.110 Business opportunity contract—Content—Cancellation period.
- 19.110.120 Unlawful acts.
- 19.110.130 Liability of seller for violation of chapter—Remedies—Damages.

- 19.110.140 Director authorized to investigate violations—Authority to subpoena witnesses or require production of documents.
- 19.110.150 Order to cease and desist—Hearing—Notice.
- 19.110.160 Actions by attorney general or prosecuting attorney to enjoin violations—Injunction—Appointment of receiver or conservator—Civil and criminal penalties.
- 19.110.170 Violations constitute unfair practice.
- 19.110.180 Authority of director to issue rules, forms, orders, interpretive opinions.
- 19.110.190 Appointment of administrator—Delegation of powers.
- 19.110.900 Chapter cumulative and nonexclusive.
- 19.110.910 Short title.
- 19.110.920 Severability—1981 c 155.
- 19.110.930 Effective date—1981 c 155.

Reviser's note: Powers, duties, and functions of the department of licensing relating to business opportunities were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

19.110.010 Legislative declaration. The legislature finds and declares that the widespread and unregulated sale of business opportunities has become a common area of investment problems and deceptive practices in the state of Washington. As a result, the provisions of this chapter are necessary to counteract the potential negative impact of the sale of business opportunities upon the economy of the state. [1981 c 155 § 1.]

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

(1) "Business opportunity" means the sale or lease of any product, equipment, supply, or service which is sold or leased to enable the purchaser to start a business; and:

(a) The seller represents that the seller will provide locations or assist the purchaser in finding locations, on premises neither owned nor leased by the purchaser or seller, for the use or operation of vending machines, display racks, cases, or similar devices or coin-operated amusement machines or similar devices; or

(b) The seller represents that the seller will purchase any product made, produced, fabricated, assembled, modified, grown, or bred by the purchaser using, in whole or part, any product, equipment, supply, or service sold or leased to the purchaser by the seller; or

(c) The seller guarantees that the purchaser will earn an income greater than or equal to the price paid for the business opportunity; or

(d) The seller represents that if the purchaser pays a fee exceeding three hundred dollars directly or indirectly for the purpose of the seller providing a sales or marketing program, the seller will provide such a program which will enable the purchaser to derive income from the business opportunity which exceeds the price paid for the business opportunity.

(2) "Person" includes an individual, corporation, partnership, joint venture, or any business entity.

(3) "Seller" means a person who sells or leases a business opportunity.

(4) "Purchaser" means a person who buys or leases a business opportunity.

(5) "Director" means the director of financial institutions.

(6) "Guarantee" means an undertaking by the seller to refund all or a portion of the purchase price paid for the business opportunity. [1994 c 92 § 4; 1981 c 155 § 2.]

19.110.030 Sale or lease of business opportunity—Offer to sell or lease business opportunity—Occurrence in Washington.

(1) An offer to sell or offer to lease a business opportunity occurs in Washington when:

- (a) The offer is made in Washington; or
- (b) The purchaser resides in Washington at the time of the offer and the business opportunity is or will be located, in whole or in part, in the state of Washington; or
- (c) The offer originates from Washington; or
- (d) The business opportunity is or will be, in whole or in part, located in Washington.

(2) An offer does not occur in Washington if a seller advertises only in a newspaper having more than two-thirds of its circulation outside the state of Washington, or on a radio or television program originating outside the state and does not sell or lease business opportunities in Washington.

(3) A sale or lease of a business opportunity occurs in Washington when:

- (a) The sale or lease is made in Washington; or
- (b) The purchaser resides in Washington at the time of the sale or lease, and the business opportunity is or will be located, in whole or in part, in Washington; or
- (c) The business opportunity is or will be located in Washington. [1981 c 155 § 3.]

19.110.040 Application of chapter. Nothing in this chapter applies to:

(1) A radio station, television station, publisher, printer, or distributor of a newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of this chapter;

(2) A franchise subject to the provisions of chapter 19.100 RCW;

(3) A security subject to the provisions of chapter 21.20 RCW;

(4) A newspaper distribution system;

(5) The sale, lease, or transfer of a business opportunity by a purchaser if the purchaser sells only one business opportunity in any twelve-month period;

(6) The not-for-profit sale of sales demonstration equipment, materials, or samples where the total cost does not exceed five hundred dollars;

(7) A marketing program made in conjunction with licensing of a registered trademark or service mark for which no consideration is paid. Any consideration paid in conjunction with the purchase of goods at a bona fide wholesale price does not constitute consideration under this subsection; or

(8) A transaction regulated pursuant to chapter 18.85 RCW. [1981 c 155 § 4.]

19.110.050 Persons proposing to sell or lease business opportunity—Registration required—Application—Renewal—Denial, suspension, or revocation of registration. (1) Any person who proposes to sell or lease a business opportunity must register prior to advertis-

ing, soliciting, or making any offer, sale, or lease in this state.

(2) Any person proposing to sell or lease a business opportunity must apply for registration by filing with the director:

(a) A copy of the disclosure document required by RCW 19.110.070;

(b) An irrevocable consent to service of process;

(c) The prescribed registration fee; and

(d) Copies of all advertisements intended to be used in connection with the offer and sale of the business opportunity.

(3) If the application meets the requirements for registration, the director shall issue a registration number to the applicant. The applicant must include the number in every advertisement in this state.

(4) Registration is effective for one year. An applicant must renew registration annually unless the director extends the duration of registration in order to stagger renewal periods. The renewal application must contain:

(a) Any new information necessary to comply with the disclosure requirements of RCW 19.110.070;

(b) The prescribed renewal fee; and

(c) Copies of any and all advertisements intended to be used in connection with the offer and sale of the business opportunity.

(5) The applicant must amend the registration whenever there is any material change in the required information.

(6) The applicant must file copies of all advertisements offering business opportunities seven days before their intended use.

(7) The director may issue an order denying, suspending, or revoking any applicant's registration if the director finds that the order is in the public interest and that:

(a) The registration application is incomplete or contains any statement which is false or misleading with respect to any material fact; or

(b) Any provision of this chapter or any rule or order lawfully imposed under this chapter has been violated; or

(c) The business opportunity includes or would include activities which are illegal; or

(d) The business opportunity has worked or tended to work a fraud on purchasers or would so operate.

(8) The director shall promptly notify the applicant of any order denying, suspending, or revoking registration. The applicant may request a hearing within fifteen days of notification. If the applicant does not request a hearing, the order remains in effect until the director modifies or vacates it. The applicant shall be notified of the right to request a hearing within fifteen days. [1981 c 155 § 5.]

19.110.060 Registration fees. The director shall charge and collect the fees specified by this section. All fees are nonrefundable and shall be deposited in the state treasury.

(1) The registration fee is two hundred dollars.

(2) The renewal fee is one hundred twenty-five dollars.

(3) The amendment fee is thirty dollars. [1981 c 155 § 6.]

19.110.070 Disclosure document required—

Contents. The seller shall provide the purchaser a written disclosure document at least forty-eight hours before the purchaser signs a business opportunity contract. The cover sheet of the disclosure document shall be entitled: "DISCLOSURES REQUIRED BY THE STATE OF WASHINGTON." The following statement shall appear under the title: "The state of Washington has not reviewed and does not approve, recommend, endorse, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract." The cover sheet shall contain only the required title and statement, and both shall be in at least ten point type. The disclosure document shall include at least the following information:

(1) The official name, address, and principal place of business of the seller and of any parent or affiliated company, or any predecessors;

(2) The names, addresses, and titles of the seller's officers, directors, trustees, general partners, general managers, principal executives, and any other persons responsible for the seller's business opportunity activities;

(3) A statement disclosing which, if any, of the persons listed in subsections (1) or (2) of this section:

(a) Has, at any time during the previous ten years, been convicted of a felony or pleaded nolo contendere to a felony charge if the felony involved fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade;

(b) Has, at any time during the previous ten years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil action or is a party to any civil action involving allegations of fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade, or any civil action which was brought by a present or former purchaser or purchasers and which involves or involved the business opportunity;

(c) Is subject to any currently effective state or federal agency or court injunctive or restrictive order, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting business opportunities activities or the business opportunity seller-purchaser relationship, or involving fraud (including violation of any franchise or business opportunity law or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

The statement shall include the identity and location of the court or agency, the date of conviction, judgment, or decision, the penalty imposed, the damages assessed, the terms of settlement or the terms of the order, and the date, nature, terms, and conditions of each such order or ruling;

(4) A statement disclosing which, if any, of the persons listed in subsections (1) and (2) of this section has, at any time during the previous ten years:

(a) Filed in bankruptcy; or

(b) Been adjudged bankrupt; or

(c) Been reorganized due to insolvency; or

(d) Been a principal, director, executive officer, or partner of any other person who has filed in bankruptcy, been adjudged bankrupt, or been reorganized due to insolvency;

(5) A statement of when, where, and how long the seller has:

(a) Offered, sold, or leased business opportunity plans; and

(b) Offered, sold, or leased the specific business opportunity plan offered to the purchaser; and

(c) Operated a business of the type offered to the purchaser;

(6) A statement disclosing:

(a) The total number of business opportunities which the seller has sold or leased; and

(b) The number of failures of business opportunities which the seller has sold or leased;

(7) The terms and conditions of payment, including the initial payment, downpayment, and any additional or recurring payments;

(8) A copy of any statement concerning estimated or projected sales or earnings, the data on which the estimations or projections are based, and an explanation of the extent to which the data relates to the actual operations of the business opportunity offered to the purchaser;

(9) A copy of the bond or written notice of the depository, the name of the trustee, and account number of the trust account, if the seller is required by RCW 19.110.100 to establish either a bond or trust account;

(10) A copy of the seller's current (not more than three months old) financial statement and any amendments necessary to reflect material changes in the seller's financial condition;

(11) An unexecuted copy of any business opportunity contract or agreement which the purchaser may be required to sign;

(12) Any additional information which the director requires by rule or order. [1981 c 155 § 7.]

19.110.080 Disclosure document—Director authorized to accept alternative. The director may, by rule or order:

(1) Accept any disclosure document filed with agencies of the United States or any other state; or

(2) Accept any disclosure document compiled in accordance with any rule or regulation of any agency of the United States or any other state; or

(3) Waive disclosure of information which is inapplicable or unnecessary for protection of purchasers. [1981 c 155 § 8.]

19.110.090 Persons proposing to sell or lease business opportunity—Service of process. Every person who proposes to sell or lease a business opportunity in this state through any person acting on an agency basis in the common law sense shall file with the director, in such form as the director by rule prescribes, an irrevocable consent appointing the director or the director's successor in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor,

or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the director, but it is not effective unless (1) the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or defendant on file with the director, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows. [1981 c 155 § 9.]

19.110.100 Seller to provide surety bond or trust account—Action by state or injured person—Damages.

(1) If the seller makes any guarantee described in RCW 19.110.020(1)(c), the seller shall have a surety bond issued by a surety company authorized to do business in Washington or a trust account with a licensed and insured bank or savings institution located in the state of Washington. The trustee shall be acceptable to the director. The bond or the trust account shall be at least fifty thousand dollars. The director may, by rule or order, establish procedures for the initiation, operation, or termination of any bond or trust account required under this section.

(2) The bond or trust account shall be in the name of the state of Washington. It shall be for the benefit of the state and any person injured by any violation of this chapter, or by the seller's breach of any business opportunity contract or obligation arising from a business opportunity contract. The state may bring an action against the bond or trust account to recover penalties. The state or an injured person may bring an action against the bond or trust account for damages to the injured person. The liability of the surety or trustee shall be only for actual damages and shall not exceed the amount of the bond or trust account. [1981 c 155 § 10.]

19.110.110 Business opportunity contract—Content—Cancellation period.

(1) Every business opportunity contract shall be in writing and shall be dated and signed by the purchaser.

(2) The seller shall provide the purchaser with a copy of the completed contract at the time the purchaser signs the contract.

(3) The seller may not receive any consideration before the purchaser signs a business opportunity contract.

(4) The contract shall include the following notifications, in ten point type, immediately above the space for the purchaser's signature:

(a) "Do not sign this contract if any of the spaces for agreed terms are blank."

(b) "Do not sign this contract unless you received a written disclosure document from the seller at least forty-eight hours before signing."

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

(d) "You have seven days exclusive of Saturday, Sunday, and holidays to cancel this contract for any reason by sending written notice to the seller by certified mail, return receipt requested. Notice of cancellation should be mailed to:

.....
(seller's name and business street address)

The notice must be postmarked before midnight of the seventh day exclusive of Saturday, Sunday, and holidays after you sign the contract.

The seller shall return all deposits and payments within ten days after receipt of your cancellation notice.

You must make available to the seller all equipment, products, and supplies provided by the seller within ten days after receipt of all refunded deposits and payments." [1981 c 155 § 11.]

19.110.120 Unlawful acts. It is unlawful for any person:

(1) To make any untrue or misleading statement of a material fact or to omit to state a material fact in connection with the offer, sale, or lease of any business opportunity in the state; or

(2) To employ any device, scheme, or artifice to defraud; or

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person; or

(4) To knowingly file or cause to be filed with the director any document which contains any untrue or misleading information; or

(5) To knowingly violate any rule or order of the director. [1981 c 155 § 12.]

19.110.130 Liability of seller for violation of chapter—Remedies—Damages.

Any seller who violates any provision of this chapter is liable to the purchaser. The purchaser may sue for actual damages, or an injunction, or rescission, or other relief.

In addition, the purchaser may sue for costs of suit, including a reasonable attorney's fee. The court may increase the amount of damages awarded up to three times the amount of actual damages. [1981 c 155 § 13.]

19.110.140 Director authorized to investigate violations—Authority to subpoena witnesses or require production of documents.

The director may make public or private investigations within or outside the state of Washington to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order issued under this chapter. The director, or any officer designated by the director, may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant to the inquiry.

If any person fails to comply with a lawful subpoena, or refuses to testify under lawful interrogation, or refuses to produce documents and records, the director may apply to

the superior court of any county for relief. After satisfactory evidence of wilful disobedience, the court may compel obedience by proceedings for contempt. [1981 c 155 § 14.]

19.110.150 Order to cease and desist—Hearing—Notice. (1) The director may order any person to cease and desist from an act or practice if it appears that the person is violating or is about to violate any provision of this chapter or any rule or order issued under this chapter.

(2) Reasonable notice of and opportunity for a hearing shall be given. The director may issue a temporary order to cease and desist pending the hearing. The temporary order shall remain in effect until ten days after the hearing. If a person does not request a hearing within fifteen days of receiving an order to cease and desist, the order becomes final. Any person who is named in the order to cease and desist shall be notified of the right to request a hearing within fifteen days. [1981 c 155 § 15.]

19.110.160 Actions by attorney general or prosecuting attorney to enjoin violations—Injunction—Appointment of receiver or conservator—Civil and criminal penalties. (1)(a) The attorney general, in the name of the state or the director, or the proper prosecuting attorney may bring an action to enjoin any person from violating any provision of this chapter. Upon proper showing, the superior court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus.

The court may make such additional orders or judgments as may be necessary to restore to any person in interest and money or property, real or personal, which may have been acquired by means of an act prohibited or declared unlawful by this chapter.

The prevailing party may recover costs of the action, including a reasonable attorney's fee.

(b) The superior court issuing an injunction shall retain jurisdiction. Any person who violates the terms of an injunction shall pay a civil penalty of not more than twenty-five thousand dollars.

(2) The attorney general, in the name of the state or the director, or the proper prosecuting attorney may apply to the superior court to appoint a receiver or conservator for any person, or the assets of any person, who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

(3) Any person who violates any provision of this chapter except as provided in subsection (1)(b) of this section, is subject to a civil penalty not to exceed two thousand dollars for each violation. Civil penalties authorized by this subsection may be imposed in any civil action brought by the attorney general or proper prosecuting attorney under this chapter and shall be deposited in the state treasury. Any action for recovery of such civil penalty shall be commenced within five years.

(4) Any person who violates RCW 19.110.050 or 19.110.070 is guilty of a gross misdemeanor. Any person who knowingly violates RCW 19.110.050 or 19.110.070 is guilty of a class B felony. Any violation of RCW 19.110.120 is a class B felony. No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation.

(5) The director may refer evidence concerning violations of this chapter to the attorney general or proper prosecuting attorney. The prosecuting attorney, or the attorney general pursuant to authority granted by RCW 10.01.190, 43.10.230, 43.10.232, and 43.10.234 may, with or without such reference, institute appropriate criminal proceedings. [1981 c 155 § 16.]

19.110.170 Violations constitute unfair practice. Any violation of this chapter is declared to be an unfair act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of application of the Consumer Protection Act, chapter 19.86 RCW. [1981 c 155 § 20.]

19.110.180 Authority of director to issue rules, forms, orders, interpretive opinions. The director may make, amend, and repeal rules, forms, and orders as necessary to carry out the provisions of this chapter. The director may honor requests for interpretive opinions. [1981 c 155 § 17.]

19.110.190 Appointment of administrator—Delegation of powers. The director shall appoint a competent person to administer this chapter. The director shall delegate to an administrator such powers, subject to the authority of the director, as may be necessary to carry out the provisions of this chapter. The administrator will hold office at the pleasure of the director. [1981 c 155 § 18.]

19.110.900 Chapter cumulative and nonexclusive. The provisions of this chapter are cumulative and nonexclusive and do not affect any other remedy available at law. [1981 c 155 § 19.]

19.110.910 Short title. This chapter may be known and cited as the Business Opportunity Fraud Act. [1981 c 155 § 22.]

19.110.920 Severability—1981 c 155. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 155 § 21.]

19.110.930 Effective date—1981 c 155. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981. [1981 c 155 § 25.]

Chapter 19.112

MOTOR FUEL QUALITY ACT

Sections

- 19.112.005 Purpose.
- 19.112.010 Definitions.
- 19.112.020 Administration of chapter—Standards—Testing laboratory.
- 19.112.030 Director's authority.
- 19.112.040 Motor fuel registration.

- 19.112.050 Unlawful acts.
- 19.112.060 Penalties.
- 19.112.070 Injunctive relief.
- 19.112.080 Chapter in addition to chapter 19.94 RCW.
- 19.112.090 Air pollution reduction—Variances from ASTM.
- 19.112.900 Short title.
- 19.112.901 Severability—1990 c 102.
- 19.112.902 Effective date—1990 c 102.

19.112.005 Purpose. It is desired that there should be uniformity among the requirements of the several states. This chapter provides for the establishment of quality specifications for all liquid motor fuels, except aviation fuel, marine fuel, and liquefied petroleum gases, and establishes a sampling, testing, and enforcement program. [1990 c 102 § 1.]

19.112.010 Definitions. As used in this chapter:

(1) "Motor fuel" means any liquid product used for the generation of power in an internal combustion engine used for the propulsion of a motor vehicle upon the highways of this state. Motor fuels containing ethanol may be marketed if either (a) the base motor fuel meets the applicable standards before the addition of the ethanol or (b) the resultant blend meets the applicable standards after the addition of the ethanol.

(2) "Director" means the director of agriculture. [1991 c 145 § 1; 1990 c 102 § 2.]

19.112.020 Administration of chapter—Standards—Testing laboratory. This chapter shall be administered by the director or his or her authorized agent. For the purpose of administering this chapter, the standards set forth in the Annual Book of ASTM Standards and supplements thereto, and revisions thereof, are adopted, together with applicable federal environmental protection agency standards. If a conflict exists between federal environmental protection agency standards, ASTM standards, or state standards, for purposes of uniformity, federal environmental protection agency standards shall take precedence over ASTM standards. Any state standards adopted must be consistent with federal environmental protection agency standards and ASTM standards not in conflict with federal environmental protection agency standards.

The director may establish a testing laboratory. The director may also adopt rules on false and misleading advertising, labeling and posting of prices, and the standards for, and identity of, motor fuels. [1990 c 102 § 3.]

19.112.030 Director's authority. The director may:

(1) Enforce and administer this chapter by inspections, analyses, and other appropriate actions;

(2) Have access during normal business hours to all places where motor fuels are marketed for the purpose of examination, inspection, taking of samples, and investigation. If access is refused by the owner or agent or other persons leasing the same, the director or his or her agent may obtain an administrative search warrant from a court of competent jurisdiction;

(3) Collect or cause to be collected, samples of motor fuels marketed in this state, and cause such samples to be tested or analyzed for compliance with this chapter;

(4) Issue a stop-sale order for any motor fuel found not to be in compliance and rescind the stop-sale order if the motor fuel is brought into compliance with this chapter;

(5) Refuse, revoke, or suspend the registration of a motor fuel;

(6) Delegate to authorized agents any of the responsibilities for the proper administration of this chapter;

(7) Establish a motor fuel testing laboratory. [1990 c 102 § 4.]

19.112.040 Motor fuel registration. All motor fuel shall be registered by the name, brand, or trademark under which it will be sold at the terminal. Registration shall include:

(1) The name and address of the person registering the motor fuel;

(2) The antiknock index or cetane number, as appropriate, at which the motor fuel is to be marketed;

(3) A certification, declaration, or affidavit that each individual grade or type of motor fuel shall conform to this chapter. [1990 c 102 § 5.]

19.112.050 Unlawful acts. It is unlawful to:

(1) Market motor fuels in any manner that may deceive or tend to deceive the purchaser as to the nature, price, quantity, and quality of a motor fuel;

(2) Fail to register a motor fuel;

(3) Submit incorrect, misleading, or false information regarding the registration of a motor fuel;

(4) Hinder or obstruct the director, or his or her authorized agent, in the performance of his or her duties;

(5) Market a motor fuel that is contrary to this chapter. [1990 c 102 § 6.]

19.112.060 Penalties. Any person who knowingly violates any provision of this chapter or rules adopted under it is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both. The director shall assess a civil penalty ranging from one hundred dollars to ten thousand dollars per occurrence, giving due consideration to the appropriateness of the penalty with respect to the gravity of the violation, and the history of previous violations. Civil penalties collected under this chapter shall be deposited into the motor vehicle fund. [1990 c 102 § 7.]

19.112.070 Injunctive relief. The director may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating any provision of this chapter. [1990 c 102 § 8.]

19.112.080 Chapter in addition to chapter 19.94 RCW. This chapter is in addition to any requirements under chapter 19.94 RCW. [1990 c 102 § 9.]

19.112.090 Air pollution reduction—Variances from ASTM. The directors of the departments of ecology and agriculture may grant a variance from ASTM motor fuel

specifications if necessary to produce lower emission motor fuels. [1991 c 199 s 231.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

19.112.900 Short title. RCW 19.112.005 through 19.112.080 shall constitute a new chapter in Title 19 RCW and may be cited as the motor fuel quality act. [1990 c 102 § 11.]

19.112.901 Severability—1990 c 102. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 102 § 10.]

19.112.902 Effective date—1990 c 102. This act shall take effect on July 1, 1990. [1990 c 102 § 12.]

Chapter 19.116

MOTOR VEHICLE SUBLEASING OR TRANSFER

Sections

- 19.116.005 Finding.
- 19.116.010 Public interest—Finding.
- 19.116.020 Definitions.
- 19.116.030 Application of consumer protection act.
- 19.116.040 Violations of chapter.
- 19.116.050 Unlawful transfer of motor vehicle—Conditions.
- 19.116.060 Unlawful subleasing of motor vehicle—Conditions.
- 19.116.070 Nonparties assisting, causing, or arranging unlawful assignment or transfer.
- 19.116.080 Unlawful subleasing or transfer—Class C felony.
- 19.116.090 Violations—Criminal profiteering.
- 19.116.100 Persons who may bring action—Damages.
- 19.116.110 Transfer or assignment of interest by persons with motor vehicles under lease contract or security agreement not subject to prosecution—Enforceability of contract or agreement not affected.
- 19.116.120 Penalties in addition to other remedies or penalties.
- 19.116.900 Severability—1990 c 44.

19.116.005 Finding. The legislature finds that the practices of unlawful subleasing or unlawful transfer of an ownership interest in motor vehicles have a substantial negative impact on the state's financial institutions and other businesses engaged in the financing and leasing of motor vehicles. [1990 c 44 § 1.]

19.116.010 Public interest—Finding. The legislature finds that the practice of unlawful subleasing or unlawful transfer of an ownership interest in motor vehicles is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1990 c 44 § 2.]

19.116.020 Definitions. The definitions set forth in this section apply throughout this chapter, unless the context requires otherwise:

(1) "Debtor" has the meaning set forth in RCW 62A.9-105(1)(d).

(2) "Motor vehicle" means a vehicle required to be registered under chapter 46.16 RCW.

(3) "Person" means an individual, company, firm, association, partnership, trust, corporation, or other legal entity.

(4) "Security agreement" has the meaning set forth in RCW 62A.9-105(1)(l).

(5) "Security interest" has the meaning set forth in RCW 62A.1-201(37).

(6) "Secured party" has the meaning set forth in RCW 62A.9-105(1)(m). [1990 c 44 § 3.]

19.116.030 Application of consumer protection act. Unlawful subleasing or unlawful transfer of an ownership interest in motor vehicles are [is] not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1990 c 44 § 4.]

19.116.040 Violations of chapter. (1) It is a violation of this chapter for a vehicle dealer, as defined in RCW 46.70.011(3), to engage in the unlawful transfer of an ownership interest in motor vehicles.

(2) It is a violation of this chapter for a person to engage in the unlawful subleasing of motor vehicles. [1990 c 44 § 5.]

19.116.050 Unlawful transfer of motor vehicle—Conditions. A dealer engages in an act of unlawful transfer of ownership interest in motor vehicles when all of the following circumstances are met:

(1) The dealer does not pay off any balance due to the secured party on a vehicle acquired by the dealer, no later than the close of the second business day after the acquisition date of the vehicle; and

(2) The dealer does not obtain a certificate of ownership under *RCW 46.12.140 for each used vehicle kept in his or her possession unless that certificate is in the possession of the person holding a security interest in the dealer's inventory; and

(3) The dealer does not transfer the certificate of ownership after the transferee has taken possession of the motor vehicle. [1990 c 44 § 6.]

*Reviser's note: RCW 46.12.140 was recodified as RCW 46.70.124 pursuant to 1993 c 307 § 18.

19.116.060 Unlawful subleasing of motor vehicle—Conditions. A person engages in an act of unlawful subleasing of a motor vehicle if all of the following conditions are met:

(1) The motor vehicle is subject to a lease contract or security agreement the terms of which prohibit the transfer or assignment of any right or interest in the motor vehicle or under the lease contract or security agreement; and

(2) The person is not a party to the lease contract or security agreement; and

(3) The person transfers or assigns or purports to transfer or assign any right or interest in the motor vehicle or under the lease contract or security agreement to any

person who is not a party to the lease contract or security agreement; and

(4) The person does not obtain, before the transfer or assignment described in subsection (3) of this section, written consent to the transfer or assignment from the motor vehicle lessor in connection with a lease contract or from the secured party in connection with a security agreement; and

(5) The person receives compensation or some other consideration for the transfer or assignment described in subsection (3) of this section. [1990 c 44 § 7.]

19.116.070 Nonparties assisting, causing, or arranging unlawful assignment or transfer. (1) A person engages in an act of unlawful subleasing of a motor vehicle when the person is not a party to the lease contract or security agreement, and assists, causes, or arranges an actual or purported assignment as described in RCW 19.116.060.

(2) A dealer engages in an act of unlawful transfer of an ownership interest in a motor vehicle when the dealer is not a party to the security agreement, and assists, causes, or arranges an actual or purported transfer as described in RCW 19.116.050. [1990 c 44 § 8.]

19.116.080 Unlawful subleasing or transfer—Class C felony. Unlawful subleasing or unlawful transfer of an ownership interest in a motor vehicle is a class C felony punishable under chapter 9A.20 RCW. [1990 c 44 § 9.]

19.116.090 Violations—Criminal profiteering. A violation of this chapter constitutes an act of criminal profiteering, as defined in RCW 9A.82.010. [1990 c 44 § 10.]

19.116.100 Persons who may bring action—Damages. (1) Any one or more of the following persons who suffers damage proximately resulting from one or more acts of unlawful motor vehicle subleasing or unlawful transfer of an ownership interest in a motor vehicle may bring an action against the person who has engaged in those acts:

- (a) A secured party;
- (b) A debtor;
- (c) A lessor;
- (d) A lessee;
- (e) An actual or purported transferee or assignee;
- (f) A guarantor of a lease or security agreement or a guarantor of a purported transferee or assignee.

(2) In an action for unlawful subleasing or unlawful transfer of an ownership interest in a motor vehicle the court may award actual damages; equitable relief, including, but not limited to an injunction and restitution of money and property; reasonable attorneys' fees and costs; and any other relief that the court deems proper. [1990 c 44 § 11.]

19.116.110 Transfer or assignment of interest by persons with motor vehicles under lease contract or security agreement not subject to prosecution—Enforceability of contract or agreement not affected. (1) The actual or purported transfer or assignment, or the assisting, causing, or arranging of an actual or purported transfer or assignment, of any right or interest in a motor

vehicle or under a lease contract or security agreement, by an individual who is a party to the lease contract or security agreement is not an act of unlawful subleasing of or unlawful transfer of an ownership interest in a motor vehicle and is not subject to prosecution.

(2) This chapter does not affect the enforceability of any provision of a lease contract or security agreement by a party thereto. [1990 c 44 § 12.]

19.116.120 Penalties in addition to other remedies or penalties. The penalties under this chapter are in addition to any other remedies or penalties provided by law for the conduct proscribed by this chapter. [1990 c 44 § 13.]

19.116.900 Severability—1990 c 44. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 44 § 15.]

Chapter 19.118

MOTOR VEHICLE WARRANTIES

Sections

- 19.118.005 Legislative intent.
- 19.118.010 Motor vehicle manufacturers—Express warranties—Service and repair facilities.
- 19.118.021 Definitions.
- 19.118.031 Manufacturers and new motor vehicle dealers—Responsibilities to consumers—Extension of warranty period.
- 19.118.041 Replacement or repurchase of nonconforming new motor vehicle—Reasonable number of attempts—Liabilities and rights of parties—Application of consumer protection act.
- 19.118.061 Vehicle with nonconformities or out of service—Notification of correction—Resale or transfer of title—Issuance of new title—Disclosure to buyer—Intervening transferor.
- 19.118.070 Remedies.
- 19.118.080 New motor vehicle arbitration boards—Board proceedings—Prerequisite to filing action in superior court.
- 19.118.090 Request for arbitration—Eligibility—Rejection—Manufacturer's response—Remedies—Defenses—Acceptance or appeal.
- 19.118.095 Arbitration decision—Compliance—Accomplishment—Dispute—Failure—Fine—Costs—Attorneys' fees.
- 19.118.100 Trial de novo—Posting security—Recovery.
- 19.118.110 Arbitration fee—New motor vehicle arbitration account—Report by attorney general.
- 19.118.120 Application of consumer protection act.
- 19.118.130 Waivers, limitations, disclaimers—Void.
- 19.118.140 Other rights and remedies not precluded.
- 19.118.150 Informal dispute resolution settlement procedure.
- 19.118.160 New motor vehicle arbitration boards—When established by attorney general—Membership—Travel expenses and compensation.
- 19.118.170 History of vehicle—Availability to owner.
- 19.118.900 Effective dates—1987 c 344.
- 19.118.902 Severability—1987 c 344.
- 19.118.903 Severability—1989 c 347.
- 19.118.904 Effective date—1989 c 347.

19.118.005 Legislative intent. The legislature recognizes that a new motor vehicle is a major consumer purchase and that a defective motor vehicle is likely to create hardship for, or may cause injury to, the consumer. The legislature further recognizes that good cooperation and

communication between a manufacturer and a new motor vehicle dealer will considerably increase the likelihood that a new motor vehicle will be repaired within a reasonable number of attempts. It is the intent of the legislature to ensure that the consumer is made aware of his or her rights under this chapter and is not refused information, documents, or service that would otherwise obstruct the exercise of his or her rights.

In enacting these comprehensive measures, it is the intent of the legislature to create the proper blend of private and public remedies necessary to enforce this chapter, such that a manufacturer will be sufficiently induced to take necessary steps to improve quality control at the time of production or provide better warranty service for the new motor vehicles that it sells in this state. [1987 c 344 § 1.]

19.118.010 Motor vehicle manufacturers—Express warranties—Service and repair facilities. Every manufacturer of motor vehicles sold in this state and for which the manufacturer has made an express warranty shall maintain in this state sufficient service and repair facilities reasonably close to all areas in which its motor vehicles are sold to carry out the terms of the warranties or designate and authorize in this state as service and repair facilities independent repair or service facilities reasonably close to all areas in which its motor vehicles are sold to carry out the terms of the warranties. As a means of complying with this section, a manufacturer may enter into warranty service contracts with independent service and repair facilities. [1983 c 240 § 1.]

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

(1) "Board" means new motor vehicle arbitration board.

(2) "Collateral charges" means any sales or lease related charges including but not limited to sales tax, use tax, arbitration service fees, unused license fees, unused registration fees, unused title fees, finance charges, prepayment penalties, credit disability and credit life insurance costs not otherwise refundable, any other insurance costs prorated for time out of service, transportation charges, dealer preparation charges, or any other charges for service contracts, undercoating, rustproofing, or factory or dealer installed options.

(3) "Condition" means a general problem that results from a defect or malfunction of one or more parts, or their improper installation by the manufacturer, its agents, or the new motor vehicle dealer.

(4) "Consumer" means any person who has entered into an agreement or contract for the transfer, lease, or purchase of a new motor vehicle, other than for purposes of resale or sublease, during the duration of the warranty period defined under this section.

(5) "Court" means the superior court in the county where the consumer resides, except if the consumer does not reside in this state, then the superior court in the county where an arbitration hearing or determination was conducted or made pursuant to this chapter.

(6) "Incidental costs" means any reasonable expenses incurred by the consumer in connection with the repair of

the new motor vehicle, including any towing charges and the costs of obtaining alternative transportation.

(7) "Manufacturer" means any person engaged in the business of constructing or assembling new motor vehicles or engaged in the business of importing new motor vehicles into the United States for the purpose of selling or distributing new motor vehicles to new motor vehicle dealers. "Manufacturer" does not include any person engaged in the business of set-up of motorcycles as an agent of a new motor vehicle dealer if the person does not otherwise construct or assemble motorcycles.

(8) "Motorcycle" means any motorcycle as defined in RCW 46.04.330 which has an engine displacement of at least seven hundred fifty cubic centimeters.

(9) "New motor vehicle" means any new self-propelled vehicle, including a new motorcycle, primarily designed for the transportation of persons or property over the public highways that was originally purchased or leased at retail from a new motor vehicle dealer or leasing company in this state, and that was initially registered in this state or for which a temporary motor vehicle license was issued pursuant to RCW 46.16.460, but does not include vehicles purchased or leased by a business as part of a fleet of ten or more vehicles at one time or under a single purchase or lease agreement. If the motor vehicle is a motor home, this chapter shall apply to the self-propelled vehicle and chassis, but does not include those portions of the vehicle designated, used, or maintained primarily as a mobile dwelling, office, or commercial space. The term "new motor vehicle" does not include trucks with nineteen thousand pounds or more gross vehicle weight rating. The term "new motor vehicle" includes a demonstrator or lease-purchase vehicle as long as a manufacturer's warranty was issued as a condition of sale.

(10) "New motor vehicle dealer" means a person who holds a dealer agreement with a manufacturer for the sale of new motor vehicles, who is engaged in the business of purchasing, selling, servicing, exchanging, or dealing in new motor vehicles, and who is licensed or required to be licensed as a vehicle dealer by the state of Washington.

(11) "Nonconformity" means a defect, serious safety defect, or condition that substantially impairs the use, value, or safety of a new motor vehicle, but does not include a defect or condition that is the result of abuse, neglect, or unauthorized modification or alteration of the new motor vehicle.

(12) "Purchase price" means the cash price of the new motor vehicle appearing in the sales agreement or contract.

(a) "Purchase price" in the instance of a lease means the actual written capitalized cost disclosed to the consumer contained in the lease agreement. If there is no disclosed capitalized cost in the lease agreement the "purchase price" is the manufacturer's suggested retail price including manufacturer installed accessories or items of optional equipment displayed on the manufacturer label, required by 15 U.S.C. Sec. 1232.

(b) "Purchase price" in the instance of both a vehicle purchase or lease agreement includes any allowance for a trade-in vehicle but does not include any manufacturer-to-consumer rebate appearing in the agreement or contract that the consumer received or that was applied to reduce the purchase or lease cost.

Where the consumer is a subsequent transferee and the consumer selects repurchase of the motor vehicle, "purchase price" means the consumer's subsequent purchase price. Where the consumer is a subsequent transferee and the consumer selects replacement of the motor vehicle, "purchase price" means the original purchase price.

(13) "Reasonable offset for use" means the definition provided in RCW 19.118.041(1)(c) for a new motor vehicle other than a new motorcycle. The reasonable offset for use for a new motorcycle shall be computed by the number of miles that the vehicle traveled before the manufacturer's acceptance of the vehicle upon repurchase or replacement multiplied by the purchase price, and divided by twenty-five thousand.

(14) "Reasonable number of attempts" means the definition provided in RCW 19.118.041.

(15) "Replacement motor vehicle" means a new motor vehicle that is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options.

(16) "Serious safety defect" means a life-threatening malfunction or nonconformity that impedes the consumer's ability to control or operate the new motor vehicle for ordinary use or reasonable intended purposes or creates a risk of fire or explosion.

(17) "Subsequent transferee" means a consumer who acquires a motor vehicle, within the warranty period, as defined in this section, with an applicable manufacturer's written warranty and where the vehicle otherwise met the definition of a new motor vehicle at the time of original retail sale or lease.

(18) "Substantially impair" means to render the new motor vehicle unreliable, or unsafe for ordinary use, or to diminish the resale value of the new motor vehicle below the average resale value for comparable motor vehicles.

(19) "Warranty" means any implied warranty, any written warranty of the manufacturer, or any affirmation of fact or promise made by the manufacturer in connection with the sale of a new motor vehicle that becomes part of the basis of the bargain. The term "warranty" pertains to the obligations of the manufacturer in relation to materials, workmanship, and fitness of a new motor vehicle for ordinary use or reasonable intended purposes throughout the duration of the warranty period as defined under this section.

(20) "Warranty period" means the period ending two years after the date of the original delivery to the consumer of a new motor vehicle, or the first twenty-four thousand miles of operation, whichever occurs first. [1995 c 254 § 1; 1990 c 239 § 1; 1989 c 347 § 1; 1987 c 344 § 2.]

Effective date—1995 c 254: "This act is necessary for the inmediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]." [1995 c 254 § 11.]

Severability—1995 c 254: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 254 § 12.]

19.118.031 Manufacturers and new motor vehicle dealers—Responsibilities to consumers—Extension of

warranty period. (1) The manufacturer shall publish an owner's manual and provide it to the new motor vehicle dealer or leasing company. The owner's manual shall include a list of the addresses and phone numbers for the manufacturer's customer assistance division, or zone or regional offices. A manufacturer shall provide to the new motor vehicle dealer or leasing company all applicable manufacturer's written warranties. The dealer or leasing company shall transfer to the consumer, at the time of original retail sale or lease, the owner's manual and applicable written warranties as provided by a manufacturer.

(2) At the time of purchase, the new motor vehicle dealer shall provide the consumer with a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared and supplied by the attorney general and shall contain a toll-free number that the consumer can contact for information regarding the procedures and remedies under this chapter.

(3) For the purposes of this chapter, if a new motor vehicle does not conform to the warranty and the consumer reports the nonconformity during the term of the warranty period or the period of coverage of the applicable manufacturer's written warranty, whichever is less, to the manufacturer, its agent, or the new motor vehicle dealer who sold the new motor vehicle, the manufacturer, its agent, or the new motor vehicle dealer shall make repairs as are necessary to conform the vehicle to the warranty, regardless of whether such repairs are made after the expiration of the warranty period. Any corrections or attempted repairs undertaken by a new motor vehicle dealer under this chapter shall be treated as warranty work and billed by the dealer to the manufacturer in the same manner as other work under the manufacturer's written warranty is billed. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(4) Upon request from the consumer, the manufacturer or new motor vehicle dealer shall provide a copy of any report or computer reading compiled by the manufacturer's field or zone representative regarding inspection, diagnosis, or test-drive of the consumer's new motor vehicle, or shall provide a copy of any technical service bulletin issued by the manufacturer regarding the year and model of the consumer's new motor vehicle as it pertains to any material, feature, component, or the performance thereof.

(5) The new motor vehicle dealer shall provide to the consumer each time the consumer's vehicle is returned from being diagnosed or repaired under the warranty, a fully itemized, legible statement or repair order indicating any diagnosis made, and all work performed on the vehicle including but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the vehicle was submitted for repair, and the date when the vehicle was made available to the consumer.

(6) No manufacturer, its agent, or the new motor vehicle dealer may refuse to diagnose or repair any nonconformity covered by the warranty for the purpose of avoiding liability under this chapter.

(7) For purposes of this chapter, consumers shall have the rights and remedies, including a cause of action, against manufacturers as provided in this chapter.

(8) The warranty period and thirty-day out-of-service period shall be extended by any time that repair services are not available to the consumer as a direct result of a strike, war, invasion, fire, flood, or other natural disaster. [1995 c 254 § 2; 1987 c 344 § 3.]

Effective date—Severability—1995 c 254: See notes following RCW 19.118.021.

19.118.041 Replacement or repurchase of nonconforming new motor vehicle—Reasonable number of attempts—Liabilities and rights of parties—Application of consumer protection act. (1) If the manufacturer, its agent, or the new motor vehicle dealer is unable to conform the new motor vehicle to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer, within forty calendar days of a consumer's written request to the manufacturer's corporate, dispute resolution, zone, or regional office address shall, at the option of the consumer, replace or repurchase the new motor vehicle.

(a) The replacement motor vehicle shall be identical or reasonably equivalent to the motor vehicle to be replaced as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options. Where the manufacturer supplies a replacement motor vehicle, the manufacturer shall be responsible for sales tax, license, registration fees, and refund of any incidental costs. Compensation for a reasonable offset for use shall be paid by the consumer to the manufacturer in the event that the consumer accepts a replacement motor vehicle.

(b) When repurchasing the new motor vehicle, the manufacturer shall refund to the consumer the purchase price, all collateral charges, and incidental costs, less a reasonable offset for use. When repurchasing the new motor vehicle, in the instance of a lease, the manufacturer shall refund to the consumer all payments made by the consumer under the lease including but not limited to all lease payments, trade-in value or inception payment, security deposit, all collateral charges and incidental costs less a reasonable offset for use. The manufacturer shall make such payment to the lessor and/or lienholder of record as necessary to obtain clear title to the motor vehicle and upon the lessor's and/or lienholder's receipt of that payment and payment by the consumer of any late payment charges, the consumer shall be relieved of any future obligation to the lessor and/or lienholder.

(c) The reasonable offset for use shall be computed by multiplying the number of miles that the vehicle traveled directly attributable to use by the consumer times the purchase price, and dividing the product by one hundred twenty thousand. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects repurchase of the motor vehicle, "the number of miles that the vehicle traveled" shall be calculated from the date of purchase or lease by the consumer. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects replacement of the motor vehicle, "the

number of miles that the vehicle traveled" shall be calculated from the original purchase, lease, or in-service date.

(2) Reasonable number of attempts shall be deemed to have been undertaken by the manufacturer, its agent, or the new motor vehicle dealer to conform the new motor vehicle to the warranty within the warranty period, if: (a) The same serious safety defect has been subject to diagnosis or repair two or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the serious safety defect continues to exist; (b) the same nonconformity has been subject to diagnosis or repair four or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the nonconformity continues to exist; or (c) the vehicle is out-of-service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of thirty calendar days, at least fifteen of them during the period of the applicable manufacturer's written warranty. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(3) No new motor vehicle dealer may be held liable by the manufacturer for any collateral charges, incidental costs, purchase price refunds, or vehicle replacements. Manufacturers shall not have a cause of action against dealers under this chapter. Consumers shall not have a cause of action against dealers under this chapter, but a violation of any responsibilities imposed upon dealers under this chapter is a per se violation of chapter 19.86 RCW. Consumers may pursue rights and remedies against dealers under any other law, including chapters 46.70 and 46.71 RCW. Manufacturers and consumers may not make dealers parties to arbitration board proceedings under this chapter. [1995 c 254 § 3; 1989 c 347 § 2; 1987 c 344 § 4.]

Effective date—Severability—1995 c 254: See notes following RCW 19.118.021.

19.118.061 Vehicle with nonconformities or out of service—Notification of correction—Resale or transfer of title—Issuance of new title—Disclosure to buyer—Intervening transferor. (1) A manufacturer shall be prohibited from reselling any motor vehicle determined or adjudicated as having a serious safety defect unless the serious safety defect has been corrected and the manufacturer warrants upon the first subsequent resale that the defect has been corrected.

(2) Before any sale or transfer of a vehicle that has been replaced or repurchased by the manufacturer that was determined or adjudicated as having a nonconformity or to have been out of service for thirty or more calendar days under this chapter, the manufacturer shall:

(a) Notify the attorney general and the department of licensing, by certified mail or by personal service, upon receipt of the motor vehicle;

(b) Attach a resale disclosure notice to the vehicle in a manner and form to be specified by the attorney general. Only the retail purchaser may remove the resale disclosure notice after execution of the disclosure form required under subsection (3) of this section; and

(c) Notify the attorney general and the department of licensing if the nonconformity in the motor vehicle is corrected.

(3) Upon the first subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle and which was previously returned after a final determination, adjudication, or settlement under this chapter or under a similar statute of any other state, the manufacturer, its agent, or the new motor vehicle dealer who has actual knowledge of said final determination, adjudication or settlement, shall execute and deliver to the buyer before sale an instrument in writing setting forth information identifying the nonconformity in a manner to be specified by the attorney general, and the department of licensing shall place on the certificate of title information indicating the vehicle was returned under this chapter.

(4) Upon receipt of the manufacturer's notification under subsection (2) of this section that the nonconformity has been corrected and upon the manufacturer's request and payment of any fees, the department of licensing shall issue a new title with information indicating the vehicle was returned under this chapter and that the nonconformity has been corrected. Upon the first subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle, as provided under subsection (2)(c) of this section, the manufacturer shall warrant upon the resale that the nonconformity has been corrected, and the manufacturer, its agent, or the new motor vehicle dealer who has actual knowledge of the corrected nonconformity, shall execute and deliver to the buyer before sale an instrument in writing setting forth information identifying the nonconformity and indicating that it has been corrected in a manner to be specified by the attorney general.

(5) After repurchase or replacement and following a manufacturer's receipt of a vehicle under this section and prior to a vehicle's first subsequent retail transfer by resale or lease, any intervening transferor of a vehicle subject to the requirements of this section who has received the disclosure, correction and warranty documents, as specified by the attorney general and required under this chapter, shall deliver the documents with the vehicle to the next transferor, purchaser or lessee to ensure proper and timely notice and disclosure. Any intervening transferor who fails to comply with this subsection shall, at the option of the subsequent transferor or first subsequent retail purchaser or lessee: (a) Indemnify and [any] subsequent transferor or first subsequent retail purchaser for all damages caused by such violation; or (b) repurchase the vehicle at the full purchase price including all fees, taxes and costs incurred for goods and services which were included in the subsequent transaction. [1995 c 254 § 4; 1989 c 347 § 3; 1987 c 344 § 5.]

Effective date—Severability—1995 c 254: See notes following RCW 19.118.021.

19.118.070 Remedies. The remedies provided under this chapter are cumulative and are in addition to any other remedies provided by law. [1983 c 240 § 7.]

19.118.080 New motor vehicle arbitration boards—Board proceedings—Prerequisite to filing action in superior court. (1) Except as provided in RCW 19.118.160,

the attorney general shall contract with one or more private entities to conduct arbitration proceedings in order to settle disputes between consumers and manufacturers as provided in this chapter, and each private entity shall constitute a new motor vehicle arbitration board for purposes of this chapter. The entities shall not be affiliated with any manufacturer or new motor vehicle dealer and shall have available the services of persons with automotive technical expertise to assist in resolving disputes under this chapter. No private entity or its officers or employees conducting board proceedings and no arbitrator presiding at such proceedings shall be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle. Payment to the entities for the arbitration services shall be made from the new motor vehicle arbitration account.

(2) The attorney general shall adopt rules for the uniform conduct of the arbitrations by the boards whether conducted by a private entity or by the attorney general pursuant to RCW 19.118.160, which rules shall include but not be limited to the following procedures:

(a) At all arbitration proceedings, the parties are entitled to present oral and written testimony, to present witnesses and evidence relevant to the dispute, to cross-examine witnesses, and to be represented by counsel.

(b) A dealer, manufacturer, or other persons shall produce records and documents requested by a party which are reasonably related to the dispute. If a dealer, manufacturer, or other person refuses to comply with such a request, a party may present a request to the board for the attorney general to issue a subpoena on behalf of the board.

The subpoena shall be issued only for the production of records and documents which the board has determined are reasonably related to the dispute, including but not limited to documents described in RCW 19.118.031 (4) or (5).

If a party fails to comply with the subpoena, the arbitrator may at the outset of the arbitration hearing impose any of the following sanctions: (i) Find that the matters which were the subject of the subpoena, or any other designated facts, shall be taken to be established for purposes of the hearing in accordance with the claim of the party which requested the subpoena; (ii) refuse to allow the disobedient party to support or oppose the designated claims or defenses, or prohibit that party from introducing designated matters into evidence; (iii) strike claims or defenses, or parts thereof; or (iv) render a decision by default against the disobedient party.

If a nonparty fails to comply with a subpoena and upon an arbitrator finding that without such compliance there is insufficient evidence to render a decision in the dispute, the attorney general shall enforce such subpoena in superior court and the arbitrator shall continue the arbitration hearing until such time as the nonparty complies with the subpoena or the subpoena is quashed.

(c) A party may obtain written affidavits from employees and agents of a dealer, a manufacturer or other party, or from other potential witnesses, and may submit such affidavits for consideration by the board.

(d) Records of the board proceedings shall be open to the public. The hearings shall be open to the public to the extent practicable.

(e) Where the board proceedings are conducted by one or more private entities, a single arbitrator may be designated to preside at such proceedings.

(3) A consumer shall exhaust the new motor vehicle arbitration board remedy or informal dispute resolution settlement procedure under RCW 19.118.150 before filing any superior court action.

(4) The attorney general shall maintain records of each dispute submitted to the new motor vehicle arbitration board, including an index of new motor vehicles by year, make, and model.

(5) The attorney general shall compile aggregate annual statistics for all disputes submitted to, and decided by, the new motor vehicle arbitration board, as well as annual statistics for each manufacturer that include, but shall not be limited to, the number and percent of: (a) Replacement motor vehicle requests; (b) purchase price refund requests; (c) replacement motor vehicles obtained in prehearing settlements; (d) purchase price refunds obtained in prehearing settlements; (e) replacement motor vehicles awarded in arbitration; (f) purchase price refunds awarded in arbitration; (g) board decisions neither complied with during the forty calendar day period nor petitioned for appeal within the thirty calendar day period; (h) board decisions appealed categorized by consumer or manufacturer; (i) the nature of the court decisions and who the prevailing party was; (j) appeals that were held by the court to be brought without good cause; and (k) appeals that were held by the court to be brought solely for the purpose of harassment. The statistical compilations shall be public information.

(6) The attorney general shall submit biennial reports of the information in this section to the senate and house of representatives committees on commerce and labor, with the first report due January 1, 1990.

(7) The attorney general shall adopt rules to implement this chapter. Such rules shall include uniform standards by which the boards shall make determinations under this chapter, including but not limited to rules which provide:

(a) A board shall find that a nonconformity exists if it determines that the consumer's new motor vehicle has a defect, serious safety defect, or condition that substantially impairs the use, value, or safety of the vehicle.

(b) A board shall find that a reasonable number of attempts to repair a nonconformity have been undertaken if: (i) The same serious safety defect has been subject to diagnosis or repair two or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the serious safety defect continues to exist; (ii) the same nonconformity has been subject to diagnosis or repair four or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the nonconformity continues to exist; or (iii) the vehicle is out-of-service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of thirty calendar days, at least fifteen of them during the period of the applicable manufacturer's written warranty. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(c) A board shall find that a manufacturer has failed to comply with RCW 19.118.041 if it finds that the manufacturer, its agent, or the new motor vehicle dealer has failed to correct a nonconformity after a reasonable number of attempts and the manufacturer has failed, within forty days of the consumer's written request, to repurchase the vehicle or replace the vehicle with a vehicle identical or reasonably equivalent to the vehicle being replaced.

(8) The attorney general shall provide consumers with information regarding the procedures and remedies under this chapter. [1995 c 254 § 5; 1989 c 347 § 4; 1987 c 344 § 6.]

Effective date—Severability—1995 c 254: See notes following RCW 19.118.021.

19.118.090 Request for arbitration—Eligibility—Rejection—Manufacturer's response—Remedies—Defenses—Acceptance or appeal. (1) A consumer may request arbitration under this chapter by submitting the request to the attorney general. Within ten days after receipt of an arbitration request, the attorney general shall make a reasonable determination of the cause of the request for arbitration and provide necessary information to the consumer regarding the consumer's rights and remedies under this chapter. The attorney general shall assign the dispute to a board, except that if it clearly appears from the materials submitted by the consumer that the dispute is not eligible for arbitration, the attorney general may refuse to assign the dispute and shall explain any required procedures to the consumer.

(2) Manufacturers shall submit to arbitration if such arbitration is requested by the consumer within thirty months from the date of the original delivery of the new motor vehicle to a consumer at retail and if the consumer's dispute is deemed eligible for arbitration by the board.

(3) The new motor vehicle arbitration board may reject for arbitration any dispute that it determines to be frivolous, fraudulent, filed in bad faith, res judicata or beyond its authority. Any dispute deemed by the board to be ineligible for arbitration due to insufficient evidence may be reconsidered by the board upon the submission of other information or documents regarding the dispute that would allegedly qualify for relief under this chapter. Following a second review, the board may reject the dispute for arbitration if evidence is still clearly insufficient to qualify the dispute for relief under this chapter. A rejection by the board is subject to review by the attorney general or may be appealed under RCW 19.118.100.

A decision to reject any dispute for arbitration shall be sent by certified mail to the consumer and the manufacturer, and shall contain a brief explanation as to the reason therefor.

(4) The manufacturer shall complete a written manufacturer response to the consumer's request for arbitration. The manufacturer shall provide a response to the consumer and the board within ten calendar days from the date of the manufacturer's receipt of the board's notice of acceptance of a dispute for arbitration. The manufacturer response shall include all issues and affirmative defenses related to the nonconformities identified in the consumer's request for arbitration that the manufacturer intends to raise at the arbitration hearing.

(5) The arbitration board shall award the remedies under RCW 19.118.041 if it finds a nonconformity and that a reasonable number of attempts have been undertaken to correct the nonconformity. The board shall award reasonable costs and attorneys' fees incurred by the consumer where the manufacturer has been directly represented by counsel: (a) In dealings with the consumer in response to a request to repurchase or replace under RCW 19.118.041; (b) in settlement negotiations; (c) in preparation of the manufacturer's statement; or (d) at an arbitration board hearing or other board proceeding.

(6) It is an affirmative defense to any claim under this chapter that: (a) The alleged nonconformity does not substantially impair the use, value, or safety of the new motor vehicle; or (b) the alleged nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the new motor vehicle.

(7) The board shall have forty-five calendar days from the date the board receives the consumer's request for arbitration to hear the dispute. If the board determines that additional information is necessary, the board may continue the arbitration proceeding on a subsequent date within ten calendar days of the initial hearing. The board shall decide the dispute within sixty calendar days from the date the board receives the consumer's request for arbitration.

The decision of the board shall be delivered by certified mail or personal service to the consumer and the manufacturer, and shall contain a written finding of whether the new motor vehicle meets the standards set forth under this chapter.

(8) The consumer may accept the arbitration board decision or appeal to superior court, pursuant to RCW 19.118.100. Upon acceptance by the consumer, the arbitration board decision shall become final. The consumer shall send written notification of acceptance or rejection to the arbitration board within sixty days of receiving the decision and the arbitration board shall immediately deliver a copy of the consumer's acceptance to the manufacturer by certified mail, return receipt requested, or by personal service. Failure of the consumer to respond to the arbitration board within sixty calendar days of receiving the decision shall be considered a rejection of the decision by the consumer. The consumer shall have one hundred twenty calendar days from the date of rejection to file a petition of appeal in superior court. At the time the petition of appeal is filed, the consumer shall deliver, by certified mail or personal service, a conformed copy of such petition to the attorney general.

(9) Upon receipt of the consumer's acceptance, the manufacturer shall have forty calendar days to comply with the arbitration board decision or thirty calendar days to file a petition of appeal in superior court. At the time the petition of appeal is filed, the manufacturer shall deliver, by certified mail or personal service, a conformed copy of such petition to the attorney general. If the attorney general receives no notice of petition of appeal after forty calendar days, the attorney general shall contact the consumer to verify compliance. [1995 c 254 § 6; 1989 c 347 § 5; 1987 c 344 § 7.]

Effective date—Severability—1995 c 254: See notes following RCW 19.118.021.

19.118.095 Arbitration decision—Compliance—Accomplishment—Dispute—Failure—Fine—Costs—Attorneys' fees. (1) Compliance with an arbitration board decision under this chapter must be accomplished at a time, place, and in a manner to be determined by the mutual agreement of the consumer and manufacturer.

(a) The consumer shall make the motor vehicle available to the manufacturer free of damage other than that related to any nonconformity, defect, or condition to which a warranty applied, or that can reasonably be expected in the use of the vehicle for ordinary or reasonably intended purposes and in consideration of the mileage attributable to the consumer's use. Any insurance claims or settlement proceeds for repair of damage to the vehicle due to fire, theft, vandalism, or collision must be assigned to the manufacturer or, at the consumer's option, the repair must be completed before return of the vehicle to the manufacturer.

The consumer may not remove any equipment or option that was included in the original purchase or lease of the vehicle or that is otherwise included in the repurchase or replacement award. In removing any equipment not included in the original purchase or lease, the consumer shall exercise reasonable care to avoid further damage to the vehicle but is not required to return the vehicle to original condition.

(b) At the time of compliance with an arbitration board decision that awards repurchase, the manufacturer shall make full payment to the consumers and either the lessor or lienholder, or both, or provide verification to the consumer of prior payment to either the lessor or lienholder, or both.

At the time of compliance with an arbitration board decision that awards replacement, the manufacturer shall provide the replacement vehicle together with any refund of incidental costs.

(c) At any time before compliance a party may request the board to resolve disputes regarding compliance with the arbitration board decision including but not limited to time and place for compliance, condition of the vehicle to be returned, clarification or recalculation of refund amounts under the award, or a determination if an offered vehicle is reasonably equivalent to the vehicle being replaced. In resolving compliance disputes the board may not review, alter, or otherwise change the findings of a decision or extend the time for compliance beyond the time necessary for the board to resolve the dispute.

(d) Failure of the consumer to make the vehicle available within sixty calendar days in response to a manufacturer's unconditional tender of compliance is considered a rejection of the arbitration decision by the consumer, except as provided in (c) of this subsection or subsection (2) of this section.

(2) If, at the end of the forty calendar day period, neither compliance with nor a petition to appeal the board's decision has occurred, the attorney general may impose a fine of up to one thousand dollars per day until compliance occurs or a maximum penalty of one hundred thousand dollars accrues unless the manufacturer can provide clear and convincing evidence that any delay or failure was beyond its control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide the evidence or fails to pay the fine, the attorney general may initiate proceedings against the manufacturer for failure to pay any fine that accrues until compli-

ance with the board's decision occurs or the maximum penalty of one hundred thousand dollars results. If the attorney general prevails in an enforcement action regarding any fine imposed under this subsection, the attorney general is entitled to reasonable costs and attorneys' fees. Fines and recovered costs and fees shall be returned to the new motor vehicle arbitration account. [1995 c 254 § 8.]

Effective date—Severability—1995 c 254: See notes following RCW 19.118.021.

19.118.100 Trial de novo—Posting security—Recovery. (1) The consumer or the manufacturer may request a trial de novo of the arbitration decision, including a rejection, in superior court.

(2) If the manufacturer appeals, the court may require the manufacturer to post security for the consumer's financial loss due to the passage of time for review.

(3) If the consumer prevails, recovery shall include the monetary value of the award, attorneys' fees and costs incurred in the superior court action, and, if the board awarded the consumer replacement or repurchase of the vehicle and the manufacturer did not comply, continuing damages in the amount of twenty-five dollars per day for all days beyond the forty calendar day period following the manufacturer's receipt of the consumer's acceptance of the board's decision in which the manufacturer did not provide the consumer with the free use of a comparable loaner replacement motor vehicle. If it is determined by the court that the party that appealed acted without good cause in bringing the appeal or brought the appeal solely for the purpose of harassment, the court may triple, but at least shall double, the amount of the total award. [1989 c 347 § 6; 1987 c 344 § 8.]

19.118.110 Arbitration fee—New motor vehicle arbitration account—Report by attorney general. A three-dollar arbitration fee shall be collected by either the new motor vehicle dealer or vehicle lessor from the consumer upon execution of a retail sale or lease agreement. The fee shall be forwarded to the department of licensing at the time of title application for deposit in the new motor vehicle arbitration account hereby created in the state treasury. Moneys in the account shall be used for the purposes of this chapter, subject to appropriation. During the 1995-97 fiscal biennium, the legislature may transfer moneys from the account to the extent that the moneys are not necessary for the purposes of this chapter.

At the end of each fiscal year, the attorney general shall prepare a report listing the annual revenue generated and the expenses incurred in implementing and operating the arbitration program under this chapter. [1995 2nd sp.s. c 18 § 910; 1995 c 254 § 7; 1989 c 347 § 7; 1987 c 344 § 9.]

Severability—1995 2nd sp.s. c 18: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 2nd sp.s. c 18 § 926.]

Effective date—1995 2nd sp.s. c 18: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions. Section 807 of this act shall take effect immediately [June 16, 1995]. The remainder of the act shall take effect July 1, 1995." [1995 2nd sp.s. c 18 § 927.]

Effective date—Severability—1995 c 254: See notes following RCW 19.118.021.

19.118.120 Application of consumer protection act. A violation of this chapter shall constitute an unfair or deceptive trade practice affecting the public interest under chapter 19.86 RCW. All public and private remedies provided under that chapter shall be available to enforce this chapter. [1987 c 344 § 10.]

19.118.130 Waivers, limitations, disclaimers—Void. Any agreement entered into by a consumer for the purchase of a new motor vehicle that waives, limits, or disclaims the rights set forth in RCW 19.118.021 through 19.118.140 shall be void as contrary to public policy. Said rights shall extend to a subsequent transferee of such new motor vehicle. [1987 c 344 § 11.]

19.118.140 Other rights and remedies not precluded. Nothing in this chapter limits the consumer from pursuing other rights or remedies under any other law. [1987 c 344 § 12.]

19.118.150 Informal dispute resolution settlement procedure. If a manufacturer has established an informal dispute resolution settlement procedure which substantially complies with the applicable provision of Title 16, Code of Federal Regulations Part 703, as from time to time amended, a consumer may choose to first submit a dispute under this chapter to the informal dispute resolution settlement procedure. [1989 c 347 § 8; 1987 c 344 § 14.]

19.118.160 New motor vehicle arbitration boards—When established by attorney general—Membership—Travel expenses and compensation. If the attorney general is unable at any time to contract with private entities to conduct arbitrations under the procedures and standards in this chapter, the attorney general shall establish one or more new motor vehicle arbitration boards. Each such board shall consist of three members appointed by the attorney general, only one of whom may be directly involved in the manufacture, distribution, sale, or service of any motor vehicle. Board members shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and shall be compensated pursuant to RCW 43.03.240. [1989 c 347 § 9; 1987 c 344 § 15.]

19.118.170 History of vehicle—Availability to owner. Notwithstanding RCW 46.12.380, the department of licensing shall make available to the registered owner all title history information regarding the vehicle upon request of the registered owner and receipt of a statement that he or she is investigating or pursuing rights under this chapter. [1995 c 254 § 9.]

Effective date—Severability—1995 c 254: See notes following RCW 19.118.021.

19.118.900 Effective dates—1987 c 344. (1) Section 9 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1987.

(2) Sections 2 through 8, 10 through 12, and 14 through 16 of this act shall take effect January 1, 1988, except that the attorney general may take such actions as are necessary to ensure the new motor vehicle arbitration boards are established and operational. [1987 c 344 § 22.]

19.118.902 Severability—1987 c 344. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 344 § 23.]

19.118.903 Severability—1989 c 347. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 347 § 10.]

19.118.904 Effective date—1989 c 347. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1989. [1989 c 347 § 11.]

Chapter 19.120

GASOLINE DEALER BILL OF RIGHTS ACT

Sections

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19.120.905	Effective date—1986 c 320.

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

(1) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or spoken on radio, television, or similar communication media published in connection with an offer or sale of a franchise.

(2) "Affiliate" means any person, firm, or corporation who controls or is controlled by any motor fuel refiner-supplier, and includes any subsidiary or affiliated corporation

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in which the motor fuel refiner-supplier or its shareholders, officers, agents, or employees hold or control more than twenty-five percent of the voting shares.

(3) "Community interest" means a continuing financial interest between the motor fuel refiner-supplier and motor fuel retailer in the operation of the franchise business.

(4) "Motor fuel" means gasoline or diesel fuel of a type distributed for use in self-propelled motor vehicles and includes gasohol.

(5) "Motor fuel franchise" means any oral or written contract, either expressed or implied, between a motor fuel refiner-supplier and motor fuel retailer under which the motor fuel retailer is supplied motor fuel for resale to the public under a trademark owned or controlled by the motor fuel refiner-supplier or for sale on commission or for a fee to the public, or any agreements between a motor fuel refiner-supplier and motor fuel retailer under which the retailer is permitted to occupy premises owned, leased, or controlled by the refiner-supplier for the purpose of engaging in the retail sale of motor fuel under a trademark owned or controlled by the motor fuel refiner-supplier supplied by the motor fuel refiner-supplier.

(6) "Motor fuel refiner-supplier" means any person, firm, or corporation, including any affiliate of the person, firm, or corporation, engaged in the refining of crude oil into petroleum who supplies motor fuel for sale, consignment, or distribution through retail outlets.

(7) "Motor fuel retailer" means a person, firm, or corporation that resells motor fuel entirely at one or more retail motor fuel outlets pursuant to a motor fuel franchise entered into with a refiner-supplier.

(8) "Offer or offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a franchise or an interest in a franchise.

(9) "Person" means a natural person, corporation, partnership, trust, or other entity and in the case of an entity, it shall include any other entity which has a majority interest in such an entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each such entity.

(10) "Price" means the net purchase price, after adjustment for commission, brokerage, rebate, discount, services or facilities furnished, or other such adjustment.

(11) "Publish" means publicly to issue or circulate by newspaper, mail, radio, or television or otherwise to disseminate to the public.

(12) "Retail motor fuel outlet" means any location where motor fuel is distributed for purposes other than resale.

(13) "Sale or sell" includes every contract of sale, contract to sell, or disposition of a franchise.

(14) "Trademark" means any trademark, trade name, service mark, or other identifying symbol or name. [1989 c 11 § 3; 1986 c 320 § 1.]

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

19.120.020 Sale of franchise to third party. Notwithstanding the terms of any motor fuel franchise, a motor fuel refiner-supplier shall not absolutely prohibit or unreasonably withhold its consent to any sale, assignment, or other transfer of the motor fuel franchise by a motor fuel retailer to a third party without fairly compensating the

motor fuel retailer for the fair market value, at the time of expiration of the franchise, of the motor fuel retailer's inventory, supplies, equipment, and furnishings purchased from the motor fuel refiner-supplier, and good will, exclusive of personalized materials which have no value to the motor fuel refiner-supplier, and inventory, supplies, equipment, and furnishings not reasonably required in the conduct of the franchise business. A motor fuel refiner-supplier may offset against amounts owed to a motor fuel retailer under this section any amounts owed by the motor fuel retailer to the motor fuel refiner-supplier. [1986 c 320 § 3.]

19.120.030 Sale of franchise to corporation. Notwithstanding the terms of any motor fuel franchise, no motor fuel refiner-supplier may prohibit or prevent the sale, assignment, or other transfer of the motor fuel franchise to a corporation in which the motor fuel retailer has and maintains a controlling interest if the motor fuel retailer offers in writing personally to guarantee the performance of the obligations under the motor fuel franchise. [1986 c 320 § 4.]

19.120.040 Franchise considered personal property—Designated successor in interest. Notwithstanding the terms of any motor fuel franchise, the interest of a motor fuel retailer under such an agreement shall be considered personal property and shall devolve on the death of the motor fuel retailer to a designated successor in interest of the retailer, limited to the retailer's spouse, adult child, or adult stepchild or, if no successor in interest is designated, to the retailer's spouse, if any. The designation shall be made, witnessed in writing by at least two persons, and delivered to the motor fuel refiner-supplier during the term of the franchise. The designation may be revised at any time by the motor fuel retailer and shall be substantially in the following form:

"I (motor fuel retailer name) at the service station located at, in the City of, Washington, designate as my successor in interest under RCW 19.120.030 and as my alternate successor if the originally designated successor is unable or unwilling so to act.

I so specify this day of, 19. . ."

The motor fuel refiner-supplier shall assist the designated successor in interest temporarily in the day-to-day operation of the service station to insure continued operation of the service station. [1986 c 320 § 5.]

19.120.050 Purchase of real estate and improvements owned by refiner-supplier—Retailer given right of first refusal—Notice to retailer. Notwithstanding the terms of any motor fuel franchise, the motor fuel retailer shall be given the right of first refusal to purchase the real estate and/or improvements owned by the refiner-supplier at the franchise location, and at least thirty days' advance notice within which to exercise this right, prior to any sale thereof to any other buyer. [1986 c 320 § 6.]

19.120.060 Refiner-suppliers—Prohibited conduct. Notwithstanding the terms of any motor fuel franchise, no motor fuel refiner-supplier may:

(1) Require any motor fuel retailer to meet mandatory minimum sales volume requirements for fuel or other products unless the refiner-supplier proves that its price to the motor fuel retailer has been sufficiently low to enable the motor fuel retailer reasonably to meet the mandatory minimum;

(2) Alter, or require the motor fuel retailer to consent to the alteration of, any provision of the motor fuel franchise during its effective term without mutual consent of the motor fuel retailer;

(3) Interfere with any motor fuel retailer's right to assistance of counsel on any matter or to join or be active in any trade association; and

(4) Set or compel, directly or indirectly, the retail price at which the motor fuel retailer sells motor fuel or other products to the public. [1986 c 320 § 7.]

19.120.070 Offers, sales, or purchases of franchises—Unlawful acts. It is unlawful for any person in connection with the offer, sale, or purchase of any motor fuel franchise directly or indirectly:

(1) To sell or offer to sell a motor fuel franchise in this state by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading.

(2) To employ any device, scheme, or artifice to defraud.

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. [1986 c 320 § 8.]

19.120.080 Refiner-supplier and retailer relationship—Rights and prohibitions. Without limiting the other provisions of this chapter, the following specific rights and prohibitions shall govern the relation between the motor fuel refiner-supplier and the motor fuel retailers:

(1) The parties shall deal with each other in good faith.

(2) For the purposes of this chapter and without limiting its general application, it shall be an unfair or deceptive act or practice or an unfair method of competition and therefore unlawful and a violation of this chapter for any person to:

(a) Require a motor fuel retailer to purchase or lease goods or services of the motor fuel refiner-supplier or from approved sources of supply unless and to the extent that the motor fuel refiner-supplier satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition: PROVIDED, That this provision shall not apply to the initial inventory of the motor fuel franchise. In determining whether a requirement to purchase or lease goods or services constitutes an unfair or deceptive act or practice or an unfair method of competition the courts shall be guided by the decisions of the courts of the United States interpreting and applying the anti-trust laws of the United States.

(b) Discriminate between motor fuel retailers in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the extent that the motor fuel refiner-supplier satisfies the burden of proving that any classification of or discrimination between motor fuel retailers is reasonable, is based on motor fuel franchises granted at materially different times and such discrimination is reasonably related to such difference in time or on other proper and justifiable distinctions considering the purposes of this chapter, and is not arbitrary.

(c) Sell, rent, or offer to sell to a motor fuel retailer any product or service for more than a fair and reasonable price.

(d) Require [a] motor fuel retailer to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by this chapter. [1986 c 320 § 9.]

19.120.090 Action for damages, rescission, or other relief. (1) Any person who sells or offers to sell a motor fuel franchise in violation of this chapter shall be liable to the motor fuel retailer or motor fuel refiner-supplier who may sue at law or in equity for damages caused thereby for rescission or other relief as the court may deem appropriate. In the case of a violation of RCW 19.120.070 rescission is not available to the plaintiff if the defendant proves that the plaintiff knew the facts concerning the untruth or omission or that the defendant exercised reasonable care and did not know or if he had exercised reasonable care would not have known of the untruth or omission.

(2) The suit authorized under subsection (1) of this section may be brought to recover the actual damages sustained by the plaintiff: PROVIDED, That the prevailing party may in the discretion of the court recover the costs of said action including a reasonable attorneys' fee.

(3) Any person who becomes liable to make payments under this section may recover contributions as in cases of contracts from any persons who, if sued separately, would have been liable to make the same payment.

(4) A final judgment, order, or decree heretofore or hereafter rendered against a person in any civil, criminal, or administrative proceedings under the United States anti-trust laws, under the Federal Trade Commission Act, or this chapter shall be regarded as evidence against such persons in any action brought by any party against such person under subsection (1) of this section as to all matters which said judgment or decree would be an estoppel between the parties thereto. [1986 c 320 § 10.]

19.120.100 Limitation period tolled. The pendency of any civil, criminal, or administrative proceedings against a person brought by the federal or Washington state governments or any of their agencies under the anti-trust laws, the Federal Trade Commission Act, or any federal or state act related to anti-trust laws or to franchising, or under this chapter shall toll the limitation of this action if the action is then instituted within one year after the final judgment or order in such proceedings: PROVIDED, That said limitation of actions shall in any case toll the law so long as there is actual concealment on the part of the person. [1986 c 320 § 11.]

19.120.110 Civil actions by retailers—Attorneys' fees. Any motor fuel retailer who is injured in his or her business by the commission of any act prohibited by this chapter, or any motor fuel retailer injured because of his or her refusal to accede to a proposal for an arrangement which, if consummated, would be in violation of this chapter may bring a civil action in superior court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including reasonable attorney's fees. [1986 c 320 § 12.]

19.120.120 Civil actions by attorney general—Attorneys' fees—Criminal actions not limited by chapter.

(1) The attorney general may bring an action in the name of the state against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful. The prevailing party may in the discretion of the court recover the costs of such action including a reasonable attorneys' fee.

(2) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law. [1986 c 320 § 13.]

19.120.130 Exception or exemption—Burden of proof—Waiver of provisions of chapter void. In any proceeding under this chapter, the burden of proving an exception or an exemption from definition is upon the person claiming it. Any condition, stipulation or provision purporting to bind any person acquiring a motor fuel franchise at the time of entering into a motor fuel franchise or other agreement to waive compliance with any provision of this chapter or any rule or order hereunder is void. [1986 c 320 § 14.]

19.120.900 Short title. This chapter shall be known as the "gasoline dealer bill of rights act." [1986 c 320 § 19.]

19.120.901 Application of chapter. The provisions of this chapter apply to any motor fuel franchise or contract entered into or renewed on or after June 30, 1986, between a motor fuel refiner-supplier and a motor fuel retailer. [1986 c 320 § 15.]

19.120.902 Intent—Interpretation consistent with chapter 19.100 RCW. It is the intent of the legislature that this chapter be interpreted consistent with chapter 19.100 RCW. [1986 c 320 § 17.]

19.120.903 Liberal construction. This chapter shall be liberally construed to effectuate its beneficial purposes. [1986 c 320 § 18.]

19.120.904 Severability—1986 c 320. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 320 § 22.]

19.120.905 Effective date—1986 c 320. (1) Sections 20 and 21 are necessary for the immediate preservation of

the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect immediately.

(2) Sections 1 through 19, 22 and 23 of this act shall take effect June 30, 1986. [1986 c 320 § 24.]

Chapter 19.122

UNDERGROUND UTILITIES

Sections

- 19.122.010 Intent.
- 19.122.020 Definitions.
- 19.122.030 Notice of excavation to owners of underground facilities—One-number locator service—Time for notice—Marking of underground facilities—Costs.
- 19.122.040 Underground facilities identified in bid or contract—Excavator's duty of reasonable care—Liability for damages—Attorneys' fees.
- 19.122.045 Exemption from liability.
- 19.122.050 Damage to underground facility—Notification by excavator—Repairs or relocation of facility.
- 19.122.060 Exemption from notice and marking requirements for property owners.
- 19.122.070 Civil penalties—Treble damages—Existing remedies not affected.
- 19.122.080 Waiver of notification and marking requirements.
- 19.122.900 Severability—1984 c 144.

19.122.010 Intent. It is the intent of the legislature in enacting this chapter to assign responsibilities for locating and keeping accurate records of utility locations, protecting and repairing damage to existing underground facilities, and protecting the public health and safety from interruption in utility services caused by damage to existing underground utility facilities. [1984 c 144 § 1.]

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

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Damage" includes the substantial weakening of structural or lateral support of an underground facility, penetration, impairment, or destruction of any underground protective coating, housing, or other protective device, or the severance, partial or complete, of any underground facility to the extent that the project owner or the affected utility owner determines that repairs are required.

(3) "Emergency" means any condition constituting a clear and present danger to life or property, or a customer service outage.

(4) "Excavation" means any operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than twelve inches in depth for agricultural purposes, or road and ditch maintenance that does not change the original road grade or ditch flowline.

(5) "Excavator" means any person who engages directly in excavation.

(6) "Identified facility" means any underground facility which is indicated in the project plans as being located within the area of proposed excavation.

(7) "Identified but unlocatable underground facility" means an underground facility which has been identified but cannot be located with reasonable accuracy.

(8) "Locatable underground facility" means an underground facility which can be field-marked with reasonable accuracy.

(9) "Marking" means the use of stakes, paint, or other clearly identifiable materials to show the field location of underground facilities, in accordance with the current color code standard of the American public works association. Markings shall include identification letters indicating the specific type of the underground facility.

(10) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a county, or any subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

(11) "Reasonable accuracy" means location within twenty-four inches of the outside dimensions of both sides of an underground facility.

(12) "Underground facility" means any item buried or placed below ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances and including but not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments, and those parts of poles or anchors below ground.

(13) "One-number locator service" means a service through which a person can notify utilities and request field-marking of underground facilities. [1984 c 144 § 2.]

19.122.030 Notice of excavation to owners of underground facilities—One-number locator service—Time for notice—Marking of underground facilities—Costs. Before commencing any excavation, the excavator shall provide notice of the scheduled commencement of excavation to all owners of underground facilities through a one-number locator service. All owners of underground facilities within a one-number locator service area shall subscribe to the service. One number locator service rates for cable television companies will be based on the amount of their underground facilities. If no one-number locator service is available, notice shall be provided individually to those owners of underground facilities known to or suspected of having underground facilities within the area of proposed excavation. The notice shall be communicated to the owners of underground facilities not less than two business days or more than ten business days before the scheduled date for commencement of excavation, unless otherwise agreed by the parties.

Upon receipt of the notice provided for in this section, the owner of the underground facility shall provide the excavator with reasonably accurate information as to its locatable underground facilities by surface-marking the location of the facilities. If there are identified but unlocatable underground facilities, the owner of such facilities shall provide the excavator with the best available information as to their locations. The owner of the underground facility providing the information shall respond no later than two business days after the receipt of the notice or before the

excavation time, at the option of the owner, unless otherwise agreed by the parties. Excavators shall not excavate until all known facilities have been marked. Once marked by the owner of the underground facility, the excavator is responsible for maintaining the markings. Excavators shall have the right to receive compensation from the owner of the underground facility for costs incurred if the owner of the underground facility does not locate its facilities in accordance with this section.

The owner of the underground facility shall have the right to receive compensation for costs incurred in responding to excavation notices given less than two business days prior to the excavation from the excavator.

An owner of underground facilities is not required to indicate the presence of existing service laterals or appurtenances if the presence of existing service laterals or appurtenances on the site of the construction project can be determined from the presence of other visible facilities, such as buildings, manholes, or meter and junction boxes on or adjacent to the construction site.

Emergency excavations are exempt from the time requirements for notification provided in this section.

If the excavator, while performing the contract, discovers underground facilities which are not identified, the excavator shall cease excavating in the vicinity of the facility and immediately notify the owner or operator of such facilities, or the one-number locator service. [1988 c 99 § 1; 1984 c 144 § 3.]

Damages to facilities on state highways: RCW 47.44.150.

19.122.040 Underground facilities identified in bid or contract—Excavator's duty of reasonable care—Liability for damages—Attorneys' fees. (1) Project owners shall indicate in bid or contract documents the existence of underground facilities known by the project owner to be located within the proposed area of excavation. The following shall be deemed changed or differing site conditions:

(a) An underground facility not identified as required by this chapter or other provision of law; and
 (b) An underground facility not located, as required by this chapter or other provision of law, by the project owner or excavator if the project owner or excavator is also a utility.

(2) An excavator shall use reasonable care to avoid damaging underground facilities. An excavator shall:

(a) Determine the precise location of underground facilities which have been marked;

(b) Plan the excavation to avoid damage to or minimize interference with underground facilities in and near the excavation area; and

(c) Provide such support for underground facilities in and near the construction area, including during backfill operations, as may be reasonably necessary for the protection of such facilities.

(3) If an underground facility is damaged and such damage is the consequence of the failure to fulfill an obligation under this chapter, the party failing to perform that obligation shall be liable for any damages. Any clause in an excavation contract which attempts to allocate liability, or requires indemnification to shift the economic consequences of liability, different from the provisions of this

chapter is against public policy and unenforceable. Nothing in this chapter prevents the parties to an excavation contract from contracting with respect to the allocation of risk for changed or differing site conditions.

(4) In any action brought under this section, the prevailing party is entitled to reasonable attorneys' fees. [1984 c 144 § 4.]

19.122.045 Exemption from liability. Excavators who comply with the requirements of this chapter are not liable for any damages arising from contact or damage to an underground fiber optics facility other than the cost to repair the facility. [1988 c 99 § 2.]

19.122.050 Damage to underground facility—Notification by excavator—Repairs or relocation of facility. (1) An excavator who, in the course of excavation, contacts or damages an underground facility shall notify the utility owning or operating such facility and the one-number locator service. If the damage causes an emergency condition, the excavator causing the damage shall also alert the appropriate local public safety agencies and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated.

(2) The owner of the underground facilities damaged shall arrange for repairs or relocation as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price. [1984 c 144 § 5.]

19.122.060 Exemption from notice and marking requirements for property owners. An excavation of less than twelve inches in vertical depth on private noncommercial property shall be exempt from the requirements of RCW 19.122.030, if the excavation is being performed by the person or an employee of the person who owns or occupies the property on which the excavation is being performed. [1984 c 144 § 6.]

19.122.070 Civil penalties—Treble damages—Existing remedies not affected. (1) Any person who violates any provision of this chapter, and which violation results in damage to underground facilities, is subject to a civil penalty of not more than one thousand dollars for each violation. All penalties recovered in such actions shall be deposited in the general fund.

(2) Any excavator who wilfully or maliciously damages a field-marked underground facility shall be liable for treble the costs incurred in repairing or relocating the facility. In those cases in which an excavator fails to notify known underground facility owners or the one-number locator service, any damage to the underground facility shall be deemed wilful and malicious and shall be subject to treble damages for costs incurred in repairing or relocating the facility.

(3) This chapter does not affect any civil remedies for personal injury or for property damage, including that to underground facilities, nor does this chapter create any new civil remedies for such damage. [1984 c 144 § 7.]

Damages to facilities on state highways: RCW 47.44.150.

19.122.080 Waiver of notification and marking requirements. The notification and marking provisions of this chapter may be waived for one or more designated persons by an underground facility owner with respect to all or part of that underground facility owner's own underground facilities. [1984 c 144 § 8.]

19.122.900 Severability—1984 c 144. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 144 § 9.]

Chapter 19.126

WHOLESALE DISTRIBUTORS AND SUPPLIERS OF WINE AND MALT BEVERAGES

Sections

19.126.010	Purpose.
19.126.020	Definitions.
19.126.030	Suppliers' protections.
19.126.040	Distributors' protections.
19.126.050	Suppliers' prohibited acts.
19.126.060	Attorney's fees—Costs.
19.126.070	Suspension or cancellation of license or certificate.
19.126.080	Civil actions—Injunctive relief.
19.126.900	Short title.
19.126.901	Severability—1984 c 169.

19.126.010 Purpose. (1) The legislature recognizes that both suppliers and wholesale distributors of malt beverages and wine are interested in the goal of best serving the public interest through the fair, efficient, and competitive distribution of such beverages. The legislature encourages them to achieve this goal by:

(a) Assuring the wholesale distributor's freedom to manage the business enterprise, including the wholesale distributor's right to independently establish its selling prices; and

(b) Assuring the supplier and the public of service from wholesale distributors who will devote their best competitive efforts and resources to sales and distribution of the supplier's products which the wholesale distributor has been granted the right to sell and distribute.

(2) This chapter governs the relationship between suppliers of malt beverages and wine and their wholesale distributors to the full extent consistent with the Constitution and laws of this state and of the United States. [1984 c 169 § 1.]

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

(1) "Agreement of distributorship" means any contract, agreement, commercial relationship, license, association, or any other arrangement, for a definite or indefinite period, between a supplier and wholesale distributor.

(2) "Wholesale distributor" means any person, including but not limited to a component of a supplier's distribution system constituted as an independent business, importing or causing to be imported into this state, or purchasing or causing to be purchased within this state, any malt beverage

or wine for sale or resale to retailers licensed under the laws of this state, regardless of whether the business of such person is conducted under the terms of any agreement with a malt beverage or wine manufacturer.

(3) "Supplier" means any malt beverage or wine manufacturer or importer who enters into or is a party to any agreement of distributorship with a wholesale distributor. "Supplier" does not include: (a) Any domestic winery licensed pursuant to RCW 66.24.170; (b) any winery or manufacturer of wine producing less than three hundred thousand gallons of wine annually and holding a certificate of approval issued pursuant to RCW 66.24.206; (c) any brewer licensed under RCW 66.24.240 and producing less than fifty thousand barrels of malt liquor annually; or (d) any brewer or manufacturer of malt liquor producing less than fifty thousand barrels of malt liquor annually and holding a certificate of approval issued under RCW 66.24.270.

(4) "Malt beverage manufacturer" means every brewer, fermenter, processor, bottler, or packager of malt beverages located within or outside this state, or any other person, whether located within or outside this state, who enters into an agreement of distributorship for the resale of malt beverages in this state with any wholesale distributor doing business in the state of Washington.

(5) "Wine manufacturer" means every winery, processor, bottler, or packager of wine located within or outside this state, or any other person, whether located within or outside this state who enters into an agreement of distributorship for the resale of wine in this state with any wine wholesale distributor doing business in the state of Washington.

(6) "Importer" means any wholesale distributor importing beer or wine into this state for sale to retailer accounts or for sale to other wholesalers designated as "subjobbers" for resale.

(7) "Person" means any natural person, corporation, partnership, trust, agency, or other entity, as well as any individual officers, directors, or other persons in active control of the activities of such entity. [1984 c 169 § 2.]

19.126.030 Suppliers' protections. Suppliers are entitled to the following protections which shall be incorporated in the agreement of distributorship:

(1) Agreements between suppliers and wholesale distributors shall be in writing;

(2) A wholesale distributor shall maintain the financial and competitive capability necessary to achieve efficient and effective distribution of the supplier's products;

(3) A wholesale distributor shall maintain the quality and integrity of the supplier's product in the manner set forth by the supplier;

(4) A wholesale distributor shall exert its best efforts to sell the product of the supplier and shall merchandise such products in the stores of its retail customers as agreed between the wholesale distributor and supplier;

(5) The supplier may cancel or otherwise terminate any agreement with a wholesale distributor immediately and without notice if the reason for such termination is insolvency, the occurrence of an assignment for the benefit of creditors, bankruptcy, or suspension in excess of fourteen days or revocation of a license issued by the state liquor board;

(6) A wholesale distributor shall give the supplier prior written notice, of not less than ninety days, of any material change in its ownership or management and the supplier has the right to reasonable prior approval of any such change; and

(7) A wholesale distributor shall give the supplier prior written notice, of not less than ninety days, of the wholesale distributor's intent to cancel or otherwise terminate the distributorship agreement. [1984 c 169 § 3.]

19.126.040 Distributors' protections. Wholesale distributors are entitled to the following protections which shall be incorporated in the agreement of distributorship:

(1) Agreements between wholesale distributors and suppliers shall be in writing;

(2) A supplier shall give the wholesale distributor at least sixty days prior written notice of the supplier's intent to cancel or otherwise terminate the agreement, unless such termination is based on a reason set forth in RCW 19.126.030(5). The notice shall state all the reasons for the intended termination or cancellation. Upon receipt of notice, the wholesale distributor shall have sixty days in which to rectify any claimed deficiency. If the deficiency is rectified within this sixty-day period, the proposed termination or cancellation is null and void and without legal effect;

(3) The wholesale distributor is entitled to compensation for the laid-in cost of inventory and liquidated damages measured on the fair market price of the business as provided for in the agreement for any termination of the agreement by the supplier other than termination for cause, for failure to live up to the terms and conditions of the agreement, or any reason set forth in RCW 19.126.030(5); and

(4) The wholesale distributor may sell or transfer its business, or any portion thereof, including the agreement, to successors in interest upon prior approval of the transfer by the supplier. No supplier may unreasonably withhold or delay its approval of any transfer, including wholesaler's rights and obligations under the terms of the agreement, if the person or persons to be substituted meet reasonable standards imposed by the supplier. [1984 c 169 § 4.]

19.126.050 Suppliers' prohibited acts. No supplier may:

(1) Coerce or induce, or attempt to induce or coerce, any wholesale distributor to engage in any illegal act or course of conduct;

(2) Require a wholesale distributor to assent to any unreasonable requirement, condition, understanding, or term of an agreement which prohibits a wholesaler from selling the product of any other supplier or suppliers;

(3) Require a wholesale distributor to accept delivery of any product or any other item or commodity which was not ordered by the wholesale distributor; or

(4) Fail or refuse to enter into an agreement of distributorship with a wholesale distributor that handles the supplier's products. [1985 c 440 § 1; 1984 c 169 § 5.]

19.126.060 Attorney's fees—Costs. In any action brought by a wholesale distributor or a supplier pursuant to this chapter, the prevailing party shall be awarded its reasonable attorney's fees and costs. [1984 c 169 § 6.]

19.126.070 Suspension or cancellation of license or certificate. Continued violation of this chapter constitutes grounds, in the discretion of the state liquor control board, for suspension or cancellation under RCW 66.24.010 of any license or certificate held by a supplier or its agent. [1985 c 440 § 2.]

19.126.080 Civil actions—Injunctive relief. A person injured by a violation of this chapter may bring a civil action in a court of competent jurisdiction to enjoin further violations. Injunctive relief may be granted in an action brought under this chapter without the injured party being required to post bond if, in the opinion of the court, there exists a likelihood that the injured party will prevail on the merits. [1985 c 440 § 3.]

19.126.900 Short title. This chapter may be known and cited as the wholesale distributor/supplier equity agreement act. [1984 c 169 § 7.]

19.126.901 Severability—1984 c 169. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 169 § 9.]

Chapter 19.130

TELEPHONE BUYERS' PROTECTION ACT

Sections

- 19.130.010 Legislative findings.
- 19.130.020 Sales of new or reconditioned telephone equipment—Disclosure of certain information.
- 19.130.030 Certain advertising media—Application of chapter.
- 19.130.040 Certain radio equipment—Application of chapter.
- 19.130.050 Equipment not intended for connection to telephone network and used equipment located on customer's premises—Application of chapter.
- 19.130.060 Violations—Application of consumer protection act.
- 19.130.900 Chapter cumulative.
- 19.130.901 Short title.

19.130.010 Legislative findings. The legislature finds that the federal deregulation of the telephone industry provides telephone users with the opportunity to purchase and use telephone and other telecommunications equipment suited to their needs. The legislature finds that competitive markets function optimally when potential buyers have adequate information about the capabilities and reliability of the equipment offered for sale. The legislature further finds that disclosure of certain product information will benefit both buyers and sellers of telephone and other telecommunications equipment and is in the public interest. [1984 c 275 § 1.]

19.130.020 Sales of new or reconditioned telephone equipment—Disclosure of certain information. Any person offering for sale or selling new or reconditioned telephone handsets or keysets, private branch exchanges, or private automatic branch exchanges of not more than a twenty-station capacity, shall clearly disclose prior to sale by

methods which may include posting of notice or printing on the equipment package the following:

- (1) Whether the equipment uses pulse, tone, pulse-or-tone, or other signaling methods, and a general description of the services that can be accessed through the equipment;
- (2) Whether the equipment is registered with the federal communications commission under the applicable federal regulations;
- (3) The person responsible for repair of the equipment;
- (4) Standard repair charges, if any; and
- (5) The terms of any written warranty offered with the equipment. [1984 c 275 § 2.]

19.130.030 Certain advertising media—Application of chapter. Nothing in this chapter applies to a radio station, television station, publisher, printer, or distributor of a newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of this chapter. [1984 c 275 § 3.]

19.130.040 Certain radio equipment—Application of chapter. This chapter shall not apply to radio equipment used for land, marine, or air mobile service, or any like service, whether or not such equipment is capable of interconnection by manual or automatic means to a telephone line. [1984 c 275 § 4.]

19.130.050 Equipment not intended for connection to telephone network and used equipment located on customer's premises—Application of chapter. This chapter shall not apply to equipment not intended for connection to the telephone network, nor to used equipment located on the customer's premises. [1984 c 275 § 5.]

19.130.060 Violations—Application of consumer protection act. Violation of this chapter constitutes a violation of chapter 19.86 RCW, the consumer protection act. It shall be presumed that damages to the consumer are equal to the purchase price of any telephone equipment sold in violation of this chapter up to one hundred dollars. Additional damages must be proved. [1984 c 275 § 7.]

19.130.900 Chapter cumulative. The rights, obligations, and remedies under this chapter are in addition to any rights, obligations, or remedies under federal statutes or regulations or other state statutes or rules. [1984 c 275 § 6.]

19.130.901 Short title. This chapter may be known and cited as the telephone buyers' protection act. [1984 c 275 § 8.]

Chapter 19.134

CREDIT SERVICES ORGANIZATION ACT

Sections

- 19.134.010 Definitions.
 19.134.020 Prohibited conduct.
 19.134.030 Surety bond and trust account—Exception to requirement.

- 19.134.040 Information statement—Prerequisite to contract or payment—File maintained.
 19.134.050 Information statement—Contents.
 19.134.060 Contract for purchase of services—Contents—Notice of cancellation—Buyer's copy.
 19.134.070 Waiver of rights—Violations—Enforcement—Unfair business practice.
 19.134.080 Damages—Attorney's fees.
 19.134.900 Short title.

19.134.010 Definitions. As used in this chapter:

(1) "Buyer" means any individual who is solicited to purchase or who purchases the services of a credit services organization.

(2)(a) "Credit services organization" means any person who, with respect to the extension of credit by others, sells, provides, performs, or represents that he or she can or will sell, provide, or perform, in return for the payment of money or other valuable consideration any of the following services:

(i) Improving, saving, or preserving a buyer's credit record, history, or rating;

(ii) Obtaining an extension of credit for a buyer;

(iii) Stopping, preventing, or delaying the foreclosure of a deed of trust, mortgage, or other security agreement; or

(iv) Providing advice or assistance to a buyer with regard to either (a)(i), (a)(ii), or (a)(iii) of this subsection.

(b) "Credit services organization" does not include:

(i) Any person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States or a lender approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the national housing act;

(ii) Any bank, savings bank, or savings and loan institution whose deposits or accounts are eligible for insurance by the federal deposit insurance corporation or the federal savings and loan insurance corporation, or a subsidiary of such bank, savings bank, or savings and loan institution;

(iii) Any credit union, federal credit union, or out-of-state credit union doing business in this state under chapter 31.12 RCW;

(iv) Any nonprofit organization exempt from taxation under section 501(c)(3) of the internal revenue code;

(v) Any person licensed as a real estate broker by this state if the person is acting within the course and scope of that license;

(vi) Any person licensed as a collection agency pursuant to chapter 19.16 RCW if acting within the course and scope of that license;

(vii) Any person licensed to practice law in this state if the person renders services within the course and scope of his or her practice as an attorney;

(viii) Any broker-dealer registered with the securities and exchange commission or the commodity futures trading commission if the broker-dealer is acting within the course and scope of that regulation;

(ix) Any consumer reporting agency as defined in the federal fair credit reporting act, 15 U.S.C. Secs. 1681 through 1681t; or

(x) Any mortgage broker as defined in RCW 19.146.010 if acting within the course and scope of that definition.

(3) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, or household purposes. [1989 c 303 § 1; 1986 c 218 § 2.]

19.134.020 Prohibited conduct. A credit services organization, its salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a credit services organization may not do any of the following:

(1) Charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for the buyer, unless the credit services organization has obtained a surety bond of ten thousand dollars issued by a surety company admitted to do business in this state and established a trust account at a federally insured bank or savings and loan association located in this state. The surety bond shall run to the state of Washington and the buyers. The surety bond shall be issued on the condition that the principal comply with all provisions of this chapter and fully perform on all contracts entered into with buyers. The surety bond shall be continuous until canceled and shall remain in full force and unimpaired at all times to comply with this section. The surety's liability for all claims in the aggregate against the continuous bond shall not exceed the penal sum of the bond. An action on the bond may be brought by the state or by any buyer by filing a complaint in a court of competent jurisdiction, including small claims court, within one year of cancellation of the surety bond. A complaint may be mailed by registered or certified mail, return receipt requested, to the surety and shall constitute good and sufficient service on the surety;

(2) Charge or receive any money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is upon substantially the same terms as those available to the general public;

(3) Make or counsel or advise any buyer to make any statement that is untrue or misleading or that should be known by the exercise of reasonable care to be untrue or misleading, to a credit reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit with respect to a buyer's credit worthiness, credit standing, or credit capacity;

(4) Make or use any untrue or misleading representations in the offer or sale of the services of a credit services organization or engage, directly or indirectly, in any act, practice, or course of business that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization. [1989 c 303 § 2; 1986 c 218 § 3.]

19.134.030 Surety bond and trust account—Exception to requirement. If a credit services organization is in compliance with RCW 19.134.020(1), the salesperson, agent, or representative who sells the services of that organization is not required to obtain a surety bond and establish a trust account. [1986 c 218 § 4.]

19.134.040 Information statement—Prerequisite to contract or payment—File maintained. Before the execution of a contract or agreement between the buyer and a credit services organization or before the receipt by the credit services organization of any money or other valuable consideration, whichever occurs first, the credit services organization shall provide the buyer with a statement in writing, containing all the information required by RCW 19.134.050. The credit services organization shall maintain on file for a period of two years an exact copy of the statement, personally signed by the buyer, acknowledging receipt of a copy of the statement. [1986 c 218 § 5.]

19.134.050 Information statement—Contents. The information statement required under RCW 19.134.040 shall include all of the following:

(1)(a) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by any consumer reporting agency, as provided under the federal Fair Credit Reporting Act, 15 U.S.C. Secs. 1681 through 1681t;

(b) A statement that the buyer may review his or her consumer reporting agency file at no charge if a request is made to the consumer credit reporting agency within thirty days after receiving notice that credit has been denied; and

(c) The approximate price the buyer will be charged by the consumer reporting agency to review his or her consumer reporting agency file;

(2) A complete and accurate statement of the buyer's right to dispute the completeness or accuracy of any item contained in any file on the buyer maintained by any consumer reporting agency;

(3) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total amount the buyer will have to pay, or become obligated to pay, for the services;

(4) A statement asserting the buyer's right to proceed against the bond or trust account required under RCW 19.134.020; and

(5) The name and address of the surety company that issued the bond, or the name and address of the depository and the trustee and the account number of the trust account. [1986 c 218 § 6.]

19.134.060 Contract for purchase of services—Contents—Notice of cancellation—Buyer's copy. (1) Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, dated, signed by the buyer, and include all of the following:

(a) A conspicuous statement in bold face type, in immediate proximity to the space reserved for the signature of the buyer, as follows: "You, the buyer, may cancel this contract at any time prior to midnight of the fifth day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right";

(b) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to some other person;

(c) A full and detailed description of the services to be performed by the credit services organization for the buyer,

including all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed, or estimated length of time for performing the services;

(d) The credit services organization's principal business address and the name and address of its agent in the state authorized to receive service of process;

(2) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" that shall be attached to the contract, be easily detachable, and contain in bold face type the following statement written in the same language as used in the contract.

"Notice of Cancellation

You may cancel this contract, without any penalty or obligation within five days from the date the contract is signed.

If you cancel any payment made by you under this contract, it will be returned within ten days following receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed dated copy of this cancellation notice, or any other written notice to (name of seller) at (address of seller) (place of business) not later than midnight (date)

I hereby cancel this transaction,
(date)
(purchaser's signature) "

The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed. [1986 c 218 § 7.]

19.134.070 Waiver of rights—Violations—Enforcement—Unfair business practice. (1) Any waiver by a buyer of any part of this chapter is void. Any attempt by a credit services organization to have a buyer waive rights given by this chapter is a violation of this chapter.

(2) In any proceeding involving this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(3) Any person who violates this chapter is guilty of a gross misdemeanor. Any district court of this state has jurisdiction in equity to restrain and enjoin the violation of this chapter.

(4) This section does not prohibit the enforcement by any person of any right provided by this or any other law.

(5) A violation of this chapter by a credit services organization is an unfair business practice as provided in chapter 19.86 RCW. [1986 c 218 § 8.]

19.134.080 Damages—Attorney's fees. (1) Any buyer injured by a violation of this chapter may bring any action for recovery of damages. Judgment shall be entered for actual damages, but in no case less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and costs. An award may also be entered for punitive damages.

(2) The remedies provided under this chapter are in addition to any other procedures or remedies for any

violation or conduct provided for in any other law. [1986 c 218 § 9.]

19.134.900 Short title. This chapter may be known and cited as the "credit services organizations act." [1986 c 218 § 1.]

Chapter 19.138

SELLERS OF TRAVEL

(Formerly: Travel charter and tour operators)

Sections

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- 19.138.903 Effective date—1994 c 237.
- 19.138.904 Implementation—1994 c 237.

19.138.010 Legislative finding and declaration. The legislature finds and declares that advertising, sales, and business practices of certain sellers of travel have worked financial hardship upon the people of this state; that the travel business has a significant impact upon the economy and well-being of this state and its people; that problems have arisen regarding certain sales of travel; and that the public welfare requires registration of sellers of travel in order to eliminate unfair advertising, sales and business practices. The legislature further finds it necessary to establish standards that will safeguard the people against financial hardship and to encourage fair dealing and prosperity in the travel business. [1994 c 237 § 1; 1986 c 283 § 1.]

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

(1) "Department" means the department of licensing.

(2) "Director" means the director of licensing or the director's designee.

(3) "Seller of travel" means a person, firm, or corporation both inside and outside the state of Washington, who transacts business with Washington consumers for travel services.

(a) "Seller of travel" includes a travel agent and any person who is an independent contractor or outside agent for a travel agency or other seller of travel whose principal duties include consulting with and advising persons concerning travel arrangements or accommodations in the conduct or administration of its business. If a seller of travel is employed by a seller of travel who is registered under this chapter, the employee need not also be registered.

(b) "Seller of travel" does not include:

(i) An air carrier;

(ii) An owner or operator of a vessel, including an ocean common carrier as defined in 46 U.S.C. App. 1702(18), an owner or charterer of a vessel that is required to establish its financial responsibility in accordance with the requirements of the federal maritime commission, 46 U.S.C. App. 817 (e), and a steamboat company as defined in RCW 84.12.200 whether or not operating over and upon the waters of this state;

(iii) A motor carrier;

(iv) A rail carrier;

(v) A charter party carrier of passengers as defined in RCW 81.70.020;

(vi) An auto transportation company as defined in RCW 81.68.010;

(vii) A hotel or other lodging accommodation;

(viii) An affiliate of any person or entity described in (i) through (vii) of this subsection (3)(b) that is primarily engaged in the sale of travel services provided by the person or entity. For purposes of this subsection (3)(b)(viii), an "affiliate" means a person or entity owning, owned by, or under common ownership, with "owning," "owned," and "ownership" referring to equity holdings of at least eighty percent;

(ix) Direct providers of transportation by air, sea, or ground, or hotel or other lodging accommodations who do not book or arrange any other travel services.

(4) "Travel services" includes transportation by air, sea, or ground, hotel or any lodging accommodations, package tours, or vouchers or coupons to be redeemed for future travel or accommodations for a fee, commission, or other valuable consideration.

(5) "Advertisement" includes, but is not limited to, a written or graphic representation in a card, brochure, newspaper, magazine, directory listing, or display, and oral, written, or graphic representations made by radio, television, or cable transmission that relates to travel services.

(6) "Transacts business with Washington consumers" means to directly offer or sell travel services to Washington consumers, including the placement of advertising in media based in the state of Washington or that is primarily directed to Washington residents. Advertising placed in national print or electronic media alone does not constitute "transacting

business with Washington consumers." Those entities who only wholesale travel services are not "transacting business with Washington consumers" for the purposes of this chapter. [1996 c 180 § 1; 1994 c 237 § 2.]

Effective date—1996 c 180: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1996]." [1996 c 180 § 10.]

19.138.030 Advertising—Restrictions—Records. A seller of travel shall not advertise that any travel services are or may be available unless he or she has, prior to the advertisement, determined that the product advertised was available at the time the advertising was placed. This determination can be made by the seller of travel either by use of an airline computer reservation system, or by written confirmation from the vendor whose program is being advertised.

It is the responsibility of the seller of travel to keep written or printed documentation of the steps taken to verify that the advertised offer was available at the time the advertising was placed. These records are to be maintained for at least two years after the placement of the advertisement. [1996 c 180 § 2; 1994 c 237 § 10; 1986 c 283 § 3.]

Effective date—1996 c 180: See note following RCW 19.138.021.

19.138.040 Written statement by seller of travel—Contents. At or prior to the time of full or partial payment for any travel services, the seller of travel shall furnish to the person making the payment a written statement conspicuously setting forth the information contained in subsections (1) through (6) of this section. If the sale of travel services is made over the telephone or by other electronic media and payment is made by credit or debit card, the seller of travel shall transmit to the person making the payment the written statement required by this section within three business days of the consumer's credit or debit card authorization. The written statement shall contain the following information:

(1) The name and business address and telephone number of the seller of travel.

(2) The amount paid, the date of such payment, the purpose of the payment made, and an itemized statement of the balance due, if any.

(3) The registration number of the seller of travel required by this chapter.

(4) The name of the vendor with whom the seller of travel has contracted to provide travel arrangements for a consumer and all pertinent information relating to the travel as known by the seller of travel at the time of booking. The seller of travel will make known further details as soon as received from the vendor. All information will be provided with final documentation.

(5) The conditions, if any, upon which the contract between the seller of travel and the passenger may be canceled, and the rights and obligations of all parties in the event of cancellation.

(6) A statement in eight-point boldface type in substantially the following form:

"If transportation or other services are canceled by the seller of travel, all sums paid to the seller of travel for services not performed in accordance with the contract

between the seller of travel and the purchaser will be refunded within thirty days of receiving the funds from the vendor with whom the services were arranged, or if the funds were not sent to the vendor, the funds shall be returned within fourteen days after cancellation by the seller of travel to the purchaser unless the purchaser requests the seller of travel to apply the money to another travel product and/or date." [1996 c 180 § 3; 1994 c 237 § 11; 1986 c 283 § 4.]

Effective date—1996 c 180: See note following RCW 19.138.021.

19.138.050 Cancellation—Refund—Material misrepresentation—Exception. (1) If the transportation or other services contracted for are canceled, or if the money is to be refunded for any reason, the seller of travel shall refund to the person with whom it contracts for travel services, the money due the person within thirty days of receiving the funds from the vendor with whom the services were arranged. If the funds were not sent to the vendor and remain in the possession of the seller of travel, the funds shall be refunded within fourteen days.

(2) Any material misrepresentation with regard to the transportation and other services offered shall be deemed to be a cancellation necessitating the refund required by this section.

(3) When travel services are paid to a vendor and charged to a consumer's credit card by the seller of travel, and the arrangements are subsequently canceled by the consumer, the vendor, or the seller of travel, any refunds to the consumer's credit card must be applied for within ten days from the date of cancellation.

(4) The seller of travel shall not be obligated to refund any cancellation penalties imposed by the vendor with whom the services were arranged if these penalties were disclosed in the statement required under RCW 19.138.040. [1994 c 237 § 12; 1986 c 283 § 5.]

19.138.090 Application of chapter to public charter operators. This chapter does not apply to the sale of public transportation by a public charter operator who is complying with regulations of the United States department of transportation. [1986 c 283 § 9.]

19.138.100 Registration—Number posting, use—Duplicates—Fee—Assignment, transfer—New owner—Exemption. No person, firm, or corporation may act or hold itself out as a seller of travel unless, prior to engaging in the business of selling or advertising to sell travel services, the person, firm, or corporation registers with the director under this chapter and rules adopted under this chapter.

(1) The registration number must be conspicuously posted in the place of business and must be included in all advertisements. Any corporation which issues a class of equity securities registered under section 12 of the securities exchange act of 1934, and any subsidiary, the majority of voting stock of which is owned by such corporation including any wholly owned subsidiary of such corporation are not required to include company registration numbers in advertisements.

(2) The director shall issue duplicate registrations upon payment of a nominal duplicate registration fee to valid registration holders operating more than one office.

(3) No registration is assignable or transferable.

(4) If a registered seller of travel sells his or her business, when the new owner becomes responsible for the business, the new owner must comply with all provisions of this chapter, including registration.

(5) If a seller of travel is employed by or under contract as an independent contractor or an outside agent of a seller of travel who is registered under this chapter, the employee, independent contractor, or outside agent need not also be registered if:

(a) The employee, independent contractor, or outside agent is conducting business as a seller of travel in the name of and under the registration of the registered seller of travel; and

(b) All money received for travel services by the employee, independent contractor, or outside agent is collected in the name of the registered seller of travel and deposited directly into the registered seller of travel's trust account as required under this chapter. [1996 c 180 § 4; 1994 c 237 § 3.]

Effective date—1996 c 180: See note following RCW 19.138.021.

19.138.110 Registration—Application—Form—Rules—Report. An application for registration as a seller of travel shall be submitted in the form prescribed by rule by the director, and shall contain but not be limited to the following:

(1) The name, address, and telephone number of the seller of travel;

(2) Proof that the seller of travel holds a valid business license in the state of its principal state of business;

(3) A registration fee in an amount determined under RCW 43.24.086;

(4) The names, business addresses, and business phone numbers of all employees, independent contractors, or outside agents who sell travel and are covered by the seller of travel's registration. This subsection shall not apply to the out-of-state employees of a corporation that issues a class of equity securities registered under section 12 of the securities exchange act of 1934, and any subsidiary, the majority of voting stock of which is owned by the corporation;

(5) A report prepared and signed by a bank officer, licensed public accountant, or certified public accountant or other report, approved by the director, that verifies that the seller of travel maintains a trust account at a federally insured financial institution located in Washington state, or other approved account, the location and number of that trust account or other approved account, and verifying that the account exists as required by RCW 19.138.140. The director, by rule, may permit alternatives to the report that provides for at least the same level of verification. [1996 c 180 § 5; 1994 c 237 § 4.]

Effective date—1996 c 180: See note following RCW 19.138.021.

19.138.120 Registration—Renewal—Refusal—Notice—Hearing. (1) Each seller of travel shall renew its

registration on or before July 1 of every other year or as otherwise determined by the director.

(2) Renewal of a registration is subject to the same provisions covering issuance, suspension, and revocation of a registration originally issued.

(3) The director may refuse to renew a registration for any of the grounds set out under RCW 19.138.130, and where the past conduct of the applicant affords reasonable grounds for belief that the applicant will not carry out the applicant's duties in accordance with law and with integrity and honesty. The director shall promptly notify the applicant in writing by certified mail of its intent to refuse to renew the registration. The registrant may, within twenty-one days after receipt of that notice or intent, request a hearing on the refusal. The director may permit the registrant to honor commitments already made to its customers, but no new commitments may be incurred, unless the director is satisfied that all new commitments are completely bonded or secured to insure that the general public is protected from loss of money paid to the registrant. It is the responsibility of the registrant to contest the decision regarding conditions imposed or registration denied through the process established by the administrative procedure act, chapter 34.05 RCW. [1994 c 237 § 5.]

19.138.130 Registration—Denial, suspension, revocation, reinstatement. (1) The director may deny, suspend, or revoke the registration of a seller of travel if the director finds that the applicant:

(a) Was previously the holder of a registration issued under this chapter, and the registration was revoked for cause and never reissued by the director, or the registration was suspended for cause and the terms of the suspension have not been fulfilled;

(b) Has been found guilty of a felony within the past five years involving moral turpitude, or of a misdemeanor concerning fraud or conversion, or suffers a judgment in a civil action involving willful fraud, misrepresentation, or conversion;

(c) Has made a false statement of a material fact in an application under this chapter or in data attached to it;

(d) Has violated this chapter or failed to comply with a rule adopted by the director under this chapter;

(e) Has failed to display the registration as provided in this chapter;

(f) Has published or circulated a statement with the intent to deceive, misrepresent, or mislead the public; or

(g) Has committed a fraud or fraudulent practice in the operation and conduct of a travel agency business, including, but not limited to, intentionally misleading advertising.

(2) If the seller of travel is found in violation of this chapter or in violation of the consumer protection act, chapter 19.86 RCW, by the entry of a judgment or by settlement of a claim, the director may revoke the registration of the seller of travel, and the director may reinstate the registration at the director's discretion. [1996 c 180 § 6; 1994 c 237 § 6.]

Effective date—1996 c 180: See note following RCW 19.138.021.

19.138.140 Trust account—Filing—Notice of change—Other funds or accounts—Rules—Exceptions.

(1) A seller of travel shall deposit in a trust account maintained in a federally insured financial institution located in Washington state, or other account approved by the director, all sums held for more than five business days that are received from a person or entity, for retail travel services offered by the seller of travel. This subsection does not apply to travel services sold by a seller of travel, when payments for the travel services are made through the airline reporting corporation either by cash or credit or debit card sale.

(2) The trust account or other approved account required by this section shall be established and maintained for the benefit of any person or entity paying money to the seller of travel. The seller of travel shall not in any manner encumber the amounts in trust and shall not withdraw money from the account except the following amounts may be withdrawn at any time:

(a) Partial or full payment for travel services to the entity directly providing the travel service;

(b) Refunds as required by this chapter;

(c) The amount of the sales commission;

(d) Interest earned and credited to the trust account or other approved account;

(e) Remaining funds of a purchaser once all travel services have been provided or once tickets or other similar documentation binding upon the ultimate provider of the travel services have been provided; or

(f) Reimbursement to the seller of travel for agency operating funds that are advanced for a customer's travel services.

(3) At the time of registration, the seller of travel shall file with the department the account number and the name of the financial institution at which the trust account or other approved account is held as set forth in RCW 19.138.110. The seller of travel shall notify the department of any change in the account number or location within one business day of the change.

(4) The director, by rule, may allow for the use of other types of funds or accounts only if the protection for consumers is no less than that provided by this section.

(5) The seller of travel need not comply with the requirements of this section if all of the following apply, except as exempted in subsection (1) of this section:

(a) The payment is made by credit card;

(b) The seller of travel does not deposit, negotiate, or factor the credit card charge or otherwise seek to obtain payment of the credit card charge to any account over which the seller of travel has any control; and

(c) If the charge includes transportation, the carrier that is to provide the transportation processes the credit card charge, or if the charge is only for services, the provider of services processes the credit card charges.

(6) If the seller of travel maintains its principal place of business in another state and maintains a trust account or other approved account in that state consistent with the requirement of this section, and if that seller of travel has transacted business within the state of Washington in an amount exceeding five million dollars for the preceding year, the out-of-state trust account or other approved account may be substituted for the in-state account required under this section. [1996 c 180 § 7; 1994 c 237 § 8.]

Effective date—1996 c 180: See note following RCW 19.138.021.

19.138.150 Standard of duties, care. A seller of travel shall perform its duties reasonably and with ordinary care in providing travel services. [1994 c 237 § 9.]

19.138.160 Nonresident seller of travel—Director as attorney if none appointed—Service of process—Notice.

(1) A nonresident seller of travel soliciting business or selling travel in the state of Washington, by mail, telephone, or otherwise, either directly or indirectly, is deemed, absent any other appointment, to have appointed the director to be the seller of travel's true and lawful attorney upon whom may be served any legal process against that nonresident arising or growing out of a transaction involving travel services. That solicitation signifies the nonresident's agreement that process against the nonresident that is served as provided in this chapter is of the same legal force and validity as if served personally on the nonresident seller of travel.

(2) Service of process upon a nonresident seller of travel shall be made by leaving a copy of the process with the director. The fee for the service of process shall be determined by the director by rule. That service is sufficient service upon the nonresident if the plaintiff or plaintiff's attorney of record sends notice of the service and a copy of the process by certified mail before service or immediately after service to the defendant at the address given by the nonresident in a solicitation furnished by the nonresident, and the sender's post office receipt of sending and the plaintiff's or plaintiff's attorney's affidavit of compliance with this section are returned with the process in accordance with Washington superior court civil rules. Notwithstanding the foregoing requirements, however, once service has been made on the director as provided in this section, in the event of failure to comply with the requirement of notice to the nonresident, the court may order that notice be given that will be sufficient to apprise the nonresident. [1994 c 237 § 14.]

19.138.170 Director—Powers and duties. The director has the following powers and duties:

(1) To adopt, amend, and repeal rules to carry out the purposes of this chapter;

(2) To issue and renew registrations under this chapter and to deny or refuse to renew for failure to comply with this chapter;

(3) To suspend or revoke a registration for a violation of this chapter;

(4) To establish fees;

(5) Upon receipt of a complaint, to inspect and audit the books and records of a seller of travel. The seller of travel shall immediately make available to the director those books and records as may be requested at the seller of travel's place of business or at a location designated by the director. For that purpose, the director shall have full and free access to the office and places of business of the seller of travel during regular business hours; and

(6) To do all things necessary to carry out the functions, powers, and duties set forth in this chapter. [1994 c 237 § 13.]

19.138.1701 Reimbursement of appropriated funds—Fees. Any state funds appropriated to the department of licensing for implementation of chapter 237, Laws of 1994 for the biennium ending June 30, 1995, shall be reimbursed by June 30, 1997, by an assessment of fees sufficient to cover all costs of implementing chapter 237, Laws of 1994. [1994 c 237 § 30.]

19.138.180 Director—Investigations—Publication of violation. The director, in the director's discretion, may:

(1) Annually, or more frequently, make public or private investigations within or without this state as the director deems necessary to determine whether a registration should be granted, denied, revoked, or suspended, or whether a person has violated or is about to violate this chapter or a rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms of this chapter;

(2) Publish information concerning a violation of this chapter or a rule adopted or order issued under this chapter; and

(3) Investigate complaints concerning practices by sellers of travel for which registration is required by this chapter. [1994 c 237 § 15.]

19.138.190 Investigations—Powers of director, officer. For the purpose of an investigation or proceeding under this chapter, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry. [1994 c 237 § 16.]

19.138.200 Director or individuals acting on director's behalf—Immunity. The director or individuals acting on the director's behalf are immune from suit in any action, civil or criminal, based on disciplinary proceedings or other official acts performed in the course of their duties in the administration and enforcement of this chapter. [1994 c 237 § 20.]

19.138.210 Violations—Cease and desist order—Notice—Hearing. If it appears to the director that a person has engaged in an act or practice constituting a violation of this chapter or a rule adopted or order issued under this chapter, the director may, in the director's discretion, issue an order directing the person to cease and desist from continuing the act or practice. Reasonable notice of an opportunity for a hearing shall be given. The director may issue a temporary order pending the hearing, which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom the notice is addressed does not request a hearing within fifteen days after the receipt of the notice. [1994 c 237 § 17.]

19.138.220 Enjoining unregistered person—Additional to criminal liability. The attorney general, a county prosecuting attorney, the director, or any person may, in accordance with the law of this state governing injunc-

tions, maintain an action in the name of this state to enjoin a person or entity selling travel services for which registration is required by this chapter without registration from engaging in the practice until the required registration is secured. However, the injunction shall not relieve the person or entity selling travel services without registration from criminal prosecution therefor, but the remedy by injunction shall be in addition to any criminal liability. [1994 c 237 § 18.]

19.138.230 Violation of injunction—Penalties—Jurisdiction. A person or business that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, that shall be paid to the department. For the purpose of this section, the superior court issuing an injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1994 c 237 § 19.]

19.138.240 Violations—Civil penalties—Hearing—Failure to pay. (1) The director may assess against a person or organization that violates this chapter, or a rule adopted under this chapter, a civil penalty of not more than one thousand dollars for each violation.

(2) The person or organization shall be afforded the opportunity for a hearing, upon request made to the director within thirty days after the date of issuance of the notice of assessment. The hearing shall be conducted in accordance with chapter 34.05 RCW.

(3) A civil penalty shall be imposed by the court for each violation of this chapter in an amount not less than five hundred dollars nor more than two thousand dollars per violation.

(4) If a person fails to pay an assessment after it has become a final and unappealable order, or after the court has entered final judgment in favor of the state, the director may recover the amount assessed by action in the appropriate superior court. In the action, the validity and appropriateness of the final order imposing the penalty shall not be subject to review. [1994 c 237 § 21.]

19.138.250 Violation—Restitution assessed by director. The director may assess against a person or organization that violates this chapter, or a rule adopted under this chapter, the full amount of restitution as may be necessary to restore to a person an interest in money or property, real or personal, that may have been acquired by means of an act prohibited by or in violation of this chapter. [1994 c 237 § 22.]

19.138.260 Registration prerequisite to suit. In order to maintain or defend a lawsuit, a seller of travel must be registered with the department as required by this chapter and rules adopted under this chapter. [1994 c 237 § 23.]

19.138.270 Violations—Giving false information—Criminal penalties. (1) Each person who knowingly violates this chapter or who knowingly gives false or incorrect information to the director, attorney general, or

county prosecuting attorney in filing statements required by this chapter, whether or not the statement or report is verified, is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(2) A person who violates this chapter or who gives false or incorrect information to the director, attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not the statement or report is verified, is guilty of a misdemeanor punishable under chapter 9A.20 RCW. [1994 c 237 § 24.]

19.138.280 Action for damages—Costs, attorneys' fees—No limitation of consumer protection act. In addition to any other penalties or remedies under chapter 19.86 RCW, a person who is injured by a violation of this chapter may bring an action for recovery of actual damages, including court costs and attorneys' fees. No provision in this chapter shall be construed to limit any right or remedy provided under chapter 19.86 RCW. [1994 c 237 § 28.]

19.138.290 Violations—Application of consumer protection act. The legislature finds that the practices governed by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive. [1994 c 237 § 27.]

19.138.300 Administrative procedure act governs. The administrative procedure act, chapter 34.05 RCW, shall, wherever applicable, govern the rights, remedies, and procedures respecting the administration of this chapter. [1994 c 237 § 25.]

19.138.310 Filing public records—Making information public for public interest. All information, documents, and reports filed with the director under this chapter are matters of public record and shall be open to public inspection, subject to reasonable regulation. The director may make public, on a periodic or other basis, the information as may be necessary or appropriate in the public interest concerning the registration, reports, and information filed with the director or any other matters to the administration and enforcement of this chapter. [1994 c 237 § 26.]

19.138.900 Severability—1986 c 283. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 283 § 11.]

19.138.901 Effective date—1986 c 283. This act shall take effect January 1, 1987. [1986 c 283 § 12.]

19.138.902 Severability—1994 c 237. If any provision of this act or its application to any person or circum-

stance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 237 § 32.]

19.138.903 Effective date—1994 c 237. Sections 1 through 29 of this act shall take effect January 1, 1996. [1994 c 237 § 33.]

19.138.904 Implementation—1994 c 237. The director of licensing, beginning July 1, 1995, may take such steps as are necessary to ensure that this act is implemented on its *effective date[s]. [1994 c 237 § 35.]

*Reviser's note: 1994 c 237 has different effective dates. The effective date for sections 1 through 29 is January 1, 1996, and the effective date for the remainder of the act is June 9, 1994.

Chapter 19.142

HEALTH STUDIO SERVICES

Sections

- 19.142.005 Findings and declaration.
- 19.142.010 Definitions.
- 19.142.020 Membership plans—Special offers—Misrepresentations prohibited.
- 19.142.030 Written contract required.
- 19.142.040 Contents of contract.
- 19.142.050 Notice of cancellation—Refund.
- 19.142.060 Trust account—Written receipt—Record of deposits—Buyers' claims.
- 19.142.070 Surety bond in lieu of trust account.
- 19.142.080 Failure to comply with bond or trust account requirements—Class C felony.
- 19.142.090 Waivers of this chapter—Contracts not in compliance with this chapter—Void and unenforceable.
- 19.142.100 Violations—Application of consumer protection act.
- 19.142.110 Attorneys' fees.
- 19.142.900 Chapter cumulative and nonexclusive.
- 19.142.901 Prospective application of chapter.

19.142.005 Findings and declaration. The legislature finds that there exist in connection with a substantial number of contracts for health studio services certain practices and business methods which have worked undue financial hardship upon some of the citizens of the state and that existing legal remedies are inadequate to correct existing problems in the industry. The legislature declares that it is a matter of public interest that the citizens of our state be assured reasonable protection when contracting for health studio services. [1987 c 317 § 1.]

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

(1) "Business day" means any day except a Sunday or a legal holiday.

(2) "Buyer" or "member" means a person who purchases health studio services.

(3) "Health studio" includes any person or entity engaged in the sale of instruction, training, assistance or use of facilities which purport to assist patrons to improve their physical condition or appearance through physical exercise, body building, weight loss, figure development, the martial arts, or any other similar activity. For the purposes of this chapter, "health studio" does not include: (a) Public com-

mon schools, private schools approved under RCW 28A.195.010, and public or private institutions of higher education; (b) persons providing professional services within the scope of a person's license under Title 18 RCW; (c) bona fide nonprofit organizations which have been granted tax-exempt status by the Internal Revenue Service, the functions of which as health studios are only incidental to their overall functions and purposes; (d) a person or entity which offers physical exercise, body building, figure development or similar activities as incidental features of a plan of instruction or assistance relating to diet or control of eating habits; (e) bona fide nonprofit corporations organized under chapter 24.03 RCW which have members and whose members have meaningful voting rights to elect and remove a board of directors which is responsible for the operation of the health club and corporation; and (f) a preexisting facility primarily offering aerobic classes, where the initiation fee is less than fifty dollars and no memberships are sold which exceed one year in duration. For purposes of this subsection, "preexisting facility" means an existing building used for health studio services covered by the fees collected.

(4) "Health studio services" means instruction, services, privileges, or rights offered for sale by a health studio. "Health studio services" do not include: (a) Instruction or assistance relating to diet or control of eating habits not involving substantial on-site physical exercise, body building, figure development, or any other similar activity; or (b) recreational or social programs which either involve no physical exercise or exercise only incidental to the program.

(5) "Initiation or membership fee" means a fee paid either in a lump sum or in installments within twelve months of execution of the health studio services contract on a one-time basis when a person first joins a health studio for the privilege of belonging to the health studio.

(6) "Special offer or discount" means any offer of health studio services at a reduced price or without charge to a prospective member.

(7) "Use fees or dues" means fees paid on a regular periodic basis for use of a health studio. This does not preclude prepayment of use fees at the buyer's option. [1990 c 55 § 1; 1990 c 33 § 556; 1987 c 317 § 2.]

Reviser's note: This section was amended by 1990 c 33 § 556 and by 1990 c 55 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

19.142.020 Membership plans—Special offers—Misrepresentations prohibited. (1) Each health studio shall prepare and provide to each prospective buyer a written comprehensive list of all membership plans of health studio services offered for sale by the health studio. The list shall contain a description and the respective price of each membership plan of health studio services offered.

(2) A health studio is prohibited from selling a membership plan of health studio services not included in the list.

(3) A health studio is prohibited from making a special offer or offering a discount unless such special offer or discount is made in writing and available to all prospective members: PROVIDED, That a special offer or discount

offered to groups need not be available to all similarly-situated prospective members.

(4) A health studio is prohibited from making any misrepresentation to any prospective buyer or current member regarding qualifications of staff, availability or quality of facilities or services, or results obtained through exercise, body building, figure development, or weight loss programs, or the present or maximum number of customers who may contract to use the facilities or services. [1987 c 317 § 3.]

19.142.030 Written contract required. A contract for the sale of health studio services shall be in writing. A copy of the contract, as well as the rules of the health studio if not stated in the contract, shall be given to the buyer when the buyer signs the contract. [1987 c 317 § 4.]

19.142.040 Contents of contract. A contract for health studio services shall include all of the following:

(1) The name and address of the health studio facilities operator;

(2) The date the buyer signed the contract;

(3) A description of the health studio services and general equipment to be provided, or acknowledgement in a conspicuous form that the buyer has received a written description of the health studio services and equipment to be provided. If any of the health studio services or equipment are to be delivered at a planned facility, at a facility under construction, or through substantial improvements to an existing facility, the description shall include a date for completion of the facility, construction, or improvement. Health studio services must begin within twelve months from the date the contract is signed unless the completion of the facility, construction, or improvement is delayed due to war, or fire, flood, or other natural disaster;

(4) A statement of the duration of the contract. No contract for health studio services may require payments or financing by the buyer over a period in excess of thirty-six months from the date of the contract, nor may any contract term be measured by or be for the life of the buyer;

(5) The use fees or dues to be paid by the buyer and if such fees are subject to periodic adjustment. Use fees or dues may not be raised more than once in any calendar year;

(6) A complete statement of the rules of the health studio or an acknowledgement in a conspicuous form that the buyer has received a copy of the rules;

(7) Clauses which notify the buyer of the right to cancel:

(a) If the buyer dies or becomes totally disabled. The contract may require that the disability be confirmed by an examination of a physician agreeable to the buyer and the health studio;

(b)(i) Subject to (b)(ii) of this subsection, if the buyer moves his or her permanent residence to a location more than twenty-five miles from the health studio or an affiliated health studio offering the same or similar services and facilities at no additional expense to the buyer and the buyer cancels after one year from signing the contract if the contract extends for more than one year. The health studio may require reasonable evidence of relocation;

(ii) If at the time of signing the contract requiring payment of an initiation or membership fee the buyer lived more than twenty-five miles from the health studio, the buyer may cancel under (7)(b)(i) of this section only if the buyer moves an additional five miles or more from the health studio.

(c) If a contract extends for more than one year, the buyer may cancel the contract for any reason upon thirty days' written notice to the health studio;

(d) If the health studio facilities are permanently closed and comparable facilities owned and operated by the seller are not made available within a ten-mile radius of the closed facility;

(e) If a facility, construction, or improvement is not completed by the date represented by the contract;

(f) If the contract for health studio services was sold prior to the opening of the facility, the buyer may cancel within the first five business days the facility opens for use of the buyer and the health studio begins to provide the agreed upon health studio services;

(8) Clauses explaining the buyer's right to a refund and relief from future payment obligations after cancellation of the contract;

(9) A provision under a conspicuous caption in capital letters and boldface type stating substantially the following:

"BUYER'S RIGHT TO CANCEL

If you wish to cancel this contract without penalty, you may cancel it by delivering or mailing a written notice to the health studio. The notice must say that you do not wish to be bound by the contract and must be delivered or mailed before midnight of the third business day after you sign this contract. The notice must be mailed to (insert name and mailing address of health studio). If you cancel within the three days, the health studio will return to you within thirty days all amounts you have paid."

[1990 c 55 § 2; 1987 c 317 § 5.]

19.142.050 Notice of cancellation—Refund. After receipt of a written notice of cancellation, the health studio shall provide a refund to the buyer within thirty days. The health studio may require the buyer to return any membership card or other materials which evidence membership in the health studio. The buyer is entitled to a refund and relief from future obligations for payments of initiation or membership fees and use fees or dues as follows:

(1) The buyer is entitled to a refund of the unused portion of any prepaid use fees or dues and relief from future obligations to pay use fees or dues concerning use after the date of cancellation.

(2)(a) Subject to (b) of this subsection, if a contract includes a one-time only initiation or membership fee and the buyer cancels pursuant to RCW 19.142.040(7)(a), the buyer is entitled to a pro rata refund of the fee less a predetermined amount not to exceed one-half of the initial initiation or membership fee if the contract clearly states what percentage of the fee is nonrefundable or refundable.

(b) If a contract includes a one-time only initiation or membership fee and the buyer cancels pursuant to RCW

19.142.040(7)(a) three years or more after the signing of the contract requiring payment of such fee, such fee is nonrefundable.

(3) If a contract includes an initiation or membership fee and the buyer cancels pursuant to RCW 19.142.040(7) (b) or (c), the buyer is entitled to a pro rata refund of the fee less a predetermined amount not to exceed one-half of the initial initiation or membership fee unless the following clause is contained in the contract and signed separately by the buyer. The clause shall be placed under a conspicuous caption in capital letters and bold face type stating the following:

NONREFUNDABLE AMOUNT

I UNDERSTAND THAT I HAVE PAID OR AM OBLIGATED TO PAY AS AN INITIATION OR MEMBERSHIP FEE, AND THAT UNDER NO CIRCUMSTANCES IS ANY PORTION OF THIS AMOUNT REFUNDABLE.

.....
(Buyer's Signature)

(4) If a contract includes a one-time only initiation or membership fee and the buyer cancels pursuant to RCW 19.142.040(7)(d), the buyer is entitled to a pro rata refund of the fee.

(5) If a contract includes a one-time only initiation or membership fee and the buyer cancels pursuant to RCW 19.142.040(7) (e) or (f), the buyer is entitled to a full refund of the fee.

If a buyer is entitled to a pro rata refund under this section, the amount shall be computed by dividing the contract price by the number of weeks in the contract term and multiplying the result by the number of weeks remaining in the contract term. If no term is stated in the contract, a term of thirty-six months shall be used. [1990 c 55 § 3; 1987 c 317 § 6.]

19.142.060 Trust account—Written receipt—Record of deposits—Buyers' claims. (1) All moneys paid to a health studio prior to the opening of the facility shall immediately be deposited in a trust account of a federally insured financial institution located in this state. The trust account shall be designated and maintained for the benefit of health studio members. Moneys maintained in the trust account shall be exempt from execution, attachment, or garnishment. A health studio shall not in any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds. Withdrawals from the trust account shall be made no sooner than thirty days after the opening of the entire facility.

(2) The health studio shall within seven days of the first deposit notify the office of the attorney general in writing, of the name, address, and location of the depository and any subsequent change thereof.

(3) The health studio shall provide the buyer with a written receipt for the money and shall provide written notice of the name, address, and location of the depository and any subsequent change thereof.

(4) The health studio shall maintain a record of each trust account deposit, including the name and address of each member whose funds are being deposited, the amount paid and the date of the deposit. Upon request of the attorney

general's office, upon five days' notice, such records shall be produced for inspection.

(5) If prior to the opening of the facility the status of the health studio is transferred to another, any sums in the trust account affected by the transfer shall simultaneously be transferred to an equivalent trust account of the successor, and the successor shall promptly notify the buyer and the office of the attorney general of the transfer and of the name, address, and location of the new depository.

(6) The buyer's claim to any money under this section is prior to that of any creditor of the health studio, including a trustee in bankruptcy or receiver.

(7) After the health studio receives a notice of cancellation of the contract, or if the health studio fails to open a facility at the stated date of completion and if the buyer so requests, then the health studio shall provide a refund within thirty days. [1987 c 317 § 7.]

19.142.070 Surety bond in lieu of trust account. The requirements of RCW 19.142.060 do not apply to any health studios which, prior to any preopening sales, have provided a bond guaranteeing the completion or opening of any facility for which contracts for health studio services were sold prior to the opening of the facility. The bond shall be drawn upon a surety in the amount of one hundred fifty thousand dollars, running to the state of Washington. An action on the bond may be brought by the office of the attorney general or by any buyer of a contract for health studio services sold prior to the opening of the facility. [1987 c 317 § 8.]

19.142.080 Failure to comply with bond or trust account requirements—Class C felony. Failure to furnish a bond as required by RCW 19.142.070 or to maintain a trust account as required by RCW 19.142.060 shall constitute a class C felony punishable as provided in chapter 9A.20 RCW. [1987 c 317 § 9.]

19.142.090 Waivers of this chapter—Contracts not in compliance with this chapter—Void and unenforceable. A health studio shall not request a buyer to waive any provision of this chapter. Any contract for health studio services which does not comply with the provisions of this chapter or in which a buyer waives any provision of this chapter is void and unenforceable as contrary to public policy. [1987 c 317 § 10.]

19.142.100 Violations—Application of consumer protection act. A violation of this chapter constitutes an unfair or deceptive act or practice and is a per se violation of the consumer protection act, chapter 19.86 RCW. [1987 c 317 § 11.]

19.142.110 Attorneys' fees. Buyers who prevail in any cause of action under this chapter are entitled to reasonable attorneys' fees. [1987 c 317 § 12.]

19.142.900 Chapter cumulative and nonexclusive. The provisions of this chapter are cumulative and nonexclu-

sive and do not affect any other remedy available at law. [1987 c 317 § 13.]

19.142.901 Prospective application of chapter. The provisions of this chapter shall not apply to any contracts for health studio services entered into before July 26, 1987. [1987 c 317 § 14.]

Chapter 19.146

MORTGAGE BROKER PRACTICES ACT

Sections

- 19.146.005 Findings and declaration.
- 19.146.010 Definitions.
- 19.146.020 Exemptions from chapter.
- 19.146.0201 Loan originator, mortgage broker—Prohibitions—Requirements.
- 19.146.030 Written disclosure of fees and costs—Rules—Contents—Lock-in agreement terms—Violations of certain federal requirements—Excess fees limited.
- 19.146.040 Written contract required—Written correspondent or loan brokerage agreement required.
- 19.146.050 Brokers to deposit moneys for third party provider services in trust account—Use of trust account.
- 19.146.060 Accounting requirements.
- 19.146.070 Fee, commission, or compensation—When permitted.
- 19.146.080 Borrowers unable to obtain loans—Mortgage broker to provide copies of certain documents—Conditions.
- 19.146.090 Advertising of residential mortgage loans to comply with certain federal requirements.
- 19.146.100 Violations of chapter—Application of consumer protection act.
- 19.146.110 Criminal penalties.
- 19.146.200 License—Required—Independent contractor—Suit or action as mortgage broker.
- 19.146.205 License—Application—Fee—Bond or alternative.
- 19.146.210 License—Requirements for issuance—Denial—Validity—Surrender—Rules.
- 19.146.215 Continuing education—Rules.
- 19.146.220 Director—Powers and duties—Violations as separate violations—Rules—Registered agent—Venue.
- 19.146.221 Action by director—Hearing—Sanction.
- 19.146.223 Director—Administration and interpretation.
- 19.146.225 Director—Rule-making powers.
- 19.146.227 Cease and desist order—Action to enjoin and enforce.
- 19.146.228 Fees—Rules.
- 19.146.230 Administrative procedure act application.
- 19.146.235 Director—Investigation powers—Duties of person subject to examination or investigation.
- 19.146.240 Violations—Claims against bond or alternative.
- 19.146.245 Violations—Liability.
- 19.146.250 Authority restricted to person named in license—Exceptions.
- 19.146.260 Office required—Registered agent.
- 19.146.265 Branch offices—Fee—Licenses—Rules.
- 19.146.280 Mortgage brokerage commission—Complaint review.
- 19.146.900 Short title.
- 19.146.901 Severability—1987 c 391.
- 19.146.902 Severability—1994 c 33.
- 19.146.903 Effective dates—1994 c 33.

19.146.005 Findings and declaration. The legislature finds and declares that the brokering of residential real estate loans substantially affects the public interest. The practices of mortgage brokers have had significant impact on the citizens of the state and the banking and real estate industries. It is the intent of the legislature to establish a state system of licensure in addition to rules of practice and conduct of mortgage brokers to promote honesty and fair dealing with citizens and to preserve public confidence in the

lending and real estate community. [1994 c 33 § 1; 1993 c 468 § 1; 1987 c 391 § 1.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

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

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(2) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(3) "Computer loan origination systems" or "CLO system" means the real estate mortgage financing information system defined by rule of the director.

(4) "Department" means the department of financial institutions.

(5) "Director" means the director of financial institutions.

(6) "Employee" means an individual who has an employment relationship acknowledged by both the employee and the licensee, and the individual is treated as an employee by the licensee for purposes of compliance with federal income tax laws.

(7) "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

(8) "Loan originator" means a person employed, either directly or indirectly, or retained as an independent contractor by a person required to be licensed as a mortgage broker, or a natural person who represents a person required to be licensed as a mortgage broker, in the performance of any act specified in subsection (10) of this section.

(9) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

(10) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) makes a residential mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan.

(11) "Person" means a natural person, corporation, company, partnership, or association.

(12) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

(13) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies. [1994 c 33 § 3; 1993 c 468 § 2; 1987 c 391 § 3.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.020 Exemptions from chapter. (1) Except as provided under subsections (2) and (3) of this section, the following are exempt from all provisions of this chapter:

(a) Any person doing business under the laws of this state or the United States relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, consumer loan companies, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof;

(b) An attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney;

(c) Any person doing any act under order of any court, except for a person subject to an injunction to comply with any provision of this chapter or any order of the director issued under this chapter;

(d) Any person making or acquiring a residential mortgage loan solely with his or her own funds for his or her own investment without intending to resell the residential mortgage loans;

(e) A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction;

(f) Any mortgage broker approved and subject to auditing by the federal national mortgage association, the government national mortgage association, or the federal home loan mortgage corporation;

(g) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (1)(g); and

(h) A real estate broker who provides only information regarding rates, terms, and lenders in connection with a CLO system, who receives a fee for providing such information, who conforms to all rules of the director with respect to the providing of such service, and who discloses on a form approved by the director that to obtain a loan the borrower must deal directly with a mortgage broker or lender.

However, a real estate broker shall not be exempt if he or she does any of the following:

(i) Holds himself or herself out as able to obtain a loan from a lender;

(ii) Accepts a loan application, or submits a loan application to a lender;

(iii) Accepts any deposit for third-party services or any loan fees from a borrower, whether such fees are paid before, upon, or after the closing of the loan;

(iv) Negotiates rates or terms with a lender on behalf of a borrower; or

(v) Provides the disclosure required by RCW 19.146.030(1).

(2) Those persons otherwise exempt under subsection (1)(d) or (f) of this section must comply with RCW 19.146.0201 and shall be subject to the director's authority to issue a cease and desist order for any violation of RCW 19.146.0201 and shall be subject to the director's authority to obtain and review books and records that are relevant to any allegation of such a violation.

(3) Any person otherwise exempted from the licensing provisions of this chapter may voluntarily submit an application to the director for a mortgage broker's license. The director shall review such application and may grant or deny licenses to such applicants upon the same grounds and with the same fees as may be applicable to persons required to be licensed under this chapter.

(a) Upon receipt of a license under this subsection, such an applicant is required to continue to maintain a valid license, is subject to all provisions of this chapter, and has no further right to claim exemption from the provisions of this chapter except as provided in (b) of this subsection.

(b) Any licensee under this subsection who would otherwise be exempted from the requirements of licensing by RCW 19.146.020 may apply to the director for exemption from licensing. The director shall adopt rules for reviewing such applications and shall grant exemptions from licensing to applications which are consistent with those rules and consistent with the other provisions of this chapter. [1994 c 33 § 5; 1994 c 33 § 4; 1993 c 468 § 3; 1987 c 391 § 4.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.0201 Loan originator, mortgage broker—Prohibitions—Requirements. It is unlawful for a loan originator, mortgage broker required to be licensed under this chapter, or mortgage broker otherwise exempted from this chapter under RCW 19.146.020(1) (d) or (f) in connection with a residential mortgage loan to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a person exempt from licensing under RCW 19.146.020(1) (f) or (g) or a lender with whom the mortgage broker maintains a written correspondent or loan brokerage agreement under RCW 19.146.040;

(6) Fail to make disclosures to loan applicants and noninstitutional investors as required by RCW 19.146.030 and any other applicable state or federal law;

(7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

(8) Make any false statement in connection with any reports filed by a licensee, or in connection with any examination of the licensee's business;

(9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(10) Fail to include the words "licensed mortgage broker" in any advertising for the broker's services that is directed at the general public if the person is required to be licensed under this chapter;

(11) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest or otherwise fail to comply with any requirement of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226 or the equal credit opportunity act, Regulation B, Sec. 202.9, 202.11, and 202.12, as now or hereafter amended, in any advertising of residential mortgage loans or any other mortgage brokerage activity;

(12) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;

(13) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or 19.146.070;

(14)(a) Except when complying with (b) and (c) of this subsection, to act as a mortgage broker in any transaction (i) in which the mortgage broker acts or has acted as a real estate broker or salesperson or (ii) in which another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson;

(b) Prior to providing mortgage broker services to the borrower, the mortgage broker, in addition to other disclosures required by this chapter and other laws, shall provide to the borrower the following written disclosure:

THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LICENSED MORTGAGE BROKER, AND WOULD LIKE TO PROVIDE MORTGAGE BROKERAGE SERVICES TO YOU IN

CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A MORTGAGE BROKER IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

(c) A real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker shall carry on such mortgage brokerage business activities and shall maintain such person's mortgage brokerage business records separate and apart from the real estate brokerage activities conducted pursuant to chapter 18.85 RCW. Such activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address, so long as each business is clearly identified by a sign visible to the public, each business is physically separated within the office facility, and no deception of the public as to the separate identities of the brokerage business firms results. This subsection (14)(c) shall not require a real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker to maintain a physical separation within the office facility for the conduct of its real estate and mortgage brokerage activities where the director determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage broker and is unnecessary for the protection of the public; or

(15) Fail to comply with any provision of RCW 19.146.030 through 19.146.090 or any rule adopted under those sections. [1994 c 33 § 6; 1993 c 468 § 4.]

Adoption of rules—1993 c 468: "The director shall take steps and adopt rules necessary to implement the sections of this act by their effective dates." [1993 c 468 § 22.]

Severability—1993 c 468: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 468 § 23.]

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.030 Written disclosure of fees and costs—Rules—Contents—Lock-in agreement terms—Violations of certain federal requirements—Excess fees limited. (1) Upon receipt of a loan application and before the receipt of any moneys from a borrower, a mortgage broker shall provide to each borrower a full written disclosure containing an itemization and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a residential mortgage loan, and specifying the fee or fees which inure to the benefit of the mortgage broker and other such disclosures as may be required by rule. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not determinable. This subsection shall not be construed to require disclosure of the distribution or breakdown of loan fees, discount, or points between the mortgage broker and any lender or investor.

(2) The written disclosure shall contain the following information:

(a) The annual percentage rate, finance charge, amount financed, total amount of all payments, number of payments,

amount of each payment, amount of points or prepaid interest and the conditions and terms under which any loan terms may change between the time of disclosure and closing of the loan; and if a variable rate, the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase, and an example of the payment terms resulting from an increase. Disclosure in compliance with the requirements of the Truth-in-Lending Act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended, shall be deemed to comply with the disclosure requirements of this subsection;

(b) The itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, escrow fee, property tax, insurance, structural or pest inspection, and any other third-party provider's costs associated with the residential mortgage loan. Disclosure through good faith estimates of settlement services and special information booklets in compliance with the requirements of the Real Estate Settlement Procedures Act, 12 U.S.C. Sec. 2601, and Regulation X, 24 C.F.R. Sec. 3500, as now or hereafter amended, shall be deemed to comply with the disclosure requirements of this subsection;

(c) If applicable, the cost, terms, duration, and conditions of a lock-in agreement and whether a lock-in agreement has been entered, and whether the lock-in agreement is guaranteed by the mortgage broker or lender, and if a lock-in agreement has not been entered, disclosure in a form approved by the director that the disclosed interest rate and terms are subject to change;

(d) A statement that if the borrower is unable to obtain a loan for any reason, the mortgage broker must, within five days of a written request by the borrower, give copies of any appraisal, title report, or credit report paid for by the borrower to the borrower, and transmit the appraisal, title report, or credit report to any other mortgage broker or lender to whom the borrower directs the documents to be sent;

(e) The name of the lender and the nature of the business relationship between the lender providing the residential mortgage loan and the mortgage broker, if any: PROVIDED, That this disclosure may be made at any time up to the time the borrower accepts the lender's commitment; and

(f) A statement providing that moneys paid by the borrower to the mortgage broker for third-party provider services are held in a trust account and any moneys remaining after payment to third-party providers will be refunded.

(3) If subsequent to the written disclosure being provided under this section, a mortgage broker enters into a lock-in agreement with a borrower or represents to the borrower that the borrower has entered into a lock-in agreement, then no less than three business days thereafter including Saturdays, the mortgage broker shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the lock-in agreement, which shall include a copy of the disclosure made under subsection (2)(c) of this section.

(4) A violation of the Truth-in-Lending Act, Regulation Z, the Real Estate Settlement Procedures Act, and Regulation X is a violation of this section for purposes of this chapter.

(5) A mortgage broker shall not charge any fee that inures to the benefit of the mortgage broker if it exceeds the fee disclosed on the written disclosure pursuant to this

section, unless (a) the need to charge the fee was not reasonably foreseeable at the time the written disclosure was provided and (b) the mortgage broker has provided to the borrower, no less than three business days prior to the signing of the loan closing documents, a clear written explanation of the fee and the reason for charging a fee exceeding that which was previously disclosed. However, if the borrower's closing costs, excluding prepaid escrowed costs of ownership as defined by rule, does not exceed the total closing costs in the most recent good faith estimate, no other disclosures shall be required by this subsection. [1994 c 33 § 18; 1993 c 468 § 12; 1987 c 391 § 5.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.040 Written contract required—Written correspondent or loan brokerage agreement required.

(1) Every contract between a mortgage broker and a borrower shall be in writing and shall contain the entire agreement of the parties.

(2) A mortgage broker shall have a written correspondent or loan brokerage agreement with a lender before any solicitation of, or contracting with, the public. [1994 c 33 § 19; 1987 c 391 § 6.]

19.146.050 Brokers to deposit moneys for third party provider services in trust account—Use of trust account.

A mortgage broker shall deposit, prior to the end of the next business day, all moneys received from borrowers for third-party provider services in a trust account of a federally insured financial institution located in this state. The trust account shall be designated and maintained for the benefit of borrowers. Moneys maintained in the trust account shall be exempt from execution, attachment, or garnishment. A mortgage broker shall not in any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds. Withdrawals from the trust account shall be only for the payment of bona fide services rendered by a third-party provider or for refunds to borrowers. Any interest earned on the trust account shall be refunded or credited to the borrowers at closing. [1987 c 391 § 7.]

19.146.060 Accounting requirements. (1) A mortgage broker shall use generally accepted accounting principles.

(2) A mortgage broker shall maintain accurate, current, and readily available books and records at the mortgage broker's usual business location until at least four years have elapsed following the effective period to which the books and records relate. "Books and records" includes but is not limited to:

(a) Copies of all advertisements placed by or at the request of the mortgage broker which mention rates or fees. In the case of radio or television advertisements, or advertisements placed on a telephonic information line or other electronic source of information including but not limited to a computer data base or electronic bulletin board, a mortgage broker shall keep copies of the precise script for the advertisement. All advertisement records shall include for each

advertisement the date or dates of publication and name of each periodical, broadcast station, or telephone information line which published the advertisement or, in the case of a flyer or other material distributed by the mortgage broker, the dates, methods, and areas of distribution; and

(b) Copies of all documents, notes, computer records if not stored in printed form, correspondence or memoranda relating to a borrower from whom the mortgage broker has accepted a deposit or other funds, or accepted a residential mortgage loan application or with whom the mortgage broker has entered into an agreement to assist in obtaining a residential mortgage loan. [1994 c 33 § 20; 1987 c 391 § 8.]

19.146.070 Fee, commission, or compensation—When permitted. (1) Except as otherwise permitted by this section, a mortgage broker shall not receive a fee, commission, or compensation of any kind in connection with the preparation, negotiation, and brokering of a residential mortgage loan unless a borrower actually obtains a loan from a lender on the terms and conditions agreed upon by the borrower and mortgage broker.

(2) A mortgage broker may:

(a) If the mortgage broker has obtained for the borrower a written commitment from a lender for a loan on the terms and conditions agreed upon by the borrower and the mortgage broker, and the borrower fails to close on the loan through no fault of the mortgage broker, charge a fee not to exceed three hundred dollars for services rendered, preparation of documents, or transfer of documents in the borrower's file which were prepared or paid for by the borrower if the fee is not otherwise prohibited by the Truth-in-Lending Act, 15 U.S.C. Sec. 1601, and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended; or

(b) Solicit or receive fees for third party provider goods or services in advance. Fees for any goods or services not provided must be refunded to the borrower and the mortgage broker may not charge more for the goods and services than the actual costs of the goods or services charged by the third party provider. [1993 c 468 § 13; 1987 c 391 § 9.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.080 Borrowers unable to obtain loans—Mortgage broker to provide copies of certain documents—Conditions. If a borrower is unable to obtain a loan for any reason and the borrower has paid for an appraisal, title report, or credit report, the mortgage broker shall give a copy of the appraisal, title report, or credit report to the borrower and transmit the originals to any other mortgage broker or lender to whom the borrower directs that the documents be transmitted. The mortgage broker must provide the copies or transmit the documents within five days after the borrower has made the request in writing. [1987 c 391 § 10.]

19.146.090 Advertising of residential mortgage loans to comply with certain federal requirements. All advertising of residential mortgage loans by a mortgage broker shall comply with the requirements of the Truth-in-

Lending Act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226, as now or hereafter amended. A violation of the Truth-in-Lending Act or Regulation Z is a violation of this section for purposes of this chapter. [1987 c 391 § 11.]

19.146.100 Violations of chapter—Application of consumer protection act. The legislature finds that the practices governed by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive. [1994 c 33 § 25; 1987 c 391 § 12.]

19.146.110 Criminal penalties. Any person who violates any provision of this chapter other than RCW 19.146.050 or any rule or order of the director shall be guilty of a misdemeanor punishable under chapter 9A.20 RCW. Any person who violates RCW 19.146.050 shall be guilty of a class C felony under chapter 9A.20 RCW. [1993 c 468 § 20; 1987 c 391 § 13.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.200 License—Required—Independent contractor—Suit or action as mortgage broker. (1) A person may not engage in the business of a mortgage broker, except as an employee of a person licensed or exempt from licensing, without first obtaining and maintaining a license under this chapter. However, a person who independently contracts with a licensed mortgage broker need not be licensed if the licensed mortgage broker and the independent contractor have on file with the director a binding written agreement under which the licensed mortgage broker assumes responsibility for the independent contractor's violations of any provision of this chapter or rules adopted under this chapter; and if the licensed mortgage broker's bond or other security required under this chapter runs to the benefit of the state and any person who suffers loss by reason of the independent contractor's violation of any provision of this chapter or rules adopted under this chapter.

(2) A person may not bring a suit or action for the collection of compensation as a mortgage broker unless the plaintiff alleges and proves that he or she was a duly licensed mortgage broker, or exempt from the license requirement of this chapter, at the time of offering to perform or performing any such an act or service regulated by this chapter. This subsection does not apply to suits or actions for the collection or compensation for services performed prior to the effective date of section 5, chapter 468, Laws of 1993. [1994 c 33 § 7; 1993 c 468 § 5.]

Effective dates—1993 c 468: "(1) Sections 2 through 4, 9, 13, and 21 through 23 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993].

(2) Sections 6 through 8, 10, 18, and 19 of this act shall take effect September 1, 1993.

(3) Sections 1, 5, 11, 12, 14 through 17, and 20 of this act shall take effect October 31, 1993. However, the effective date of section 5 of this act may be delayed thirty days upon an order of the director of licensing under section 7(3) of this act." [1993 c 468 § 26.] The director of licensing did not delay the effective date.

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

19.146.205 License—Application—Fee—Bond or alternative. (1) Application for a mortgage broker license under this chapter shall be in writing and in the form prescribed by the director. Unless waived by the director, the application shall contain at least the following information:

(a) The name, address, date of birth, and social security number of the applicant, and any other names, dates of birth, or social security numbers previously used by the applicant;

(b) If the applicant is a partnership or association, the name, address, date of birth, and social security number of each general partner or principal of the association, and any other names, dates of birth, or social security numbers previously used by the members;

(c) If the applicant is a corporation, the name, address, date of birth, and social security number of each officer, director, registered agent, and each principal stockholder, and any other names, dates of birth, or social security numbers previously used by the officers, directors, registered agents, and principal stockholders;

(d) The street address, county, and municipality where the principal business office is to be located;

(e) Submission of a complete set of fingerprints taken by an authorized law enforcement officer; and

(f) Such other information regarding the applicant's background, financial responsibility, experience, character, and general fitness as the director may require by rule.

(2) At the time of filing an application for a license under this chapter, each applicant shall pay to the director the appropriate application fee in an amount determined by rule of the director in accordance with RCW 43.24.086 to cover, but not exceed, the cost of processing and reviewing the application. The director shall deposit the moneys in the banking examination fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case the director shall deposit the moneys in the consumer services account.

(3)(a) Each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount of not greater than sixty thousand dollars nor less than twenty thousand dollars which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety. The bonding requirement as established by the director may take the form of a uniform bond amount for all licensees or the director may establish by rule a schedule establishing a range of bond amounts which shall vary according to the annual average number of loan originators or independent contractors of a licensee. The bond shall run to the state of Washington as obligee, and shall run to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this chapter or

rules adopted under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if the arrangement provides at least as much coverage as is required under this subsection.

(b) In lieu of a surety bond, the applicant may, upon approval by the director, file with the director a certificate of deposit, an irrevocable letter of credit, or such other instrument as approved by the director by rule, drawn in favor of the director for an amount equal to the required bond.

(c) In lieu of the surety bond or compliance with (b) of this subsection, an applicant may obtain insurance or coverage from an association comprised of mortgage brokers that is organized as a mutual corporation for the sole purpose of insuring or self-insuring claims that may arise from a violation of this chapter. An applicant may only substitute coverage under this subsection for the requirements of (a) or (b) of this subsection if the director, with the consent of the insurance commissioner, has authorized such association to organize a mutual corporation under such terms and conditions as may be imposed by the director to ensure that the corporation is operated in a financially responsible manner to pay any claims within the financial responsibility limits specified in (a) of this subsection. [1994 c 33 § 8; 1993 c 468 § 6.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.210 License—Requirements for issuance—Denial—Validity—Surrender—Rules. (1) The director shall issue and deliver a mortgage broker license to an applicant if, after investigation, the director makes the following findings:

(a) The applicant has paid the required license fees;

(b) The applicant has complied with RCW 19.146.205;

(c) Neither the applicant nor any of its principals has had a license issued under this chapter or any similar state statute suspended or revoked within five years of the filing of the present application;

(d) Neither the applicant nor any of its principals has been convicted of a gross misdemeanor involving dishonesty or financial misconduct or a felony within seven years of the filing of the present application;

(e) Either the applicant or one of its principals, who may be designated by the applicant, (i) has at least two years of experience in the residential mortgage loan industry or has completed the educational requirements established by rule of the director and (ii) has passed a written examination whose content shall be established by rule of the director; and

(f) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter.

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the license. The director shall notify the applicant of the denial and return to the applicant the bond or approved alternative and any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

(3) The director shall issue a license under this chapter to any licensee issued a license under chapter 468, Laws of 1993, that has a valid license and is otherwise in compliance with the provisions of this chapter.

(4) A license issued pursuant to this chapter is valid from the date of issuance with no fixed date of expiration.

(5) A licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the licensee's civil or criminal liability arising from acts or omissions occurring before such surrender. [1994 c 33 § 10; 1993 c 468 § 7.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.215 Continuing education—Rules. Either the applicant or one of its principals, who may be designated by the applicant, and every branch manager of every licensee shall complete an annual continuing education requirement, which the director shall define by rule. [1994 c 33 § 11.]

19.146.220 Director—Powers and duties—Violations as separate violations—Rules—Registered agent—Venue.

(1) The director shall enforce all laws and rules relating to the licensing of mortgage brokers, grant or deny licenses to mortgage brokers, and hold hearings.

(2) The director may impose the following sanctions:

(a) Deny applications for licenses for: (i) Violations of orders, including cease and desist orders issued under this chapter; or (ii) any violation of RCW 19.146.050 or 19.146.0201 (1) through (9);

(b) Suspend or revoke licenses for:

(i) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(ii) Failure to pay a fee required by the director or maintain the required bond;

(iii) Failure to comply with any directive or order of the director; or

(iv) Any violation of RCW 19.146.050, 19.146.0201 (1) through (9) or (13), 19.146.205(3), or 19.146.265;

(c) Impose fines on the licensee, employee or loan originator of the licensee, or other person subject to this chapter for:

(i) Any violations of RCW 19.146.0201 (1) through (9) or (13), 19.146.030 through 19.146.090, 19.146.200, 19.146.205(3), or 19.146.265; or

(ii) Failure to comply with any directive or order of the director;

(d) Issue orders directing a licensee, its employee or loan originator, or other person subject to this chapter to:

(i) Cease and desist from conducting business in a manner that is injurious to the public or violates any provision of this chapter; or

(ii) Pay restitution to an injured borrower; or

(e) Issue orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker or any person subject to licensing under this chapter for:

(i) Any violation of 19.146.0201 (1) through (9) or (13), 19.146.030 through 19.146.090, 19.146.200, 19.146.205(3), or 19.146.265; or

(ii) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(iii) Conviction of a gross misdemeanor involving dishonesty or financial misconduct or a felony after obtaining a license; or

(iv) Failure to comply with any directive or order of the director.

(3) Each day's continuance of a violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

(4) The director shall establish by rule standards for licensure of applicants licensed in other jurisdictions. Every licensed mortgage broker that does not maintain a physical office within the state must maintain a registered agent within the state to receive service of any lawful process in any judicial or administrative noncriminal suit, action, or proceeding, against the licensed mortgage broker which arises under this chapter or any rule or order under this chapter, with the same force and validity as if served personally on the licensed mortgage broker. Service upon the registered agent shall be effective if the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or defendant on file with the director. In any judicial action, suit, or proceeding arising under this chapter or any rule or order adopted under this chapter between the department or director and a licensed mortgage broker who does not maintain a physical office in this state, venue shall be exclusively in the superior court of Thurston county. [1996 c 103 § 1; 1994 c 33 § 12; 1993 c 468 § 8.]

Effective date—1996 c 103: "This act shall take effect July 1, 1996." [1996 c 103 § 2.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.221 Action by director—Hearing—Sanction.

The director may, at his or her discretion and as provided for in *RCW 19.146.220(2), take any action specified in RCW 19.146.220(1). If the person subject to such action does not appear in person or by counsel at the time and place designated for any administrative hearing that may be held on the action then the person shall be deemed to consent to the action. If the person subject to the action consents, or if after hearing the director finds by a preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter. [1994 c 33 § 13.]

*Reviser's note: RCW 19.146.220 was amended by 1996 c 103 § 1, which deleted subsection (2).

19.146.223 Director—Administration and interpretation. The director shall have the power and broad administrative discretion to administer and interpret the provisions of this chapter to fulfill the intent of the legislature as expressed in RCW 19.146.005. [1994 c 33 § 2.]

19.146.225 Director—Rule-making powers. In accordance with the administrative procedure act, chapter 34.05 RCW, the director may issue rules under this chapter only after seeking the advice of the mortgage brokerage commission and to govern the activities of licensed mortgage brokers and other persons subject to this chapter. [1994 c 33 § 15; 1993 c 468 § 9.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.227 Cease and desist order—Action to enjoin and enforce. Whenever the director determines that the public is likely to be substantially injured by delay in issuing a cease and desist order, the director may immediately issue a temporary cease and desist order. The order shall become effective at the time specified in the order. Every temporary cease and desist order shall include a provision that a hearing will be held, within fourteen days unless otherwise specified in chapter 34.05 RCW, upon request to determine whether the order will become permanent.

If it appears that a person has engaged in an act or practice constituting a violation of a provision of this chapter, or a rule or order under this chapter, the director, with or without prior administrative proceedings, may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon proper showing, injunctive relief or temporary restraining orders shall be granted. The director shall not be required to post a bond in any court proceedings. [1994 c 33 § 14.]

19.146.228 Fees—Rules. The director shall establish fees by rule in accordance with RCW 43.24.086 sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

(1) An annual assessment paid by each licensee on or before a date specified by rule;

(2) An examination fee to cover the costs of any examination of the books and records of a licensee or other person subject to this chapter; and

(3) An application fee to cover the costs of processing applications made to the director under this chapter.

All moneys, fees, and penalties collected under the authority of this chapter shall be deposited into the banking examination fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under this chapter shall be deposited in the consumer services account. [1994 c 33 § 9.]

19.146.230 Administrative procedure act application. The proceedings for denying license applications, issuing cease and desist orders, suspending or revoking licenses, and imposing civil penalties or other remedies issued pursuant to this chapter and any appeal therefrom or review thereof shall be governed by the provisions of the administrative procedure act, chapter 34.05 RCW. [1994 c 33 § 16; 1993 c 468 § 10.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.235 Director—Investigation powers—Duties of person subject to examination or investigation. For the purposes of investigating complaints arising under this chapter, the director may at any time, either personally or by a designee, examine the business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person shall act or claim to act under or without the authority of this chapter. For that purpose the director and designated representatives shall have access during regular business hours to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The director or designated person may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such investigation. No person subject to examination or investigation under this chapter shall withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

Once during the first two years of licensing, the director may visit, either personally or by designee, the licensee's place or places of business to conduct a compliance examination. The director may examine, either personally or by designee, a sample of the licensee's loan files, interview the licensee or other designated employee or independent contractor, and undertake such other activities as necessary to ensure that the licensee is in compliance with the provisions of this chapter. For those licensees issued licenses prior to March 21, 1994, the cost of such an examination shall be considered to have been prepaid in their license fee. After this one visit within the two-year period subsequent to issuance of a license, the director or a designee may visit the licensee's place or places of business only to ensure that

corrective action has been taken or to investigate a complaint. [1994 c 33 § 17; 1993 c 468 § 11.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.240 Violations—Claims against bond or alternative. (1) Any person injured by a violation of this chapter may bring an action against the surety bond or approved alternative of the licensed mortgage broker who committed the violation or who employed or engaged the loan originator who committed the violation.

(2) A person who is damaged by the licensee's or its loan originator's violation of this chapter, or rules adopted under this chapter, may bring suit upon the surety bond or approved alternative in the superior court of any county in which jurisdiction over the licensee may be obtained. Jurisdiction shall be exclusively in the superior court. Any such action must be brought not later than one year after the alleged violation of this chapter or rules adopted under this chapter. In the event valid claims against a bond or deposit exceed the amount of the bond or deposit, each claimant shall only be entitled to a pro rata amount, based on the amount of the claim as it is valid against the bond or deposit, without regard to the date of filing of any claim or action. A judgment arising from a violation of this chapter or rule adopted under this chapter shall be entered for actual damages and in no case be less than the amount paid by the borrower to the licensed mortgage broker plus reasonable attorneys' fees and costs. In no event shall the surety bond or approved alternative provide payment for any trebled or punitive damages.

(3) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available at law. [1994 c 33 § 21; 1993 c 468 § 14.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.245 Violations—Liability. A licensed mortgage broker is liable for any conduct violating this chapter by a loan originator or other licensed mortgage broker while employed or engaged by the licensed mortgage broker. In addition, a branch office manager is liable for any conduct violating this chapter by a loan originator or other licensed mortgage broker employed or engaged at the branch office. [1994 c 33 § 22; 1993 c 468 § 15.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.250 Authority restricted to person named in license—Exceptions. No license issued under the provisions of this chapter shall authorize any person other than the person to whom it is issued to do any act by virtue thereof nor to operate in any other manner than under his or her own name except:

(1) A licensed mortgage broker may operate or advertise under a name other than the one under which the license is issued by obtaining the written consent of the director to do so; and

(2) A broker may establish one or more branch offices under a name or names different from that of the main office if the name or names are approved by the director, so long as each branch office is clearly identified as a branch or division of the main office. No broker may establish branch offices under more than three names. Both the name of the branch office and of the main office must clearly appear on the sign identifying the office, if any, and in any advertisement or on any letterhead of any stationery or any forms, or signs used by the mortgage firm on which either the name of the main or branch offices appears. [1993 c 468 § 16.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.260 Office required—Registered agent. Every licensed mortgage broker must have and maintain an office in this state, or within thirty miles of the border of this state, accessible to the public and which shall serve as his or her office for the transaction of business. The broker's license must be prominently displayed. Every licensed mortgage broker that does not maintain a physical office within the state must maintain a registered agent within the state to receive service of any lawful process in any judicial or administrative noncriminal suit, action, or proceeding against the licensed mortgage broker which arises under this chapter or any rule or order under this chapter, with the same force and validity as if served personally on the licensed mortgage broker. Service upon the registered agent shall not be effective unless the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, no later than the next business day sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or defendant on file with the director. [1994 c 33 § 23; 1993 c 468 § 17.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.265 Branch offices—Fee—Licenses—Rules. A licensed mortgage broker may apply to the director for authority to establish one or more branch offices under the same or different name as the main office upon the payment of a fee as prescribed by the director by rule. The director shall issue a duplicate license for each of the branch offices showing the location of the main office and the particular branch. Each duplicate license shall be prominently displayed in the office for which it is issued. Each branch office shall be required to have a branch manager who meets the experience and educational requirements for branch managers as established by rule of the director. [1994 c 33 § 24; 1993 c 468 § 18.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.280 Mortgage brokerage commission—Complaint review. (1) There is established the mortgage brokerage commission consisting of five commission

members who shall act in an advisory capacity to the director on mortgage brokerage issues.

(2) The director shall appoint the members of the commission, weighing the recommendations from professional organizations representing mortgage brokers. At least three of the commission members shall be mortgage brokers required to apply for a mortgage brokers license under this chapter and at least one shall be exempt from licensure under RCW 19.146.020(1)(f). No commission member shall be appointed who has had less than five years' experience in the business of residential mortgage lending. In addition, the director or a designee shall serve as an ex officio, nonvoting member of the commission. Voting members of the commission shall serve for two-year terms with three of the initial commission members serving one-year terms. The department shall provide staff support to the commission.

(3) Members of the commission shall be reimbursed for their travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060. All costs and expenses associated with the commission shall be paid from the banking examination fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all costs and expenses shall be paid from the consumer services account.

(4) The commission shall advise the director on the characteristics and needs of the mortgage brokerage profession.

(5) The department, in consultation with other applicable agencies of state government, shall conduct a continuing review of the number and type of consumer complaints arising from residential mortgage lending in the state. The department shall report its findings to the senate committee on labor and commerce and house of representatives committee on financial institutions and insurance along with recommendations for any changes in the licensing requirements of this chapter, no later than December 1, 1996. [1994 c 33 § 26; 1993 c 468 § 21.]

Adoption of rules—Severability—1993 c 468: See notes following RCW 19.146.0201.

Effective dates—1993 c 468: See note following RCW 19.146.200.

19.146.900 Short title. This act shall be known and cited as the "mortgage broker practices act." [1987 c 391 § 2.]

19.146.901 Severability—1987 c 391. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 391 § 15.]

19.146.902 Severability—1994 c 33. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 33 § 28.]

19.146.903 Effective dates—1994 c 33. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its

existing public institutions, and shall take effect immediately [March 21, 1994], except section 5 of this act which shall take effect June 1, 1994. [1994 c 33 § 29.]

Chapter 19.148

MORTGAGE LOAN SERVICING

Sections

19.148.010 Finding—Purpose.

19.148.020 Definitions.

19.148.030 Disclosure requirements—Action for damages.

19.148.900 Effective date—1989 c 98.

19.148.010 Finding—Purpose. The ability of individuals to obtain information relating to their residential mortgage loans is vital to the financial needs of mortgagors in Washington. The public interest is adversely affected when a residential mortgage loan's servicing is sold or transferred with insufficient notification given to the mortgagor. In addition, mortgagors may experience difficulty in obtaining various mortgage loan information including information concerning mortgage loan prepayments, reserve accounts, and adjustments to monthly payments. The legislature finds that the legitimate interests of mortgagors and mortgage loan servicers are served if the disclosure of the potential sale of loan servicing is made to the mortgagor, reasonable notification of a residential mortgage loan servicing's sale is made, and continued mortgagor access to information regarding the mortgage loan is promoted. [1989 c 98 § 1.]

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

(1) "Lender" shall mean any person in the business of making a loan.

(2) "Loan" shall mean any loan used to finance the acquisition of a one-to-four family owner occupied residence located in this state.

(3) "Purchasing servicing agent" is any person who purchases, receives through transfer or assignment, or otherwise acquires the responsibility of the servicing for a loan.

(4) "Person" shall include an individual, firm, association, partnership, business, trust, corporation, or any other legal entity whether resident or nonresident. [1989 c 98 § 2.]

19.148.030 Disclosure requirements—Action for damages. (1) If the servicing for the loan is subject to sale, transfer, or assignment, a lender shall so disclose in writing at the time of or prior to loan closing and shall also disclose in the same writing that when such servicing is sold, transferred, or assigned, the purchasing servicing agent is required to provide notification to the mortgagor. If a lender, which has not provided the notice required by this subsection, consolidates with, merges with or is acquired by another institution, and thereafter loan servicing becomes subject to sale, transfer, or assignment, that institution shall within thirty days of such transaction make the disclosure in

writing to the obligor primarily responsible for repaying each loan according to the records of the lender.

(2) If the servicing of a loan is sold, assigned, transferred, or otherwise acquired by another person, the purchasing servicing agent shall:

(a)(i) Issue corrected coupon or payment books, if used and necessary;

(ii) Provide notification to the mortgagor at least thirty days prior to the due date of the first payment to the purchasing servicing agent, of the name, address, and telephone number of the division from whom the mortgagor can receive information regarding the servicing of the loan; and

(iii) Inform the mortgagor of changes made regarding the servicing requirements including, but not limited to, interest rate, monthly payment amount, and escrow balance; and

(b) Respond within fifteen business days upon receipt of a written request for information from a mortgagor. A written response must include the telephone number of the company division who can assist the mortgagor.

(3) Any person injured by a violation of this chapter may bring an action for actual damages and reasonable attorneys' fees and costs incurred in bringing the action. [1989 c 98 § 3.]

19.148.900 Effective date—1989 c 98. This act shall take effect on January 1, 1990. [1989 c 98 § 5.]

Chapter 19.149

RESIDENTIAL MORTGAGE LOAN CLOSING— VALUATION DISCLOSURE

Sections

- 19.149.010 Definitions.
19.149.020 Purchase money residential mortgage loans—Provision to borrower of documents used by lender to evaluate value—Written waiver.

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

(1) "Lender" means any person doing business under the laws of this state or the United States relating to banks, savings banks, trust companies, savings and loan associations, credit unions, consumer loan companies, insurance companies, real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof, and all other persons who make residential mortgage loans.

(2) "Residential mortgage loan" means any loan used for the purchase of a single-family dwelling or multiple-family dwelling of four or less units secured by a mortgage or deed of trust on the residential real estate. [1994 c 295 § 1.]

19.149.020 Purchase money residential mortgage loans—Provision to borrower of documents used by lender to evaluate value—Written waiver. A lender shall provide to the borrower, prior to the closing of a residential mortgage loan, true and complete copies of all appraisals or other documents relied upon by the lender in evaluating the

value of the dwelling to be financed. A borrower may waive in writing the lender's duty to provide the appraisals or other documents prior to closing. This written waiver may not be construed to in any way limit the lender's duty to provide the information to the borrower at a reasonable later date. This section shall only apply to purchase money residential mortgage loans. [1994 c 295 § 2.]

Chapter 19.150

SELF-SERVICE STORAGE FACILITIES

Sections

- 19.150.010 Definitions.
19.150.020 Lien on personal property.
19.150.030 Unpaid rent—Denial of access to storage space.
19.150.040 Unpaid rent—Termination of occupant's rights—Notice.
19.150.050 Form of notice.
19.150.060 Attachment of lien—Notice of lien sale or notice of disposal.
19.150.070 Sale of property.
19.150.080 Manner of sale—Who may not acquire—Excess proceeds—Accounting.
19.150.090 Claim by persons with a security interest.
19.150.100 Payment prior to sale by persons claiming a right to the property.
19.150.110 Good faith purchasers.
19.150.120 Contract for storage space—Alternative address for notice.
19.150.130 Owner not obligated to provide insurance.
19.150.140 Other rights not impaired.
19.150.900 Short title.
19.150.901 Application of chapter.
19.150.902 Existing rental agreements not affected.
19.150.903 Chapter not applicable to owner subject to Article 62A.7 RCW.
19.150.904 Severability—1988 c 240.

19.150.010 Definitions. For the purposes of this chapter, the following terms shall have the following meanings:

(1) "Self-service storage facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property on a self-service basis, but does not include a garage or other storage area in a private residence. No occupant may use a self-service storage facility for residential purposes.

(2) "Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, his or her agent, or any other person authorized by him or her to manage the facility, or to receive rent from an occupant under a rental agreement.

(3) "Occupant" means a person, or his or her sublessee, successor, or assign, who is entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(4) "Rental agreement" means any written agreement or lease which establishes or modifies the terms, conditions, rules or any other provision concerning the use and occupancy of a self-service storage facility.

(5) "Personal property" means movable property not affixed to land, and includes, but is not limited to, goods, merchandise, furniture, and household items.

(6) "Last known address" means that address provided by the occupant in the latest rental agreement, or the address

provided by the occupant in a subsequent written notice of a change of address. [1988 c 240 § 2.]

19.150.020 Lien on personal property. The owner of a self-service storage facility and his or her heirs, executors, administrators, successors, and assigns have a lien upon all personal property located at a self-service storage facility for rent, labor, or other charges, present or future, incurred pursuant to the rental agreement, and for expenses necessary for the preservation, sale, or disposition of personal property subject to this chapter. The lien may be enforced consistent with this chapter. However, any lien on a motor vehicle or boat which has attached and is set forth in the documents of title to the motor vehicle or boat shall have priority over any lien created pursuant to this chapter. [1988 c 240 § 3.]

19.150.030 Unpaid rent—Denial of access to storage space. When any part of the rent or other charges due from an occupant remains unpaid for six consecutive days, and the rental agreement so provides, an owner may deny the occupant access to the storage space at a self-service storage facility. [1988 c 240 § 4.]

19.150.040 Unpaid rent—Termination of occupant's rights—Notice. When any part of the rent or other charges due from an occupant remains unpaid for fourteen consecutive days, an owner may terminate the right of the occupant to the use of the storage space at a self-service storage facility by sending a notice to the occupant's last known address, and to the alternative address specified in RCW 19.150.120(2), by first class mail, postage prepaid, containing all of the following:

- (1) An itemized statement of the owner's claim showing the sums due at the time of the notice and the date when the sums become due.
- (2) A statement that the occupant's right to use the storage space will terminate on a specified date (not less than fourteen days after the mailing of the notice) unless all sums due and to become due by that date are paid by the occupant prior to the specified date.
- (3) A notice that the occupant may be denied or continue to be denied, as the case may be, access to the storage space after the termination date if the sums are not paid, and that an owner's lien, as provided for in RCW 19.150.020 may be imposed thereafter.
- (4) The name, street address, and telephone number of the owner, or his or her designated agent, whom the occupant may contact to respond to the notice. [1988 c 240 § 5.]

19.150.050 Form of notice. A notice in substantially the following form shall satisfy the requirements of RCW 19.150.040:

"PRELIMINARY LIEN NOTICE
to (occupant)
(address)
(state)

You owe and have not paid rent and/or other charges for the use of storage (space number) at (name and address of self-service storage facility)

Charges that have been due for more than fourteen days and accruing on or before (date) are itemized as follows:

DUE DATE	DESCRIPTION	AMOUNT
		TOTAL \$ _____

IF this sum is not paid in full before (date at least fourteen days from mailing), your right to use the storage space will terminate, you may be denied, or continue to be denied, access and an owner's lien on any stored property will be imposed. You may pay the sum due and contact the owner at:

(Name)

(Address)

(State)

(Telephone)

(Date)

(Owner's Signature) "

[1988 c 240 § 6.]

19.150.060 Attachment of lien—Notice of lien sale or notice of disposal. If a notice has been sent, as required by RCW 19.150.040, and the total sum due has not been paid as of the date specified in the preliminary lien notice, the lien proposed by this notice attaches as of that date and the owner may deny an occupant access to the space, enter the space, inventory the goods therein, and remove any property found therein to a place of safe keeping. The owner shall then serve by personal service or send to the occupant, addressed to the occupant's last known address and to the alternative address specified in RCW 19.150.120(2) by certified mail, postage prepaid, a notice of lien sale or notice of disposal which shall state all of the following:

- (1) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property.
- (2) That the stored property is subject to a lien, and the amount of the lien accrued and to accrue prior to the date required to be specified in subsection (3) of this section.
- (3) That the property, other than personal papers and personal effects, may be sold to satisfy the lien after a specified date which is not less than fourteen days from the date of mailing the lien sale notice, or a minimum of forty-two days after the date when any part of the rent or other charges due from the occupants remain unpaid, whichever is later, unless the amount of the lien is paid. If the total value of property in the storage space is less than three hundred dollars, the owner may, instead of sale, dispose of the property in any reasonable manner, subject to the restrictions of RCW 19.150.080(4).

(4) That any excess proceeds of the sale or other disposition under RCW 19.150.080(2) over the lien amount and costs of sale will be retained by the owner and may be reclaimed by the occupant, or claimed by another person, at any time for a period of six months from the sale and that thereafter the proceeds will be turned over to the state as abandoned property as provided in RCW 63.29.165.

(5) That any personal papers and personal effects will be retained by the owner and may be reclaimed by the occupant at any time for a period of six months from the

sale or other disposition of property and that thereafter the owner may dispose of the personal papers and effects in a reasonable manner, subject to the restrictions of RCW 19.150.080(3).

(6) That the occupant has no right to repurchase any property sold at the lien sale. [1996 c 220 § 1; 1993 c 498 § 5; 1988 c 240 § 7.]

Application—1996 c 220: "This act shall only apply to rental agreements entered into, extended, or renewed after June 6, 1996. Rental agreements entered into before June 6, 1996, which provide for monthly rental payments but providing no specific termination date shall be subject to this act on the first monthly rental payment date next succeeding June 6, 1996." [1996 c 220 § 4.]

19.150.070 Sale of property. The owner, subject to RCW 19.150.090 and 19.150.100, may sell the property, other than personal papers and personal effects, upon complying with the requirements set forth in RCW 19.150.080. [1988 c 240 § 8.]

19.150.080 Manner of sale—Who may not acquire—Excess proceeds—Accounting. (1) After the expiration of the time given in the notice of lien sale pursuant to RCW 19.150.060, the property, other than personal papers and personal effects, may be sold or disposed of in a reasonable manner.

(2)(a) If the property has a value of three hundred dollars or more, the sale shall be conducted in a commercially reasonable manner, and, after deducting the amount of the lien and costs of sale, the owner shall retain any excess proceeds of the sale on the occupant's behalf. The occupant, or any other person having a court order or other judicial process against the property, may claim the excess proceeds, or a portion thereof sufficient to satisfy the particular claim, at any time within six months of the date of sale.

(b) If the property has a value of less than three hundred dollars, the property may be disposed of in a reasonable manner.

(3) Personal papers and personal effects that are not reclaimed by the occupant within six months of a sale under subsection (2)(a) of this section or other disposition under subsection (2)(b) of this section may be disposed of in a reasonable manner.

(4) No employee or owner, or family member of an employee or owner, may acquire, directly or indirectly, the property sold pursuant to subsection (2)(a) of this section or disposed of pursuant to subsection (2)(b) of this section, or personal papers and personal effects disposed of under subsection (3) of this section.

(5) The owner is entitled to retain any interest earned on the excess proceeds until the excess proceeds are claimed by another person or are turned over to the state as abandoned property pursuant to RCW 63.29.165.

(6) After the sale or other disposition pursuant to this section has been completed, the owner shall provide an accounting of the disposition of the proceeds of the sale or other disposition to the occupant at the occupant's last known address and at the alternative address. [1996 c 220 § 2; 1993 c 498 § 6; 1988 c 240 § 9.]

Application—1996 c 220: See note following RCW 19.150.060.

19.150.090 Claim by persons with a security interest. Any person who has a perfected security interest under Article 62A.9 RCW of the uniform commercial code may claim any personal property subject to the security interest and subject to a lien pursuant to this chapter by paying the total amount due, as specified in the lien notices, for the storage of the property. Upon payment of the total amount due, the owner shall deliver possession of the particular property subject to the security interest to the person who paid the total amount due. The owner shall not be liable to any person for any action taken pursuant to this section if the owner has fully complied with RCW 19.150.050 and 19.150.060. [1988 c 240 § 10.]

19.150.100 Payment prior to sale by persons claiming a right to the property. Prior to any sale pursuant to RCW 19.150.080, any person claiming a right to the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred for particular actions taken pursuant to this chapter. In that event, the goods shall not be sold, but shall be retained by the owner subject to the terms of this chapter pending a court order directing a particular disposition of the property. [1988 c 240 § 11.]

19.150.110 Good faith purchasers. A purchaser in good faith of goods disposed of pursuant to RCW 19.150.080(2) takes the goods free of any rights of persons against whom the lien was claimed, despite noncompliance by the owner of the storage facility with this chapter. [1996 c 220 § 3; 1988 c 240 § 12.]

Application—1996 c 220: See note following RCW 19.150.060.

19.150.120 Contract for storage space—Alternative address for notice. (1) Each contract for the rental or lease of individual storage space in a self-service storage facility shall be in writing and shall contain, in addition to the provisions otherwise required or permitted by law to be included, a statement requiring the occupant to disclose any lienholders or secured parties who have an interest in the property that is or will be stored in the self-service storage facility, a statement that the occupant's property will be subject to a claim of lien and may even be sold to satisfy the lien if the rent or other charges due remain unpaid for fourteen consecutive days, and that such actions are authorized by this chapter.

(2) The lien authorized by this chapter shall not attach, unless the rental agreement requests, and provides space for, the occupant to give the name and address of another person to whom the preliminary lien notice and subsequent notices required to be given under this chapter may be sent. Notices sent pursuant to RCW 19.150.040 or 19.150.060 shall be sent to the occupant's address and the alternative address, if both addresses are provided by the occupant. Failure of an occupant to provide an alternative address shall not affect an owner's remedies under this chapter or under any other provision of law. [1988 c 240 § 13.]

19.150.130 Owner not obligated to provide insurance. Any insurance protecting the personal property stored within the storage space against fire, theft, or damage is the

responsibility of the occupant. The owner is under no obligation to provide insurance. [1988 c 240 § 14.]

19.150.140 Other rights not impaired. Nothing in this chapter may be construed to impair or affect the right of the parties to create additional rights, duties, and obligations which do not conflict with the provisions of this chapter. The rights provided by this chapter shall be in addition to all other rights provided by law to a creditor against his or her debtor. [1988 c 240 § 15.]

19.150.900 Short title. This chapter shall be known as the "Washington self-service storage facility act." [1988 c 240 § 1.]

19.150.901 Application of chapter. This chapter shall only apply to rental agreements entered into, extended, or renewed after June 9, 1988. Rental agreements entered into before June 9, 1988, which provide for monthly rental payments but providing no specific termination date shall be subject to this chapter on the first monthly rental payment date next succeeding June 9, 1988. [1988 c 240 § 16.]

19.150.902 Existing rental agreements not affected. All rental agreements entered into before June 9, 1988, and not extended or renewed after that date, or otherwise made subject to this chapter pursuant to RCW 19.150.901, and the rights, duties, and interests flowing from them, shall remain valid, and may be enforced or terminated in accordance with their terms or as permitted by any other statute or law of this state. [1988 c 240 § 17.]

19.150.903 Chapter not applicable to owner subject to Article 62A.7 RCW. If an owner issues any warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the occupant are subject to Article 62A.7 RCW (commencing with RCW 62A.7-101) of the uniform commercial code and this chapter does not apply. [1988 c 240 § 18.]

19.150.904 Severability—1988 c 240. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 240 § 23.]

Chapter 19.154

IMMIGRATION ASSISTANT PRACTICES ACT

Sections

- 19.154.010 Findings.
- 19.154.020 Definitions.
- 19.154.030 Exemptions.
- 19.154.040 Registration required.
- 19.154.050 Change of address.
- 19.154.060 Nonlegal assistance permitted.
- 19.154.070 Written contract—Requirements—Right to rescind.
- 19.154.080 Prohibited activities.
- 19.154.090 Unfair and deceptive act—Unfair method of competition.
- 19.154.100 Penalty.
- 19.154.900 Short title.

19.154.901 Severability—1989 c 117.

19.154.902 Effective date—1989 c 117.

19.154.010 Findings. The legislature finds and declares that assisting persons regarding immigration matters substantially affects the public interest. The practices of immigration assistants have a significant impact on the residents of the state of Washington. It is the intent of the legislature to establish rules of practice and conduct for immigration assistants to promote honesty and fair dealing with residents and to preserve public confidence. [1989 c 117 § 1.]

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

(1) "Immigration assistant" means every person who, for compensation or the expectation of compensation, gives nonlegal assistance on an immigration matter. That assistance is limited to:

(a) Transcribing responses to a government agency form selected by the customer which is related to an immigration matter, but does not include advising a person as to his or her answers on those forms;

(b) Translating a person's answer to questions posed on those forms;

(c) Securing for a person supporting documents currently in existence, such as birth and marriage certificates, which may be needed to submit with those forms;

(d) Making referrals to attorneys who could undertake legal representation for a person in an immigration matter.

(2) "Immigration matter" means any proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person which arises under immigration and naturalization law, executive order, or presidential proclamation, or which arises under action of the United States immigration and naturalization service, the United States department of labor, or the United States department of state.

(3) "Compensation" means money, property, or anything else of value. [1989 c 117 § 2.]

19.154.030 Exemptions. The following persons are exempt from all provisions of this chapter:

(1) An attorney licensed to practice law in this state where such attorney renders services in the course of his or her practice as an attorney and a legal intern, as described by court rule, or paralegal employed by and under the direct supervision of such an attorney;

(2) A nonprofit corporation or clinic affiliated with a law school in this state that provides immigration consulting services to clients without charge beyond a request for reimbursement of the corporation's or clinic's reasonable costs relating to providing immigration services to that client. "Reasonable costs" include, but are not limited to, the costs of photocopying, telephone calls, document requests, and the filing fees for immigration forms. [1989 c 117 § 3.]

19.154.040 Registration required. Any person who wishes to engage in the business of an immigration assistant must register with the secretary of state's office and provide

his or her name, business address, home address, and business and home telephone numbers. [1989 c 117 § 4.]

19.154.050 Change of address. Immigration assistants who have registered must inform the secretary of state of any changes in their name, addresses, or telephone numbers within thirty days of the change. [1989 c 117 § 5.]

19.154.060 Nonlegal assistance permitted. Immigration assistants shall offer or provide only nonlegal assistance in an immigration matter as defined in RCW 19.154.020. [1989 c 117 § 6.]

19.154.070 Written contract—Requirements—Right to rescind. (1) Before providing any assistance, an immigration assistant who has agreed to provide immigration assistance to a customer shall provide the customer with a written contract that includes the following provisions:

(a) An explanation of the services to be performed;
 (b) Identification of all compensation and costs to be charged to the customer for the services to be performed;
 (c) A statement that documents submitted in support of an application for nonimmigrant, immigrant, or naturalization status may not be retained by the assistant for any purpose, including payment of compensation or costs;

(d) A statement that the immigration assistant is not an attorney and may not perform legal services. This statement shall be on the face of the contract in ten-point bold type print; and

(e) A statement that the customer has seventy-two hours to rescind the contract. This statement shall be conspicuously set forth in the contract.

(2) The written contract shall be stated in both English and in the language of the customer.

(3) A copy of the written contract shall be provided to the customer by the immigration assistant upon execution of the contract.

(4) A customer has the right to rescind a contract within seventy-two hours of the signing of the contract.

(5) Any documents identified in subsection (1)(c) of this section shall be returned upon demand of the customer. [1989 c 117 § 7.]

19.154.080 Prohibited activities. In the course of dealing with customers or prospective customers, an immigration assistant shall not:

(1) Make any statement that the immigration assistant can or will obtain special favors from or has special influence with the United States immigration and naturalization service;

(2) Retain any compensation for services not performed;

(3) Refuse to return documents supplied by, prepared by, or paid for by the customer upon the request of the customer. These documents must be returned upon request even if there is a fee dispute between the immigration assistant and the customer;

(4) Represent or advertise, in connection with the provision of immigration assistance, other titles or credentials, including but not limited to "notary public" or "immigration consultant" that could cause a customer to believe

that the immigration assistant possesses special professional skills;

(5) Communicate in any manner, oral or written, that registration under this chapter is an indicator of special skill or expertise or that it allows the person to provide advice on an immigration matter;

(6) Give any legal advice concerning an immigration matter. [1989 c 117 § 8.]

19.154.090 Unfair and deceptive act—Unfair method of competition. The legislature finds and declares that any violation of this chapter substantially affects the public interest and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce as set forth in RCW 19.86.020. [1989 c 117 § 9.]

19.154.100 Penalty. A violation of this chapter shall be punished as a gross misdemeanor according to chapter 9A.20 RCW. [1989 c 117 § 10.]

19.154.900 Short title. This chapter shall be known and cited as the "immigration assistant practices act." [1989 c 117 § 11.]

19.154.901 Severability—1989 c 117. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 117 § 14.]

19.154.902 Effective date—1989 c 117. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989. [1989 c 117 § 15.]

Chapter 19.158

COMMERCIAL TELEPHONE SOLICITATION

Sections

- 19.158.010 Findings.
- 19.158.020 Definitions.
- 19.158.030 Violation an unfair or deceptive act.
- 19.158.040 Unfair or deceptive acts.
- 19.158.050 Registration requirements.
- 19.158.060 Failure to register—Penalty.
- 19.158.070 Appointment of agent to receive process.
- 19.158.080 Duties of director.
- 19.158.090 Injunctive relief—Other applicable law.
- 19.158.100 Requiring payment by credit card prohibited.
- 19.158.110 Commercial telephone solicitor—Duties and prohibited acts—Notice to customers.
- 19.158.120 Cancellation of purchases—Requirements—Notice—Voidable contracts.
- 19.158.130 Damages, costs, attorneys' fees—Remedies not limited.
- 19.158.140 Civil penalties.
- 19.158.150 Registration required—Penalty.
- 19.158.160 Penalties.
- 19.158.900 Severability—1989 c 20.
- 19.158.901 Effective date—1989 c 20.

19.158.010 Findings. The use of telephones for commercial solicitation is rapidly increasing. This form of

communication offers unique benefits, but entails special risks and poses potential for abuse. The legislature finds that the widespread practice of fraudulent commercial telephone solicitation is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. For the general welfare of the public and in order to protect the integrity of the telemarketing industry, the commercial use of telephones must be regulated by law. [1989 c 20 § 1.]

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

(1) A "commercial telephone solicitor" is any person who engages in commercial telephone solicitation, including service bureaus.

(2) "Commercial telephone solicitation" means:

(a) An unsolicited telephone call to a person initiated by a salesperson and conversation for the purpose of inducing the person to purchase or invest in property, goods, or services;

(b) Other communication with a person where:

(i) A free gift, award, or prize is offered to a purchaser who has not previously purchased from the person initiating the communication; and

(ii) A telephone call response is invited; and

(iii) The salesperson intends to complete a sale or enter into an agreement to purchase during the course of the telephone call;

(c) Other communication with a person which misrepresents the price, quality, or availability of property, goods, or services and which invites a response by telephone or which is followed by a call to the person by a salesperson;

(d) For purposes of this section, "other communication" means a written or oral notification or advertisement transmitted through any means.

(3) A "commercial telephone solicitor" does not include any of the following:

(a) A person engaging in commercial telephone solicitation where:

(i) The solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature; or

(ii) Less than sixty percent of such person's prior year's sales were made as a result of a commercial telephone solicitation as defined in this chapter. Where more than sixty percent of a seller's prior year's sales were made as a result of commercial telephone solicitations, the service bureau contracting to provide commercial telephone solicitation services to the seller shall be deemed a commercial telephone solicitor.

(b) A person making calls for religious, charitable, political, or other noncommercial purposes.

(c) A person soliciting business solely from purchasers who have previously purchased from the business enterprise for which the person is calling.

(d) A person soliciting:

(i) Without the intent to complete or obtain provisional acceptance of a sale during the telephone solicitation; and

(ii) Who does not make the major sales presentation during the telephone solicitation; and

(iii) Who only makes the major sales presentation or arranges for the major sales presentation to be made at a later face-to-face meeting between the salesperson and the purchaser.

(e) A person selling a security which is exempt from registration under RCW 21.20.310;

(f) A person licensed under RCW 18.85.090 when the solicited transaction is governed by that law;

(g) A person registered under RCW 18.27.060 when the solicited transaction is governed by that law;

(h) A person licensed under RCW 48.17.150 when the solicited transaction is governed by that law;

(i) Any person soliciting the sale of a franchise who is registered under RCW 19.100.140;

(j) A person primarily soliciting the sale of a newspaper of general circulation, a magazine or periodical, or contractual plans, including book or record clubs: (i) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise; and (ii) which is regulated by the federal trade commission trade regulation concerning "use of negative option plans by sellers in commerce";

(k) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this section, "supervised financial institution" means any commercial bank, trust company, savings and loan association, mutual savings banks, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, or insurer, provided that the institution is subject to supervision by an official or agency of this state or the United States;

(l) A person soliciting the sale of a prearrangement funeral service contract registered under RCW 18.39.240 and 18.39.260;

(m) A person licensed to enter into prearrangement contracts under RCW 68.05.155 when acting subject to that license;

(n) A person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit;

(o) A person or affiliate of a person whose business is regulated by the utilities and transportation commission or the federal communications commission;

(p) A person soliciting the sale of agricultural products, as defined in RCW 20.01.010 where the purchaser is a business;

(q) An issuer or subsidiary of an issuer that has a class of securities that is subject to section 12 of the securities exchange act of 1934 (15 U.S.C. Sec. 781) and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G), or (H) of subsection (g) of that section;

(r) A commodity broker-dealer as defined in RCW 21.30.010 and registered with the commodity futures trading commission;

(s) A business-to-business sale where:

(i) The purchaser business intends to resell the property or goods purchased, or

(ii) The purchaser business intends to use the property or goods purchased in a recycling, reuse, remanufacturing or manufacturing process;

(t) A person licensed under RCW 19.16.110 when the solicited transaction is governed by that law;

(u) A person soliciting the sale of food intended for immediate delivery to and immediate consumption by the purchaser;

(v) A person soliciting the sale of food fish or shellfish when that person is licensed pursuant to the provisions of Title 75 RCW.

(4) "Purchaser" means a person who is solicited to become or does become obligated to a commercial telephone solicitor.

(5) "Salesperson" means any individual employed, appointed, or authorized by a commercial telephone solicitor, whether referred to by the commercial telephone solicitor as an agent, representative, or independent contractor, who attempts to solicit or solicits a sale on behalf of the commercial telephone solicitor.

(6) "Service bureau" means a commercial telephone solicitor who contracts with any person to provide commercial telephone solicitation services.

(7) "Seller" means any person who contracts with any service bureau to purchase commercial telephone solicitation services.

(8) "Person" includes any individual, firm, association, corporation, partnership, joint venture, sole proprietorship, or any other business entity.

(9) "Free gift, award, or prize" means a gratuity which the purchaser believes of a value equal to or greater than the value of the specific product, good, or service sought to be sold to the purchaser by the seller.

(10) "Solicit" means to initiate contact with a purchaser for the purpose of attempting to sell property, goods or services, where such purchaser has expressed no previous interest in purchasing, investing in, or obtaining information regarding the property, goods, or services attempted to be sold. [1989 c 20 § 3.]

19.158.030 Violation an unfair or deceptive act. Unfair and deceptive telephone solicitation is not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1989 c 20 § 2.]

19.158.040 Unfair or deceptive acts. (1) It shall be unlawful for any person to engage in unfair or deceptive commercial telephone solicitation.

(2) A commercial telephone solicitor shall not place calls to any residence which will be received before 8:00 a.m. or after 9:00 p.m. at the purchaser's local time.

(3) A commercial telephone solicitor may not engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the telephone call. [1989 c 20 § 4.]

19.158.050 Registration requirements. (1) In order to maintain or defend a lawsuit or do any business in this state, a commercial telephone solicitor must be registered with the department of licensing. Prior to doing business in this state, a commercial telephone solicitor shall register with the department of licensing. Doing business in this state

includes both commercial telephone solicitation from a location in Washington and solicitation of purchasers located in Washington.

(2) The department of licensing, in registering commercial telephone solicitors, shall have the authority to require the submission of information necessary to assist in identifying and locating a commercial telephone solicitor, including past business history, prior judgments, and such other information as may be useful to purchasers.

(3) The department of licensing shall issue a registration number to the commercial telephone solicitor.

(4) It is a violation of this chapter for a commercial telephone solicitor to:

(a) Fail to maintain a valid registration;

(b) Advertise that one is registered as a commercial telephone solicitor or to represent that such registration constitutes approval or endorsement by any government or governmental office or agency;

(c) Provide inaccurate or incomplete information to the department of licensing when making a registration application; or

(d) Represent that a person is registered or that such person has a valid registration number when such person does not.

(5) An annual registration fee shall be assessed by the department of licensing, the amount of which shall be determined at the discretion of the director of the department of licensing, and which shall be reasonably related to the cost of administering the provisions of this chapter. [1989 c 20 § 5.]

19.158.060 Failure to register—Penalty. If the director of the department of licensing determines that a commercial telephone solicitor has failed to register, the director may issue an order in accordance with chapter 34.05 RCW imposing a civil penalty in an amount which may not exceed five thousand dollars. [1989 c 20 § 6.]

19.158.070 Appointment of agent to receive process. Each commercial telephone solicitor shall appoint the director of the department of licensing as an agent to receive civil process under this chapter if the commercial telephone solicitor has no properly registered agent, if the agent has resigned, or if the agent cannot, after reasonable diligence, be found. [1989 c 20 § 7.]

19.158.080 Duties of director. The director of the department of licensing may make rules, create forms, and issue orders as necessary to carry out the provisions of this chapter, pursuant to chapter 34.05 RCW. [1989 c 20 § 8.]

19.158.090 Injunctive relief—Other applicable law. The director of the department of licensing may refer such evidence as may be available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, in addition to any other action they might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice herein prohibited or declared unlawful: PROVIDED, That this chapter

shall be considered in conjunction with chapters 9.04 and 19.86 RCW and the powers and duties of the attorney general and the prosecuting attorney as they may appear in chapters 9.04 and 19.86 RCW shall apply against all persons subject to this chapter. [1989 c 20 § 9.]

19.158.100 Requiring payment by credit card prohibited. It is a violation of this chapter for a commercial telephone solicitor to require that payment be by credit card authorization or otherwise to announce a preference for that method of payment over any other for unfair or deceptive reasons. [1989 c 20 § 10.]

19.158.110 Commercial telephone solicitor—Duties and prohibited acts—Notice to customers. (1) Within the first minute of the telephone call, a commercial telephone solicitor or salesperson shall:

(a) Identify himself or herself, the company on whose behalf the solicitation is being made, the property, goods, or services being sold; and

(b) Terminate the telephone call within ten seconds if the purchaser indicates he or she does not wish to continue the conversation.

(2) If at any time during the telephone contact, the purchaser states or indicates that he or she does not wish to be called again by the commercial telephone solicitor or wants to have his or her name and individual telephone number removed from the telephone lists used by the commercial telephone solicitor:

(a) The commercial telephone solicitor shall not make any additional commercial telephone solicitation of the called party at that telephone number within a period of at least one year; and

(b) The commercial telephone solicitor shall not sell or give the called party's name and telephone number to another commercial telephone solicitor: **PROVIDED**, That the commercial telephone solicitor may return the list, including the called party's name and telephone number, to the company or organization from which it received the list.

(3) The utilities and transportation commission shall by rule ensure that telecommunications companies inform their residential customers of the provisions of this section. The notification may be made by:

(a) Annual inserts in the billing statements mailed to residential customers; or

(b) Conspicuous publication of the notice in the consumer information pages of local telephone directories.

(4) If a sale or an agreement to purchase is completed, the commercial telephone solicitor must inform the purchaser of his or her cancellation rights as enunciated in this chapter, state the registration number issued by the department of licensing, and give the street address of the seller.

(5) If, at any time prior to sale or agreement to purchase, the commercial telephone solicitor's registration number is requested by the purchaser, it must be provided.

(6) All oral disclosures required by this section shall be made in a clear and intelligible manner. [1989 c 20 § 11.]

19.158.120 Cancellation of purchases—Requirements—Notice—Voidable contracts. (1) A purchase of property, goods, or services ordered as a result

of a commercial telephone solicitation as defined in this chapter, if not followed by a written confirmation, is not final. The confirmation must contain an explanation of the consumer's rights under this section and a statement indicating where notice of cancellation should be sent. The purchaser may give notice of cancellation to the seller in writing within three business days after receipt of the confirmation. If the commercial telephone solicitor has not provided an address for receipt of such notice, cancellation is effective by mailing the notice to the department of licensing.

(2) Notice of cancellation shall be given by certified mail, return receipt requested, and shall be effective when mailed. Notice of cancellation given by the purchaser need not take a particular form and is sufficient if it indicates by any form of written expression the name, address, and telephone number of the purchaser and the purchaser's stated intention not to be bound by the sale.

(3) If a commercial telephone solicitor or a seller, if different, violates this chapter in making a sale, or fails to deliver an item within forty-two calendar days, the contract is voidable by giving written notice to the seller and the purchaser is entitled to a return from the seller within fourteen days of all consideration paid. Upon receipt by the purchaser of the consideration paid to the seller, the purchaser shall make available to the seller, at a reasonable time and place, the items received by the purchaser. Any cost of returning the items received by the purchaser shall be borne by the seller, by providing or guaranteeing payment for return shipping. If such payment is not provided or guaranteed, the purchaser may keep without further obligation the items received.

(4) Any contract, agreement to purchase, or written confirmation executed by a seller which purports to waive the purchaser's rights under this chapter is against public policy and shall be unenforceable: **PROVIDED**, That an agreement between a purchaser and seller to extend the delivery time of an item to more than forty-two days shall be enforceable if the seller has a reasonable basis to expect that he or she will be unable to ship the item within forty-two days and if the agreement is included in the terms of the written confirmation.

(5) Where a contract or agreement to purchase confers on a purchaser greater rights to cancellation, refund, or return than those enumerated in this chapter, such contract shall be enforceable, and not in violation of this chapter: **PROVIDED**, That all rights under such a contract or agreement to purchase must be specifically stated in a written confirmation sent pursuant to this section.

(6) The provisions of this section shall not reduce, restrict, or eliminate any existing rights or remedies available to purchasers. [1989 c 20 § 12.]

19.158.130 Damages, costs, attorneys' fees—Remedies not limited. In addition to any other penalties or remedies under chapter 19.86 RCW, a person who is injured by a violation of this chapter may bring an action for recovery of actual damages, including court costs and attorneys' fees. No provision in this chapter shall be construed to limit any right or remedy provided under chapter 19.86 RCW. [1989 c 20 § 13.]

19.158.140 Civil penalties. A civil penalty shall be imposed by the court for each violation of this chapter in an amount not less than five hundred dollars nor more than two thousand dollars per violation. [1989 c 20 § 14.]

19.158.150 Registration required—Penalty. No salesperson shall solicit purchasers on behalf of a commercial telephone solicitor who is not currently registered with the department of licensing pursuant to this chapter. Any salesperson who violates this section is guilty of a misdemeanor. [1989 c 20 § 15.]

19.158.160 Penalties. (1) Except as provided in RCW 19.158.150, any person who knowingly violates any provision of this chapter or who knowingly, directly or indirectly employs any device, scheme or artifice to deceive in connection with the offer or sale by any commercial telephone solicitor shall be guilty of the following:

If the value of a transaction made in violation of RCW 19.158.040(1) is:

(a) Less than fifty dollars, the person shall be guilty of a misdemeanor;

(b) Fifty dollars or more, then such person shall be guilty of a gross misdemeanor; and

(c) Two hundred fifty dollars or more, then such person shall be guilty of a class C felony.

(2) When any series of transactions which constitute a violation of this section would, when considered separately, constitute a series of misdemeanors or gross misdemeanors because of the value of the transactions, and the series of transactions are part of a common scheme or plan, the transactions may be aggregated in one count and the sum of the value of all the transactions shall be the value considered in determining whether the violations are to be punished as a class C felony or a gross misdemeanor. [1989 c 20 § 16.]

19.158.900 Severability—1989 c 20. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 20 § 19.]

19.158.901 Effective date—1989 c 20. The effective date of this act shall be January 1, 1990. [1989 c 20 § 20.]

Chapter 19.162

PAY-PER-CALL INFORMATION DELIVERY SERVICES

Sections

19.162.010 Application of consumer protection act—Scope.

19.162.020 Definitions.

19.162.030 Program message preamble.

19.162.040 Advertisement of services.

19.162.050 Services directed at children.

19.162.060 Nonpayment of charges.

19.162.070 Violations—Action for damages.

Information delivery services through exclusive number prefix or service access code: RCW 80.36.500.

19.162.010 Application of consumer protection act—Scope. (1) The legislature finds that the deceptive use of pay-per-call information delivery services is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) The deceptive use of pay-per-call information delivery services is not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW, and constitutes an act of deceptive pay-per-call information delivery service.

(3) This chapter applies to a communication made by a person in Washington or to a person in Washington. [1991 c 191 § 1.]

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

(1) "Person" means an individual, corporation, the state or its subdivisions or agencies, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

(2) "Information delivery services" means telephone-recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix or service access code.

(3) "Information provider" means the person who provides the information, prerecorded message, or interactive program for the information delivery service. The information provider generally receives a portion of the revenue from the calls. "Information provider" does not include the medium for advertising information delivery services.

(4) "Interactive program" means a program that allows an information delivery service caller, once connected to the information provider's delivery service, to use the caller's telephone device to access more specific information or further information or to talk to other callers during the call.

(5) "Telecommunications company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, and every city or town owning, operating, or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within the state of Washington.

(6) "Interexchange carrier" means a carrier providing transmissions between local access and transport areas interstate or intrastate.

(7) "Billing services" means billing and collection services provided to information providers whether by the local exchange company or the interexchange carrier.

(8) "Program message" means the information that a caller hears or receives upon placing a call to an information provider.

(9) "Advertisement" includes all radio, television, or other broadcast, video, newspaper, magazine, or publication, billboard, direct mail, print media, telemarketing, or any promotion of an information delivery service, program, or number, and includes brochures, pamphlets, fliers, coupons, promotions, or the labeling of products or in-store communi-

cations circulated or distributed in any manner whatsoever. "Advertisement" does not include any listing in a white page telephone directory. In a yellow page telephone directory, "advertisement" includes only yellow page display advertising.

(10) "Subscriber" means the person in whose name an account is billed.

(11) "Does business in Washington" includes providing information delivery services to Washington citizens, advertising information delivery services in Washington, entering into a contract for billing services in Washington, entering into a contract in Washington with a telecommunications company or interexchange carrier for transmission services, or having a principal place of business in Washington. [1991 c 191 § 2.]

19.162.030 Program message preamble. (1) An information provider that does business in Washington must include a preamble in all program messages for:

(a) Programs costing more than five dollars per minute; or

(b) Programs having a total potential cost of greater than ten dollars.

(2) The preamble must:

(a) Accurately describe the service that will be provided by the program;

(b) Advise the caller of the price of the call, including:

(i) Any per minute charge;

(ii) Any flat rate charge; and

(iii) Any minimum charge;

(c) State that billing will begin shortly after the end of the introductory message; and

(d) Be clearly articulated, at a volume equal to that of the program message, in plain English or the language used to promote the information delivery service, and spoken in a normal cadence.

(3) Mechanisms that provide for the option of bypassing the preamble are only permitted when:

(a) The caller has made use of the information provider's service in the past, at which time the preamble required by this section was part of the program message; and

(b) The cost of the call has not changed during the thirty-day period before the call.

(4) When an information provider's program message consists of a polling application that permits the caller to register an opinion or vote on a matter by completing a call, this section does not apply. [1991 c 191 § 3.]

19.162.040 Advertisement of services. An information provider that does business in Washington shall comply with the following provisions in its advertisement of information delivery services:

(1) Advertisements for information delivery services that are broadcast by radio or television, contained in home videos, or that appear on movie screens must include a voice-over announcement that is clearly audible and articulates the price of the service provided. The announcement must be made at a volume equal to that used to announce the telephone number, spoken in a normal cadence, and in plain English or the language used in the advertisement.

(2) Advertisements for information delivery services that are broadcast by television, contained in home videos, or that appear on movie screens must include, in clearly visible letters and numbers, the cost of calling the advertised number. This visual disclosure of the cost of the call must be displayed adjacent to the number to be called whenever the number is shown in the advertisement, and the lettering of the visual disclosure of the cost must be in the same size and typeface as that of the number to be called.

(3)(a) Except as otherwise provided in (b) of this subsection, advertisements for information delivery services that appear in print must include, in clearly visible letters and numbers, the cost of calling the advertised number. The printed disclosure of the cost of the call must be displayed adjacent to the number to be called wherever the number is shown in the advertisement.

(b) In telephone directory yellow page display advertising and in printed materials published not more than three times a year, instead of disclosing the cost of the service, advertisements for information delivery services, shall include the conspicuous disclosure that the call is a pay-per-call service.

(4) The advertised price or cost of the information delivery service must include:

(a) Any per minute charge;

(b) Any flat rate charge; and

(c) Any minimum charge. [1991 c 191 § 4.]

19.162.050 Services directed at children. An information provider that does business in the state of Washington shall not direct information delivery services to children under the age of twelve years unless the information provider complies with the following provisions:

(1) Interactive calls where children under the age of twelve years can speak to other children under the age of twelve years are prohibited.

(2) Programs directed to children under the age of twelve where the children are asked to provide their names, addresses, telephone numbers, or other identifying information are prohibited.

(3) Advertisements for information delivery services that are directed to children under the age of twelve years must contain a visual disclosure that clearly and conspicuously in the case of print and broadcast advertising, and audibly in the case of broadcast advertising, states that children under the age of twelve years must obtain parental consent before placing a call to the advertised number.

(4) Program messages that encourage children under the age of twelve years to make increased numbers of calls in order to obtain progressively more valuable prizes, awards, or similarly denominated items are prohibited.

(5) Advertisements for information delivery services that are directed to children under the age of twelve years must contain, in age-appropriate language, an accurate description of the services being provided. In the case of print advertising, the information must be clear and conspicuous and in the case of broadcast advertising, it must be visually displayed clearly and conspicuously and verbally disclosed in an audible, clearly articulated manner.

(6) Program messages that are directed to children under the age of twelve years that employ broadcast advertising

where an electronic tone signal is emitted during the broadcast of the advertisement that automatically dials the program message are prohibited. [1991 c 191 § 5.]

19.162.060 Nonpayment of charges. An information provider's failure to substantially comply with any of the provisions of RCW 19.162.030 through 19.162.050 is a defense to the nonpayment of charges accrued as a result of using the information provider's services, billed by any entity, including but not limited to telecommunications companies and interexchange carriers. [1991 c 191 § 6.]

19.162.070 Violations—Action for damages. A person who suffers damage from a violation of this chapter may bring an action against an information provider. In an action alleging a violation of this chapter, the court may award the greater of three times the actual damages sustained by the person or five hundred dollars; equitable relief, including but not limited to an injunction and restitution of money and property; attorneys' fees and costs; and any other relief that the court deems proper. For purposes of this section, a telecommunications company or interexchange carrier is a person. [1991 c 191 § 7.]

Chapter 19.166

INTERNATIONAL STUDENT EXCHANGE

Sections

19.166.010	Intent.
19.166.020	Definitions.
19.166.030	Organization registration.
19.166.040	Organization application for registration.
19.166.050	Standards.
19.166.060	Rules—Fee.
19.166.070	Informational document.
19.166.080	Complaints.
19.166.090	Violations—Misdemeanor.
19.166.100	Violations—Consumer protection act.
19.166.900	Severability—1991 c 128.
19.166.901	Effective date—1991 c 128.

19.166.010 Intent. It is the intent of the legislature to:

- (1) Promote the health, safety, and welfare of international student exchange visitors in Washington in accordance with uniform national standards;
- (2) Promote quality education and living experiences for international student exchange visitors living in Washington;
- (3) Promote international awareness among Washington residents, by encouraging Washington residents to interact with international student exchange visitors;
- (4) Encourage public confidence in international student exchange visitor placement organizations operating in Washington;
- (5) Encourage and assist with compliance with United States information agency regulations and nationally established standards; and
- (6) Promote the existence and quality of international student visitor exchange programs operating in Washington. [1991 c 128 § 1.]

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

(1) "International student exchange visitor placement organization" or "organization" means a person, partnership, corporation, or other entity that regularly arranges the placement of international student exchange visitors for the purpose, in whole or in part, of allowing the student an opportunity to attend school in the United States.

(2) "International student exchange visitor" or "student" means any person eighteen years of age or under, or up to age twenty-one if enrolled or to be enrolled in high school in this state, placed by an international student exchange visitor placement organization, who enters the United States with a nonimmigrant visa. [1991 c 128 § 2.]

19.166.030 Organization registration. (1) All international student exchange visitor placement organizations that place students in public schools in the state shall register with the secretary of state.

(2) Failure to register is a violation of this chapter.

(3) Information provided to the secretary of state under this chapter is a public record.

(4) Registration shall not be considered or be represented as an endorsement of the organization by the secretary of state or the state of Washington.

(5) On a date established by rule by the secretary of state, the secretary of state shall provide annually to the superintendent of public instruction a list of all currently registered international student placement organizations. The superintendent of public instruction shall distribute annually the list of all currently registered international student placement organizations to all Washington state school districts. [1995 c 60 § 1; 1991 c 128 § 3.]

19.166.040 Organization application for registration. (1) An application for registration as an international student exchange visitor placement organization shall be submitted in the form prescribed by the secretary of state. The application shall include:

(a) Evidence that the organization meets the standards established by the secretary of state under RCW 19.166.050;

(b) The name, address, and telephone number of the organization, its chief executive officer, and the person within the organization who has primary responsibility for supervising placements within the state;

(c) The organization's unified business identification number, if any;

(d) The organization's United States Information Agency number, if any;

(e) Evidence of council on standards for international educational travel listing, if any;

(f) Whether the organization is exempt from federal income tax; and

(g) A list of the organization's placements in Washington for the previous academic year including the number of students placed, their home countries, the school districts in which they were placed, and the length of their placements.

(2) The application shall be signed by the chief executive officer of the organization and the person within the

organization who has primary responsibility for supervising placements within Washington. If the secretary of state determines that the application is complete, the secretary of state shall file the application and the applicant is registered.

(3) International student exchange visitor placement organizations that have registered shall inform the secretary of state of any changes in the information required under subsection (1) of this section within thirty days of the change.

(4) Registration shall be renewed annually as established by rule by the office of the secretary of state. [1995 c 60 § 2; 1991 c 128 § 5.]

19.166.050 Standards. The secretary of state shall adopt standards for international student exchange visitor placement organizations. In adopting the standards, the secretary of state shall strive to adopt standards established by the United States Information Agency and the council on standards for international educational travel and strive to achieve uniformity with national standards. The secretary of state may incorporate standards established by the United States Information Agency or the council on standards for international educational travel by reference and may accept an organization's designation by the United States Information Agency or acceptance for listing by the council on standards for international educational travel as evidence of compliance with such standards. [1991 c 128 § 4.]

19.166.060 Rules—Fee. The secretary of state may adopt rules as necessary to carry out its duties under this chapter. The rules may include providing for a reasonable registration fee, not to exceed fifty dollars, to defray the costs of processing registrations. [1991 c 128 § 6.]

19.166.070 Informational document. International student exchange organizations that have agreed to provide services to place students in the state shall provide an informational document, in English, to each student, host family, and superintendent of the school district in which the student is being placed. The document shall be provided before placement and shall include the following:

(1) An explanation of the services to be performed by the organization for the student, host family, and school district;

(2) A summary of this chapter prepared by the secretary of state;

(3) Telephone numbers that the student, host family, and school district may call for assistance. The telephone numbers shall include, at minimum, an in-state telephone number for the organization, and the telephone numbers of the organization's national headquarters, if any, the United States Information Agency, and the office of the secretary of state. [1991 c 128 § 7.]

19.166.080 Complaints. The secretary of state may, upon receipt of a complaint regarding an international student exchange organization, report the matter to the organization involved, the United States Information Agency, or the council on standards for international education travel, as he or she deems appropriate. [1991 c 128 § 8.]

19.166.090 Violations—Misdemeanor. Any person who violates any provision of this chapter or who willfully and knowingly gives false or incorrect information to the secretary [of state], attorney general, or county prosecuting attorney in filing statements required by this chapter, whether or not such statement or report is verified, is guilty of a misdemeanor punishable under chapter 9A.20 RCW. [1991 c 128 § 9.]

19.166.100 Violations—Consumer protection act. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1991 c 128 § 10.]

19.166.900 Severability—1991 c 128. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 128 § 16.]

19.166.901 Effective date—1991 c 128. Sections 1 through 11 and 13 through 16 of this act shall take effect January 1, 1992. [1991 c 128 § 17.]

Chapter 19.170

PROMOTIONAL ADVERTISING OF PRIZES

Sections

- 19.170.010 Finding—Violations—Consumer protection act—Application.
- 19.170.020 Definitions.
- 19.170.030 Disclosures required.
- 19.170.040 Disclosures—Prizes awarded—Rain checks.
- 19.170.050 Simulated checks—Continuing obligation checks—Notice.
- 19.170.060 Damages—Penalties.
- 19.170.070 Violation—Penalty.
- 19.170.080 Remedies not exclusive.
- 19.170.900 Severability—1991 c 227.

19.170.010 Finding—Violations—Consumer protection act—Application. (1) The legislature finds that deceptive promotional advertising of prizes is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW.

(2) Deceptive promotional advertising of prizes is not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW, and constitutes an act of deceptive promotional advertising.

(3) This chapter applies to a promotion offer:

- (a) Made to a person in Washington;
- (b) Used to induce or invite a person to come to the state of Washington to claim a prize, attend a sales presentation, meet a promoter, sponsor, salesperson, or their agent, or conduct any business in this state; or

(c) Used to induce or invite a person to contact by any means a promoter, sponsor, salesperson, or their agent in this state. [1991 c 227 § 1.]

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

(1) "Person" means an individual, corporation, the state or its subdivisions or agencies, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

(2) "Prize" means a gift, award, travel coupon or certificate, free item, or any other item offered in a promotion that is different and distinct from the goods, service, or property promoted by a sponsor. "Prize" does not include an item offered in a promotion where all of the following elements are present:

(a) No element of chance is involved in obtaining the item offered in the promotion;

(b) The recipient has the right to review the merchandise offered for sale without obligation for at least seven days, and has a right to obtain a full refund in thirty days for the return of undamaged merchandise;

(c) The recipient may keep the item offered in the promotion without obligation; and

(d) The recipient is not required to attend any sales presentation or spend any sum in order to receive the item offered in the promotion.

(3) "Promoter" means a person conducting a promotion.

(4) "Promotion" means an advertising program, sweepstakes, contest, direct giveaway, or solicitation directed to specific named individuals, that includes the award of or chance to be awarded a prize.

(5) "Offer" means a written notice delivered by hand, mail, or other print medium offering goods, services, or property made as part of a promotion to a person based on a representation that the person has been awarded, or will be awarded, a prize.

(6) "Sponsor" means a person on whose behalf a promotion is conducted to promote or advertise goods, services, or property of that person.

(7) "Simulated check" means a document that is not currency or a check, draft, note, bond, or other negotiable instrument but has the visual characteristics thereof. "Simulated check" does not include a nonnegotiable check, draft, note, or other instrument that is used for soliciting orders for the purchase of checks, drafts, notes, bonds, or other instruments and that is clearly marked as a sample, specimen, or nonnegotiable.

(8) "Continuing obligation check" means a document that is a check, draft, note, bond, or other negotiable instrument that, when cashed, deposited, or otherwise used, imposes on the payee an obligation to enter into a loan transaction. This definition does not include checks, drafts, or other negotiable instruments that are used by consumers to take advances on revolving loans, credit cards, or revolving credit accounts.

(9) "Verifiable retail value" means:

(a) A price at which a promoter or sponsor can demonstrate that a substantial number of prizes have been sold at

retail in the local market by a person other than the promoter or sponsor; or

(b) If the prize is not available for retail sale in the local market, the retail fair market value in the local market of an item substantially similar in each significant aspect, including size, grade, quality, quantity, ingredients, and utility; or

(c) If the value of the prize cannot be established under (a) or (b) of this subsection, then the prize may be valued at no more than three times its cost to the promoter or sponsor.

(10) "Financial institution" means any bank, trust company, savings bank, savings and loan association, credit union, industrial loan company, or consumer finance lender subject to regulation by an official agency of this state or the United States, and any subsidiary or affiliate thereof. [1991 c 227 § 2.]

19.170.030 Disclosures required. (1) The offer must identify the name and address of the promoter and the sponsor of the promotion.

(2) The offer must state the verifiable retail value of each prize offered in it.

(3)(a) If an element of chance is involved, each offer must state the odds the participant has of being awarded each prize. The odds must be expressed in Arabic numerals, in ratio form, based on the total number of prizes to be awarded and the total number of offers distributed.

(b) If the promotion identified in the offer is part of a collective promotion with more than one participating sponsor, that fact must be clearly and conspicuously disclosed.

(c) The odds must be stated in a manner that will not deceive or mislead a person about that person's chance of being awarded a prize.

(4) The verifiable retail value and odds for each prize must be stated in immediate proximity on the same page with the first listing of each prize in type at least as large as the typeface used in the standard text of the offer.

(5) If a person is required or invited to view, hear, or attend a sales presentation in order to claim a prize that has been awarded, may have been awarded, or will be awarded, the requirement or invitation must be conspicuously disclosed to the person in the offer in type at least as large as the typeface used in the standard text of the offer on the first page of the offer.

(6) No item in an offer may be denominated a prize, gift, award, premium, or similar term that implies the item is free if, in order to receive the item or use the item for its intended purpose the intended recipient is required to spend any sum of money, including but not limited to shipping fees, deposits, handling fees, payment for one item in order to receive another at no charge, or the purchase of another item or the expenditure of funds in order to make meaningful use of the item awarded in the promotion. The payment of any applicable state or federal taxes by a recipient directly to a government entity is not a violation of this section.

(7) If the receipt of the prize is contingent upon certain restrictions or qualifications that the recipient must meet, or if the use or availability of the prize is restricted or qualified in any way, including, but not limited to restrictions on travel dates, travel times, classes of travel, airlines, accommodations, travel agents, or tour operators, the restrictions or

qualifications must be disclosed on the offer in immediate proximity on the same page with the first listing of the prize in type at least as large as the typeface used in the standard text of the offer or, in place thereof, the following statement printed in direct proximity to the prize or prizes awarded in type at least as large as the typeface used in the standard text of the offer:

"Major restrictions may apply to the use, availability, or receipt of the prize(s) awarded."

This statement must be followed by a disclosure, in the same size type as the statement, indicating where in the offer the restrictions may be found. The restrictions must be printed in type at least as large as the typeface used in the standard text of the offer.

(8) If a prize will not be awarded or given unless a winning ticket, the offer itself, a token, number, lot, or other device used to determine winners in a particular promotion is presented to a promoter or a sponsor, this fact must be clearly stated on the first page of the offer. [1991 c 227 § 3.]

19.170.040 Disclosures—Prizes awarded—Rain checks. (1) Before a demonstration, seminar, or sales presentation begins, the promoter shall inform the person of the prize, if any, the person will receive.

(2) A prize or a voucher, certificate, or other evidence of obligation given instead of a prize shall be given to a person at the time the person is informed of the prize, if any, the person will receive.

(3) A copy of the offer shall be returned to the person receiving the prize at the time the prize is awarded.

(4) It is a violation of this chapter for a promoter or sponsor to include a prize in an offer when the promoter or sponsor knows or has reason to know that the prize will not be available in a sufficient quantity based upon the reasonably anticipated response to the offer.

(5)(a) If the prize is not available for immediate delivery to the recipient, the recipient shall be given, at the promoter or sponsor's option, a rain check for the prize, the verifiable retail value of the prize in cash, or a substitute item of equal or greater verifiable retail value.

(b) If the rain check cannot be honored within thirty days, the promoter or sponsor shall mail to the person a valid check or money order for the verifiable retail value of the prize described in this chapter.

(6) A sponsor shall fulfill the rain check within thirty days if the person named as being responsible fails to honor it.

(7) The offer shall contain the following clear and conspicuous statement of recipients' rights printed in type at least as large as the typeface used in the standard text of the offer:

"If you receive a rain check in lieu of the prize, you are entitled by law to receive the prize, an item of equal or greater value, or the cash equivalent of the offered prize within thirty days of the date on which you claimed the prize."

(8) It is a violation of this chapter to misrepresent the quality, type, value, or availability of a prize. [1991 c 227 § 4.]

19.170.050 Simulated checks—Continuing obligation checks—Notice. (1) No person may produce, advertise, offer for sale, sell, distribute, or otherwise transfer for use in this state a simulated check unless the document bears the phrase "THIS IS NOT A CHECK," diagonally printed in type at least as large as the predominant typeface in the simulated check on the front of the check itself.

(2) No person, other than a financial institution, may produce, advertise, offer for sale, sell, distribute, or otherwise transfer for use in this state a continuing obligation check unless the document bears the phrase "THIS IS A LOAN" or "CASHING THIS REQUIRES REPAYMENT," diagonally printed in type at least as large as the predominant typeface in the continuing obligation check on the front of the check itself. [1991 c 227 § 5.]

19.170.060 Damages—Penalties. (1) A person who suffers damage from an act of deceptive promotional advertising may bring an action against the sponsor or promoter of the advertising, or both. Damages include, but are not limited to, fees paid in violation of RCW 19.170.030(6) and the dollar value of a prize represented to be awarded to a person, but not received by that person.

(2) In an action for deceptive promotional advertising, the court may award the greater of five hundred dollars or three times the actual damages sustained by the person, not to exceed ten thousand dollars; equitable relief, including, but not limited to an injunction and restitution of money and property; attorneys' fees and costs; and any other relief that the court deems proper. [1991 c 227 § 6.]

19.170.070 Violation—Penalty. A person who knowingly violates any provision of this chapter is guilty of a gross misdemeanor. [1991 c 227 § 7.]

19.170.080 Remedies not exclusive. The remedies prescribed in this chapter do not limit or bar any existing remedies at law or equity. [1991 c 227 § 8.]

19.170.900 Severability—1991 c 227. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 227 § 11.]

Chapter 19.174

AUTOMATED TELLER MACHINES AND NIGHT DEPOSITORIES SECURITY

Sections

19.174.010	Intent.
19.174.020	Definitions.
19.174.030	Safety procedures—Requirements.
19.174.040	Lighting requirements—Compliance.
19.174.050	Lighting requirements.
19.174.060	Notice to customer.
19.174.070	Exceptions.
19.174.080	Chapter supersedes local government actions.
19.174.090	Compliance evidence of adequate safety measures.
19.174.900	Effective date—1993 c 324.

19.174.010 Intent. The intent of the legislature in enacting this chapter is to enhance the safety of consumers using automated teller machines and night deposit facilities in Washington without discouraging the siting of automated teller machines and night deposit facilities in locations convenient to consumers' homes and workplaces. Because decisions concerning safety at automated teller machines and night deposit facilities are inherently subjective, the legislature establishes as the standard of care applicable to operators of automated teller machines and night deposit facilities, in connection with user safety, compliance with the objective standards and information requirements of this chapter. It is not the intent of the legislature in enacting this chapter to impose a duty to relocate or modify automated teller machines or night deposit facilities upon the occurrence of a particular event or circumstance, but rather to establish a means for the evaluation of all automated teller machines and night deposit facilities as provided in this chapter. The legislature further recognizes the need for uniformity as to the establishment of safety standards for automated teller machines and night deposit facilities and intends with this chapter to supersede and preempt a rule, regulation, code, or ordinance of a city, county, municipality, or local agency regarding customer safety at automated teller machines and night deposit facilities in Washington. [1993 c 324 § 2.]

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

(1) "Access area" means a paved walkway or sidewalk that is within fifty feet of an automated teller machine or night deposit facility. "Access area" does not include publicly maintained sidewalks or roads.

(2) "Access device" means:

(a) "Access device" as defined in federal reserve board Regulation E, 12 C.F.R. Part 205, promulgated under the Electronic Fund Transfer Act, 15 U.S.C. Sec. 1601, et seq.; or

(b) A key or other mechanism issued by a banking institution to its customer to give the customer access to the banking institution's night deposit facility.

(3) "Automated teller machine" means an electronic information processing device located in this state that accepts or dispenses cash in connection with a credit, deposit, or convenience account. "Automatic [automated] teller machine" does not include a device used primarily to facilitate check guarantees or check authorizations, used in connection with the acceptance or dispensing of cash on a person-to-person basis such as by a store cashier, or used for payment of goods and services.

(4) "Banking institution" means a state or federally chartered bank, trust company, savings bank, savings and loan association, and credit union.

(5) "Candle-foot power" means a light intensity of candles on a horizontal plane at thirty-six inches above ground level and five feet in front of the area to be measured.

(6) "Control of an access area or defined parking area" means to have the present authority to determine how, when, and by whom it is to be used, and how it is to be maintained, lighted, and landscaped.

(7) "Defined parking area" means that portion of a parking area open for customer parking that is:

(a) Contiguous to an access area with respect to an automated teller machine or night deposit facility;

(b) Regularly, principally, and lawfully used for parking by users of the automated teller machine or night deposit facility while conducting transactions during hours of darkness; and

(c) Owned or leased by the operator of the automated teller machine or night deposit facility or owned or controlled by the party leasing the automated teller machine or night deposit facility site to the operator. "Defined parking area" does not include a parking area that is not open or regularly used for parking by users of the automated teller machine or night deposit facility who are conducting transactions during hours of darkness. A parking area is not open if it is physically closed to access or if conspicuous signs indicate that it is closed. If a multiple level parking area satisfies the conditions of this subsection (7)(c) and would therefore otherwise be a defined parking area, only the single parking level deemed by the operator of the automated teller machine and night deposit facility to be the most directly accessible to the users of the automated teller machine and night deposit facility is a defined parking area.

(8) "Hours of darkness" means the period that commences thirty minutes after sunset and ends thirty minutes before sunrise.

(9) "Night deposit facility" means a receptacle that is provided by a banking institution for the use of its customers in delivering cash, checks, and other items to the banking institution.

(10) "Operator" means a banking institution or other business entity or a person who operates an automated teller machine or night deposit facility. [1993 c 324 § 1.]

19.174.030 Safety procedures—Requirements. On or before July 1, 1994, with respect to an existing installed automated teller machine and night deposit facility in this state, and an automated teller machine or night deposit facility installed after July 1, 1994, the operator shall adopt procedures for evaluating the safety of the automated teller machine or night deposit facility. These procedures must pertain to the following:

(1) The extent to which the lighting for the automated teller machine or night deposit facility complies or will comply with the standards required by RCW 19.174.050;

(2) The presence of landscaping, vegetation, or other obstructions in the area of the automated teller machine or night deposit facility, the access area, and the defined parking area; and

(3) The incidence of crimes of violence in the immediate neighborhood of the automated teller machine or night deposit facility, as reflected in the records of the local law enforcement agency and of which the operator has actual knowledge. [1993 c 324 § 3.]

19.174.040 Lighting requirements—Compliance.

(1) An operator of an automated teller machine or night deposit facility installed on or after July 1, 1994, shall comply with RCW 19.174.050 beginning on the date the automated teller machine or night deposit facility is installed.

Compliance with RCW 19.174.050 by an operator as to an automated teller machine and night deposit facility existing as of July 1, 1994, is optional until July 1, 1996, and mandatory thereafter. This section applies to an operator of an automated teller machine or night deposit facility only to the extent that the operator controls the access area or defined parking area to be lighted.

(2) If an access area or a defined parking area is not controlled by the operator of an automated teller machine or night deposit facility, and if the person who leased the automated teller machine or night deposit facility site to the operator controls the access area or defined parking area, the person who controls the access area or defined parking area shall comply with RCW 19.174.050 for an automated teller machine or night deposit facility installed on or after July 1, 1994, beginning on the date the automated teller machine or night deposit facility is installed and for an automated teller machine or night deposit facility existing as of July 1, 1994, by or on July 1, 1996. [1993 c 324 § 4.]

19.174.050 Lighting requirements. The operator, owner, or other person responsible for an automated teller machine or night deposit facility shall provide lighting during hours of darkness with respect to an open and operating automated teller machine or night deposit facility and a defined parking area, access area, and the exterior of an enclosed automated teller machine or night deposit facility installation according to the following standards:

(1) There must be a minimum of ten candle-foot power at the face of the automated teller machine or night deposit facility and extending in an unobstructed direction outward five feet;

(2) There must be a minimum of two candle-foot power within fifty feet from all unobstructed directions from the face of the automated teller machine or night deposit facility. In the event the automated teller machine or night deposit facility is located within ten feet of the corner of the building and the automated teller machine or night deposit facility is generally accessible from the adjacent side, there must be a minimum of two candle-foot power along the first forty unobstructed feet of the adjacent side of the building; and

(3) There must be a minimum of two candle-foot power in that portion of the defined parking area within fifty feet of the automated teller machine or night deposit facility. [1993 c 324 § 5.]

19.174.060 Notice to customer. The issuer of an access device shall furnish a customer receiving the device with a notice of basic safety precautions that the customer should employ while using an automated teller machine or night deposit facility. This information must be furnished by personally delivering or by mailing the information to each customer whose mailing address is in this state for the account to which the access device relates. This information must be furnished for an access device issued on or after July 1, 1994, at or before the time the customer is furnished with his or her access device. For a customer to whom an access device was issued before July 1, 1994, the information must be delivered or mailed to the customer on or before December 31, 1994. Only one notice must be

furnished per household, and if an access device is furnished to more than one customer for a single account or set of accounts or on the basis of a single application or other request for the access devices, only a single notice must be furnished in satisfaction of the notification responsibilities as to all those customers. The information may be included with other disclosures related to the access device furnished to the customer, such as with an initial or periodic disclosure statement furnished under the Electronic Fund Transfer Act, 15 U.S.C. Sec. 1601, et seq. [1993 c 324 § 6.]

19.174.070 Exceptions. This chapter does not apply to an automated teller machine or night deposit facility that is:

(1) Located inside of a building, unless it is a freestanding installation that exists for the sole purpose of providing an enclosure for the automated teller machine or night deposit facility;

(2) Located inside a building, except to the extent a transaction can be conducted from outside the building; or

(3) Located in an area, including an access area, building, enclosed space, or parking area that is not controlled by the operator. [1993 c 324 § 7.]

19.174.080 Chapter supersedes local government actions. This chapter supersedes and preempts all rules, regulations, codes, statutes, or ordinances of all cities, counties, municipalities, and local agencies regarding customer safety at automated teller machines or night deposit facilities located in this state. [1993 c 324 § 8.]

19.174.090 Compliance evidence of adequate safety measures. Compliance with the objective standards and information requirements of this chapter is prima facie evidence that the operator of the automated teller machine or night deposit facility in question has provided adequate measures for the safety of users of the automated teller machine or night depository. [1993 c 324 § 9.]

19.174.900 Effective date—1993 c 324. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]. [1993 c 324 § 15.]

Chapter 19.178

GOING OUT OF BUSINESS SALES

Sections

- 19.178.010 Definitions.
- 19.178.020 Notice—Recording—Display—Service on attorney general.
- 19.178.030 Notice—Recording—Procedure.
- 19.178.040 Inventory list—Compilation of purchase orders.
- 19.178.050 Business identification number—Ownership interest purposes limited—Application of consumer protection act.
- 19.178.060 Time limit.
- 19.178.070 Merchandise—Consigned or not owned by seller—Transfer—Additional.
- 19.178.080 Continuing business prohibited—Exception.
- 19.178.090 Means for continuation of closing business location prohibited.
- 19.178.100 Advertising—Moving sale.

- 19.178.110 Violations—Application of consumer protection act.
 19.178.120 Violation—False or incorrect notice—Penalty.
 19.178.130 Proceedings instituted by attorney general or prosecuting attorney.
 19.178.140 State preemption.
 19.178.900 Application of chapter—Exceptions.
 19.178.901 Severability—1993 c 456.

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

(1) "Affiliated business" means a business or business location that is directly or indirectly controlled by or under common control with the business location or locations listed in the notice of the sale or that has a common ownership interest in the merchandise to be sold with the business location or locations listed in the notice of the sale.

(2) "Going out of business sale" means a sale or auction advertised or held out to the public as the disposal of merchandise in anticipation of cessation of business. This includes but is not limited to a sale or auction advertised or held out to the public as a "going out of business sale," a "closing out sale," a "quitting business sale," a "loss of lease sale," a "must vacate sale," a "liquidation sale," a "bankruptcy sale," a "sale to prevent bankruptcy," or another description suggesting price reduction due to the imminent closure of the business.

(3) "Merchandise" means goods, wares, or other property or services capable of being the object of a sale regulated under this chapter.

(4) "Moving sale" means a sale or auction advertised or held out to the public in anticipation of a relocation of the business to within a thirty-mile radius of its existing location.

(5) "Person" means, where applicable, natural persons, corporations, trusts, unincorporated associations, partnerships, or other legal entities. [1993 c 456 § 2.]

19.178.020 Notice—Recording—Display—Service on attorney general. (1) It is unlawful for a person to sell, offer for sale, or advertise for sale merchandise at a going out of business sale without first recording a notice of the going out of business sale and executing an affidavit of inventory under this chapter.

(2) The notice of the sale must be displayed in a prominent place on the premises where a going out of business sale is being conducted.

(3) Where a going out of business sale is part of a bankruptcy, receivership, or other court-ordered action, a person required by this chapter to record a notice of the sale shall serve a copy of the petition, motion, proposed order, or other pleading requesting court approval of the sale on the attorney general no less than seven days before the date on which an action may be taken related to the conduct of the sale by a court. [1993 c 456 § 3.]

19.178.030 Notice—Recording—Procedure. (1) A person conducting a going out of business sale shall record a notice of the sale with the county auditor at least fourteen days before the beginning date of the sale.

(2) The notice must be signed under oath and acknowledged and must require, and the person signing the notice

shall set forth, the following facts and information regarding the sale:

(a) The name, address, telephone number, and Washington state business identification number of the owner of the merchandise to be sold. If the owner is a corporation, trust, unincorporated association, partnership, or other legal entity, the person signing the notice must be an officer of the entity and must identify his or her title;

(b) The name, address, and telephone number of the person who will be in charge and responsible for the conduct of the sale;

(c) The descriptive name, location or locations, and beginning and ending dates of the sale;

(d) Whether a person who has an ownership interest in the business or in the merchandise to be sold has conducted a going out of business sale within one year of recording the notice;

(e) Whether a person who has an ownership interest in the business or in the merchandise to be sold established or acquired an ownership interest in the business within six months of recording the notice; and

(f) A statement that:

(i) The merchandise ordered during the thirty days before recording the notice consists only of bona fide orders made in the usual course of business and does not contain merchandise taken on consignment or otherwise;

(ii) No merchandise transferred from an affiliated business was transferred in contemplation of conducting the sale;

(iii) No merchandise will be ordered, taken on consignment, or transferred from an affiliated business after the notice is recorded or during the sale;

(iv) No person who has an ownership interest in the business or in the merchandise to be sold established or acquired an interest in the business or in the merchandise to be sold solely or principally for the purpose of conducting a going out of business sale;

(v) The business will be discontinued after the ending date of the sale and no merchandise held out for sale will be subsequently offered for sale to the public by anyone who had an ownership interest in the business or in the merchandise offered for sale; and

(vi) No person who has an ownership interest in the business or in the merchandise to be sold is subject to a court order resulting from a civil enforcement action under the consumer protection act for a violation of this chapter or the type of conduct prohibited by this chapter. [1993 c 456 § 5.]

19.178.040 Inventory list—Compilation of purchase orders. (1) A person conducting a going out of business sale shall, before recording the notice, make either an inventory list of the merchandise to be sold or a compilation of purchase orders issued by the business in the thirty days before recording the notice of the sale.

(2) If a person elects to make an inventory list:

(a) The inventory list must identify the merchandise and include the quantity of each item and the price at which each item was offered for sale within one week of recording the notice;

(b) The inventory list must identify items ordered within thirty days of recording the notice but not yet received by the business;

(c) The inventory list must be permanently attached to an affidavit executed by the person recording the notice of the sale stating that the inventory list is a true and correct inventory of merchandise owned by the business conducting the sale as of the date the affidavit is executed; and

(d) No item may be offered for sale at a going out of business sale unless the item is included in the inventory list for the sale.

(3) If a person elects to make a purchase order compilation, the compilation must be permanently attached to an affidavit executed by the person recording the notice of the sale stating that the compilation is a true and correct compilation of the purchase orders issued by the business in the thirty days before recording the notice of the sale.

(4) The affidavit must be signed under oath and acknowledged before a notary public. Each page of the inventory list or purchase order compilation must be marked in some form by a notary public to verify its identity as part of the inventory list or purchase order compilation for the going out of business sale.

(5) A person conducting a going out of business sale shall maintain possession of the affidavit and attached inventory list or purchase order compilation for three years after the ending date of the sale. The inventory list or purchase order compilation is admissible evidence of compliance or noncompliance with this chapter. [1993 c 456 § 6.]

19.178.050 Business identification number—Ownership interest purposes limited—Application of consumer protection act. (1) No person may conduct a going out of business sale except a person with a valid Washington state business identification number.

(2) No person may conduct a going out of business sale if a person who has an ownership interest in the business or in the merchandise to be sold established or acquired an ownership interest in the business solely or principally for the purpose of conducting a going out of business sale. A person who has either conducted a going out of business sale within one year or established or acquired an interest in the business conducting the sale within six months of recording the notice is presumed to have established or acquired an interest in the business solely or principally for the purpose of conducting a going out of business sale.

(3) No person may conduct a going out of business sale if a person who has an ownership interest in the business or in the merchandise to be sold is subject to a court order resulting from a civil enforcement action under the consumer protection act for a violation of this chapter or the type of conduct prohibited by this chapter. [1993 c 456 § 7.]

19.178.060 Time limit. No person may conduct a going out of business sale for more than sixty days from the beginning date of the sale. [1993 c 456 § 8.]

19.178.070 Merchandise—Consigned or not owned by seller—Transfer—Additional. (1) No person may sell consigned merchandise or other merchandise not owned by

the person signing the notice at a going out of business sale. Merchandise ordered within thirty days of recording the notice of the sale may consist only of bona fide orders made in the usual course of business and may contain no merchandise taken on consignment or otherwise.

(2) No person in contemplation of conducting a going out of business sale may transfer merchandise from an affiliated business or business location to the location or locations of the sale.

(3) No person, after recording the notice of a going out of business sale, may buy or order merchandise, take merchandise on consignment, or receive a transfer of merchandise from an affiliated business or business location for the purpose of selling it at the sale or sell the merchandise in a going out of business sale. [1993 c 456 § 9.]

19.178.080 Continuing business prohibited—Exception. (1) No person may continue to conduct a going out of business sale beyond the ending date listed in the notice of the sale.

(2) No person after conducting a going out of business sale may remain in business under any of the same ownership, or under the same or substantially the same trade name, or continue to offer for sale the same type of merchandise for a period of one year after the ending date of the sale unless the continuing business location was in operation before recording the notice for the closing business location.

(3) For the purposes of this section, if a business entity that is prohibited from continuing a business under this section reformulates itself as a new entity or as an individual, whether by sale, merger, acquisition, bankruptcy, dissolution, or other transaction, for the purpose of continuing the business or profiting from the business, the successor entity or individual is considered the same person as the original entity. If an individual who is prohibited from continuing a business under this section forms a new business entity to continue the business, participate in the business, or profit from the business, that entity is considered the same person as the individual. [1993 c 456 § 10.]

19.178.090 Means for continuation of closing business location prohibited. No person may conduct a going out of business sale if any means have been established for continuation of the closing business location by the same owner, directly or indirectly, by corporation, trust, unincorporated association, partnership, or other legal entity under the same name or under a different name. [1993 c 456 § 11.]

19.178.100 Advertising—Moving sale. (1) No person may advertise a going out of business sale more than fourteen days before the beginning date of the sale. All advertising of the sale must state the beginning date and must clearly and prominently state the ending date of the sale. Except as provided in subsection (2) of this section, all advertising must be confined to or refer to the address or addresses and place or places of business specified in the notice as going out of business and may not state that other locations or affiliated businesses are cooperating with or participating in the sale unless the other locations or affiliated businesses are included in the notice.

(2) Advertising broadcast on radio is not required to refer to the address or addresses of the business specified in the notice as going out of business, but must meet all other conditions of this section.

(3) No advertising may contain false, misleading, or deceptive statements regarding the nature, duration, merchandise, or other terms of a going out of business sale.

(4) Representations in advertising regarding price savings or discounts on sale merchandise must be bona fide and substantiated.

(5) A moving sale may not be advertised for more than ninety days and may not occur more than once within a twenty-four month period. [1993 c 456 § 12.]

19.178.110 Violations—Application of consumer protection act. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1993 c 456 § 1.]

19.178.120 Violation—False or incorrect notice—Penalty. A person who knowingly violates this chapter or who knowingly gives false or incorrect information in a notice required by this chapter is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW. [1993 c 456 § 13.]

19.178.130 Proceedings instituted by attorney general or prosecuting attorney. The attorney general or the proper prosecuting attorney may institute proceedings under this chapter. [1993 c 456 § 14.]

19.178.140 State preemption. The state of Washington fully occupies and preempts the entire field of regulating going out of business sales. [1993 c 456 § 15.]

19.178.900 Application of chapter—Exceptions. (1) This chapter shall apply only to persons who engage in the retail sale of merchandise in their regular course of business.

(2) This chapter does not apply to:

(a) Persons acting in accordance with their powers and duties as public officers, such as county sheriffs;

(b) Bulk transfers as defined in *RCW 62A.6-102; or

(c) Moving sales, except for RCW 19.178.100(5).

(3) Going out of business sales of perishable merchandise or merchandise damaged by fire, smoke, or water are exempt from the requirement that the notice of the sale be recorded at least fourteen days before the beginning date of the sale. [1993 c 456 § 4.]

*Reviser's note: RCW 62A.6-102 was repealed by 1993 c 395 § 6-101.

19.178.901 Severability—1993 c 456. If any provision of this chapter or its application to any person or

circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1993 c 456 § 16.]

Chapter 19.182

FAIR CREDIT REPORTING ACT

Sections

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- 19.182.900 Short title—1993 c 476.
- 19.182.901 Severability—1993 c 476.
- 19.182.902 Effective date—1993 c 476.

19.182.005 Findings—Declaration. The legislature finds and declares that consumers have a vital interest in establishing and maintaining creditworthiness. The legislature further finds that an elaborate mechanism using credit reports has developed for investigating and evaluating a consumer's creditworthiness, credit capacity, and general reputation and character. As such, credit reports are used for evaluating credit card, loan, mortgage, and small business financing applications, as well as for decisions regarding employment and the rental or leasing of dwellings. Moreover, financial institutions and other creditors depend upon fair and accurate credit reports to efficiently and accurately evaluate creditworthiness. Unfair or inaccurate reports undermine both public and creditor confidences in the reliability of credit granting systems.

Therefore, this chapter is necessary to assure accurate credit data collection, maintenance, and reporting on the citizens of the state. It is the policy of the state that credit reporting agencies maintain accurate credit reports, resolve disputed reports promptly and fairly, and adopt reasonable procedures to promote consumer confidentiality and the proper use of credit data in accordance with this chapter. [1993 c 476 § 1.]

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

(1)(a) "Adverse action" includes:

(i) Denial of, increase in any charge for, or reduction in the amount of insurance for personal, family, or household purposes;

(ii) Denial of employment or any other decision for employment purposes that adversely affects a current or prospective employee;

(iii) Action or determination with respect to a consumer's application for credit that is adverse to the interests of the consumer; and

(iv) Action or determination with respect to a consumer's application for the rental or leasing of residential real estate that is adverse to the interests of the consumer.

(b) "Adverse action" does not include:

(i) A refusal to extend additional credit under an existing credit arrangement if:

(A) The applicant is delinquent or otherwise in default with respect to the arrangement; or

(B) The additional credit would exceed a previously established credit limit; or

(ii) A refusal or failure to authorize an account transaction at a point of sale.

(2) "Attorney general" means the office of the attorney general.

(3) "Consumer" means an individual.

(4)(a) "Consumer report" means a written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for:

(i) The purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes;

(ii) Employment purposes; or

(iii) Other purposes authorized under RCW 19.182.020.

(b) "Consumer report" does not include:

(i) A report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) An authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(iii) A report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures to the consumer required under RCW 19.182.070;

(iv) A list compiled by a consumer reporting agency to be used by its client for direct marketing of goods or services not involving an offer of credit;

(v) A report solely conveying a decision whether to guarantee a check in response to a request by a third party; or

(vi) A report furnished for use in connection with a transaction that consists of an extension of credit to be used for a commercial purpose.

(5) "Consumer reporting agency" means a person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the business of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means

or facility of commerce for the purpose of preparing or furnishing consumer reports. "Consumer reporting agency" does not include a person solely by reason of conveying a decision whether to guarantee a check in response to a request by a third party or a person who obtains a consumer report and provides the report or information contained in it to a subsidiary or affiliate of the person.

(6) "Credit transaction that is not initiated by the consumer" does not include the use of a consumer report by an assignee for collection or by a person with which the consumer has an account, for purposes of (a) reviewing the account, or (b) collecting the account. For purposes of this subsection "reviewing the account" includes activities related to account maintenance and monitoring, credit line increases, and account upgrades and enhancements.

(7) "Direct solicitation" means the process in which the consumer reporting agency compiles or edits for a client a list of consumers who meet specific criteria and provides this list to the client or a third party on behalf of the client for use in soliciting those consumers for an offer of a product or service.

(8) "Employment purposes," when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(9) "File," when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(10) "Investigative consumer report" means a consumer report or portion of it in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom the consumer is acquainted or who may have knowledge concerning any items of information. However, the information does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when the information was obtained directly from a creditor of the consumer or from the consumer.

(11) "Medical information" means information or records obtained, with the consent of the individual to whom it relates, from a licensed physician or medical practitioner, hospital, clinic, or other medical or medically related facility.

(12) "Person" includes an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal or commercial entity.

(13) "Prescreening" means the process in which the consumer reporting agency compiles or edits for a client a list of consumers who meet specific credit criteria and provides this list to the client or a third party on behalf of the client for use in soliciting those consumers for an offer of credit. [1993 c 476 § 3.]

19.182.020 Consumer report—Furnishing—Procuring. (1) A consumer reporting agency may furnish a consumer report only under the following circumstances:

(a) In response to the order of a court having jurisdiction to issue the order;

(b) In accordance with the written instructions of the consumer to whom it relates; or

(c) To a person that the agency has reason to believe:

(i) Intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;

(ii) Intends to use the information for employment purposes;

(iii) Intends to use the information in connection with the underwriting of insurance involving the consumer;

(iv) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(v) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

(2)(a) A person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer who is not an employee at the time the report is procured or caused to be procured unless:

(i) A clear and conspicuous disclosure has been made in writing to the consumer before the report is procured or caused to be procured that a consumer report may be obtained for purposes of considering the consumer for employment. The disclosure may be contained in a written statement contained in employment application materials; or

(ii) The consumer authorizes the procurement of the report.

(b) A person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any employee unless the employee has received, at any time after the person became an employee, written notice that consumer reports may be used for employment purposes. A written statement that consumer reports may be used for employment purposes that is contained in employee guidelines or manuals available to employees or included in written materials provided to employees constitutes written notice for purposes of this subsection. This subsection does not apply with respect to a consumer report of an employee who the employer has reasonable cause to believe has engaged in specific activity that constitutes a violation of law.

(c) In using a consumer report for employment purposes, before taking any adverse action based in whole or part on the report, a person shall provide to the consumer to whom the report relates: (i) The name, address, and telephone number of the consumer reporting agency providing the report; (ii) a description of the consumer's rights under this chapter pertaining to consumer reports obtained for employment purposes; and (iii) a reasonable opportunity to respond to any information in the report that is disputed by the consumer. [1993 c 476 § 4.]

19.182.030 Consumer report—Credit action not initiated by consumer—Exclusion by consumer. (1) A consumer reporting agency may provide a consumer report

relating to a consumer under RCW 19.182.020(1)(c)(i) in connection with a credit transaction that is not initiated by the consumer only if:

(a) The consumer authorized the consumer reporting agency to provide the report to such a person; or

(b) The consumer has not elected in accordance with subsection (3) of this section to have the consumer's name and address excluded from such transactions.

(2) A consumer reporting agency may provide only the following information under subsection (1) of this section:

(a) The name and address of the consumer; and

(b) Information pertaining to a consumer that is not identified or identifiable with particular accounts or transactions of the consumer.

(3)(a) A consumer may elect to have his or her name and address excluded from any list provided by a consumer reporting agency through prescreening under subsection (1) of this section or from any list provided by a consumer reporting agency for direct solicitation transactions that are not initiated by the consumer by notifying the consumer reporting agency. The notice must be made in writing through the notification system maintained by the consumer reporting agency under subsection (4) of this section and must state that the consumer does not consent to any use of consumer reports relating to the consumer in connection with any transaction that is not initiated by the consumer.

(b) An election of a consumer under (a) of this subsection is effective with respect to a consumer reporting agency and any affiliate of the consumer reporting agency, within five business days after the consumer reporting agency receives the consumer's notice.

(4) A consumer reporting agency that provides information intended to be used in a prescreened credit transaction or direct solicitation transaction that is not initiated by the consumer shall:

(a) Maintain a notification system that facilitates the ability of a consumer in the agency's data base to notify the agency to promptly withdraw the consumer's name from lists compiled for prescreened credit transactions and direct solicitation transactions not initiated by the consumer; and

(b) Publish at least annually in a publication of general circulation in the area served by the agency, the address for consumers to use to notify the agency of the consumer's election under subsection (3) of this section.

(5) A consumer reporting agency that maintains consumer reports on a nation-wide basis shall establish a system meeting the requirements of subsection (4) of this section on a nation-wide basis, and may operate such a system jointly with any other consumer reporting agencies.

(6) Compliance with the requirements of this section by any consumer reporting agency constitutes compliance by the agency's affiliates. [1993 c 476 § 5.]

19.182.040 Consumer report—Prohibited information—Exceptions. (1) Except as authorized under subsection (2) of this section, no consumer reporting agency may make a consumer report containing any of the following items of information:

(a) Bankruptcies that, from date of adjudication of the most recent bankruptcy, antedate the report by more than ten years;

(b) Suits and judgments that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period;

(c) Paid tax liens that, from date of payment, antedate the report by more than seven years;

(d) Accounts placed for collection or charged to profit and loss that antedate the report by more than seven years;

(e) Records of arrest, indictment, or conviction of crime that, from date of disposition, release, or parole, antedate the report by more than seven years;

(f) Any other adverse item of information that antedates the report by more than seven years.

(2) Subsection (1) of this section is not applicable in the case of a consumer report to be used in connection with:

(a) A credit transaction involving, or that may reasonably be expected to involve, a principal amount of fifty thousand dollars or more;

(b) The underwriting of life insurance involving, or that may reasonably be expected to involve, a face amount of fifty thousand dollars or more; or

(c) The employment of an individual at an annual salary that equals, or that may reasonably be expected to equal, twenty thousand dollars or more. [1993 c 476 § 6.]

19.182.050 Investigative consumer report—Procurement, preparation—Disclosure—Use—Liability—Record. (1) A person may not procure or cause to be prepared an investigative consumer report on a consumer unless:

(a) It is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to the consumer's character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and the disclosure:

(i) Is made in a writing mailed, or otherwise delivered, to the consumer not later than three days after the date on which the report was first requested; and

(ii) Includes a statement informing the consumer of the consumer's right to request the additional disclosures provided for under subsection (2) of this section and the written summary of the rights of the consumer prepared under RCW 19.182.080(7); or

(b) The report is to be used for employment purposes for which the consumer has not specifically applied.

(2) A person who procures or causes to be prepared an investigative consumer report on a consumer shall make, upon written request made by the consumer within a reasonable period of time after the receipt by the consumer of the disclosure required in subsection (1)(a) of this section, a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure must be made in a writing mailed, or otherwise delivered, to the consumer not later than the latter of five days after the date on which the request for the disclosure was either received from the consumer or the report was first requested.

(3) No person may be held liable for a violation of subsection (1) or (2) of this section if the person shows by a preponderance of the evidence that at the time of the violation the person maintained reasonable procedures to assure compliance with subsection (1) or (2) of this section.

(4) A consumer reporting agency shall maintain a detailed record of:

(a) The identity of the person to whom an investigative consumer report or information from a consumer report is provided by the consumer reporting agency; and

(b) The certified purpose for which an investigative consumer report on a consumer, or any other information relating to a consumer, is requested by the person.

For purposes of this subsection, "person" does not include an individual who requests the report unless the individual obtains the report or information for his or her own individual purposes. [1993 c 476 § 7.]

19.182.060 Consumer report—Procedures for compliance—Information for governmental agency—Record. (1) A consumer reporting agency shall maintain reasonable procedures designed to avoid violations of RCW 19.182.040 and to limit the furnishing of consumer reports to the purposes listed under RCW 19.182.020. These procedures must require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. A consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by the prospective user before furnishing the user a consumer report. No consumer reporting agency may furnish a consumer report to a person if the agency has reasonable grounds for believing that the consumer report will not be used for a purpose listed in RCW 19.182.020.

(2) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(3) Notwithstanding RCW 19.182.020, a consumer reporting agency may furnish identifying information about a consumer, limited to the consumer's name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

(4) A consumer reporting agency shall maintain a detailed record of:

(a) The identity of any person to whom a consumer report or information from a consumer report is provided by the consumer reporting agency; and

(b) The certified purpose for which a consumer report on a consumer, or any other information relating to a consumer, is requested by any person.

For purposes of this subsection, "person" does not include an individual who requests the report unless the individual obtains the report or information for his or her own purposes. [1993 c 476 § 8.]

19.182.070 Disclosures to consumer. A consumer reporting agency shall, upon request by the consumer, clearly and accurately disclose:

(1) All information in the file on the consumer at the time of request, except that medical information may be withheld. The agency shall inform the consumer of the existence of medical information, and the consumer has the right to have that information disclosed to the health care provider of the consumer's choice. Nothing in this chapter

prevents, or authorizes a consumer reporting agency to prevent, the health care provider from disclosing the medical information to the consumer. The agency shall inform the consumer of the right to disclosure of medical information at the time the consumer requests disclosure of his or her file.

(2) All items of information in its files on that consumer, including disclosure of the sources of the information, except that sources of information acquired solely for use in an investigative report may only be disclosed to a plaintiff under appropriate discovery procedures.

(3) Identification of (a) each person who for employment purposes within the two-year period before the request, and (b) each person who for any other purpose within the six-month period before the request, procured a consumer report.

(4) A record identifying all inquiries received by the agency in the six-month period before the request that identified the consumer in connection with a credit transaction that is not initiated by the consumer.

(5) An identification of a person under subsection (3) or (4) of this section must include (a) the name of the person or, if applicable, the trade name under which the person conducts business; and (b) upon request of the consumer, the address of the person. [1993 c 476 § 9.]

19.182.080 Disclosures to consumer—Procedures.

(1) A consumer reporting agency shall make the disclosures required under RCW 19.182.070 during normal business hours and on reasonable notice.

(2) The consumer reporting agency shall make the disclosures required under RCW 19.182.070 to the consumer:

(a) In person if the consumer appears in person and furnishes proper identification;

(b) By telephone if the consumer has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer; or

(c) By any other reasonable means that are available to the consumer reporting agency if that means is authorized by the consumer.

(3) A consumer reporting agency shall provide trained personnel to explain to the consumer, information furnished to the consumer under RCW 19.182.070.

(4) The consumer reporting agency shall permit the consumer to be accompanied by one other person of the consumer's choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in the other person's presence.

(5) If a credit score is provided by a consumer reporting agency to a consumer, the agency shall provide an explanation of the meaning of the credit score.

(6) Except as provided in RCW 19.182.150, no consumer may bring an action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against a consumer reporting agency or a user of information, based on information disclosed under this section or RCW 19.182.070, except as

to false information furnished with malice or willful intent to injure the consumer. Except as provided in RCW 19.182.150, no consumer may bring an action or proceeding against a person who provides information to a consumer reporting agency in the nature of defamation, invasion of privacy, or negligence for unintentional error.

(7)(a) A consumer reporting agency must provide to a consumer, with each written disclosure by the agency to the consumer under RCW 19.182.070, a written summary of all rights and remedies the consumer has under this chapter.

(b) The summary of the rights and remedies of consumers under this chapter must include:

(i) A brief description of this chapter and all rights and remedies of consumers under this chapter;

(ii) An explanation of how the consumer may exercise the rights and remedies of the consumer under this chapter; and

(iii) A list of all state agencies, including the attorney general's office, responsible for enforcing any provision of this chapter and the address and appropriate phone number of each such agency. [1993 c 476 § 10.]

19.182.090 Consumer file—Dispute—Procedure—Notice—Statement of dispute—Toll-free information number.

(1) If the completeness or accuracy of an item of information contained in a consumer's file at a consumer reporting agency is disputed by the consumer and the consumer notifies the agency directly of the dispute, the agency shall reinvestigate without charge and record the current status of the disputed information before the end of thirty business days, beginning on the date the agency receives the notice from the consumer.

(2) Before the end of the five business-day period beginning on the date a consumer reporting agency receives notice of a dispute from a consumer in accordance with subsection (1) of this section, the agency shall notify any person who provided an item of information in dispute.

(3)(a) Notwithstanding subsection (1) of this section, a consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under subsection (1) of this section if the agency determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure of the consumer to provide sufficient information.

(b) Upon making a determination in accordance with (a) of this subsection that a dispute is frivolous or irrelevant, a consumer reporting agency shall notify the consumer within five business days of the determination. The notice shall be made in writing or any other means authorized by the consumer that are available to the agency, but the notice shall include the reasons for the determination and a notice of the consumer's rights under subsection (6) of this section.

(4) In conducting a reinvestigation under subsection (1) of this section with respect to disputed information in the file of any consumer, the consumer reporting agency shall review and consider all relevant information submitted by the consumer in the period described in subsection (1) of this section with respect to the disputed information.

(5)(a) If, after a reinvestigation under subsection (1) of this section of information disputed by a consumer, the information is found to be inaccurate or cannot be verified,

the consumer reporting agency shall promptly delete the information from the consumer's file.

(b)(i) If information is deleted from a consumer's file under (a) of this subsection, the information may not be reinserted in the file after the deletion unless the person who furnishes the information verifies that the information is complete and accurate.

(ii) If information that has been deleted from a consumer's file under (a) of this subsection is reinserted in the file in accordance with (b)(i) of this subsection, the consumer reporting agency shall notify the consumer of the reinsertion within thirty business days. The notice shall be in writing or any other means authorized by the consumer that are available to the agency.

(6) If the reinvestigation does not resolve the dispute or if the consumer reporting agency determines the dispute is frivolous or irrelevant, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit these statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(7) After the deletion of information from a consumer's file under this section or after the filing of a statement of dispute under subsection (6) of this section, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item of information has been deleted or that item of information is disputed. In the case of disputed information, the notification shall include the statement filed under subsection (6) of this section. The notification shall be furnished to any person specifically designated by the consumer, who has, within two years before the deletion or filing of a dispute, received a consumer report concerning the consumer for employment purposes, or who has, within six months of the deletion or the filing of the dispute, received a consumer report concerning the consumer for any other purpose, if these consumer reports contained the deleted or disputed information.

(8)(a) Upon completion of the reinvestigation under this section, a consumer reporting agency shall provide notice, in writing or by any other means authorized by the consumer, of the results of a reinvestigation within five business days.

(b) The notice required under (a) of this subsection must include:

(i) A statement that the reinvestigation is completed;

(ii) A consumer report that is based upon the consumer's file as that file is revised as a result of the reinvestigation;

(iii) A description or indication of any changes made in the consumer report as a result of those revisions to the consumer's file;

(iv) If requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the agency, including the name, business address, and telephone number of any person contacted in connection with the information;

(v) If the reinvestigation does not resolve the dispute, a summary of the consumer's right to file a brief statement as provided in subsection (6) of this section; and

(vi) If information is deleted or disputed after reinvestigation, a summary of the consumer's right to request

notification to persons who have received a consumer report as provided in subsection (7) of this section.

(9) In the case of a consumer reporting agency that compiles and maintains consumer reports on a nation-wide basis, the consumer reporting agency must provide to a consumer who has undertaken to dispute the information contained in his or her file a toll-free telephone number that the consumer can use to communicate with the agency. A consumer reporting agency that provides a toll-free number required by this subsection shall also provide adequately trained personnel to answer basic inquiries from consumers using the toll-free number. [1993 c 476 § 11.]

19.182.100 Consumer reporting agency—Consumer fees and charges for required information—Exceptions.

(1) Except as provided in subsections (2) and (3) of this section, a consumer reporting agency may charge the following fees to the consumer:

(a) For making a disclosure under RCW 19.182.070 and 19.182.080, the consumer reporting agency may charge a fee not exceeding eight dollars. Beginning January 1, 1995, the eight-dollar charge may be adjusted on January 1st of each year based on corresponding changes in the consumer price index with fractional changes rounded to the nearest half dollar.

(b) For furnishing a notification, statement, or summary to a person under RCW 19.182.090(7), the consumer reporting agency may charge a fee not exceeding the charge that the agency would impose on each designated recipient for a consumer report. The amount of any charge must be disclosed to the consumer before furnishing the information.

(2) A consumer reporting agency shall make all disclosures under RCW 19.182.070 and 19.182.080 and furnish all consumer reports under RCW 19.182.090 without charge, if requested by the consumer within sixty days after receipt by the consumer of a notification of adverse action under RCW 19.182.110 or of a notification from a debt collection agency affiliated with that consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected.

(3) A consumer reporting agency shall not impose any charge for (a) providing notice to a consumer required under RCW 19.182.090, or (b) notifying a person under RCW 19.182.090(7) of the deletion of information that is found to be inaccurate or that can no longer be verified, if the consumer designates that person to the agency before the end of the thirty-day period beginning on the date of notice under RCW 19.182.090(8). [1993 c 476 § 12.]

19.182.110 Adverse action based on report—Procedure—Notice. If a person takes an adverse action with respect to a consumer that is based, in whole or in part, on information contained in a consumer report, the person shall:

(1) Provide written notice of the adverse action to the consumer, except verbal notice may be given by a person in an adverse action involving a business regulated by the Washington utilities and transportation commission or involving an application for the rental or leasing of residential real estate if such verbal notice does not impair a

consumer's ability to obtain a credit report without charge under RCW 19.182.100(2); and

(2) Provide the consumer with the name, address, and telephone number of the consumer reporting agency that furnished the report to the person. [1993 c 476 § 13.]

19.182.120 Limitation on action—Exception. An action to enforce a liability created under this chapter is permanently barred unless commenced within two years after the cause of action accrues, except that where a defendant has materially and willfully misrepresented information required under this chapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this chapter, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. [1993 c 476 § 14.]

19.182.130 Obtaining information under false pretenses—Penalty. A person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses is subject to a fine of up to five thousand dollars or imprisonment for up to one year, or both. [1993 c 476 § 15.]

19.182.140 Provision of information to unauthorized person—Penalty. An officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information is subject to a fine of up to five thousand dollars or imprisonment for up to one year, or both. [1993 c 476 § 16.]

19.182.150 Application of consumer protection act—Limitation—Awards—Penalties—Attorneys' fees. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. The burden of proof in an action alleging a violation of this chapter shall be by a preponderance of the evidence, and the applicable statute of limitation shall be as set forth in RCW 19.182.120. For purposes of a judgment awarded pursuant to an action by a consumer under chapter 19.86 RCW, the consumer shall be awarded actual damages and costs of the action together with reasonable attorney's fees as determined by the court. However, where there has been willful failure to comply with any requirement imposed under this chapter, the consumer shall be awarded actual damages, a monetary penalty of one thousand dollars, and the costs of the action together with reasonable attorneys' fees as determined by the court. [1993 c 476 § 17.]

19.182.900 Short title—1993 c 476. This chapter shall be known as the Fair Credit Reporting Act. [1993 c 476 § 2.]

19.182.901 Severability—1993 c 476. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 476 § 18.]

19.182.902 Effective date—1993 c 476. This act takes effect January 1, 1994. [1993 c 476 § 20.]

Chapter 19.184 WHEELCHAIRS

Sections

- 19.184.010 Definitions.
- 19.184.020 Warranty—Implied.
- 19.184.030 Failure to conform with warranty—Remedy—Disclosure of returned wheelchair.
- 19.184.040 Rights or remedies not limited.
- 19.184.050 Consumer waiver void.
- 19.184.060 Action for damages—Pecuniary loss doubled—Costs, disbursements, attorneys' fees, equitable relief.

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

(1) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative wheelchair or other device assisting mobility.

(2) "Consumer" means any of the following:

(a) The purchaser of a wheelchair, if the wheelchair was purchased from a wheelchair dealer or manufacturer for purposes other than resale;

(b) A person to whom a wheelchair is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the wheelchair;

(c) A person who may enforce a warranty on a wheelchair; or

(d) A person who leases a wheelchair from a wheelchair lessor under a written lease.

(3) "Demonstrator" means a wheelchair used primarily for the purpose of demonstration to the public.

(4) "Early termination cost" means an expense or obligation that a wheelchair lessor incurs as a result of both the termination of a written lease before the termination date set forth in the lease and the return of a wheelchair to a manufacturer under RCW 19.184.030(2)(b). "Early termination cost" includes a penalty for prepayment under a finance arrangement.

(5) "Early termination savings" means an expense or obligation that a wheelchair lessor avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of a wheelchair to a manufacturer under RCW 19.184.030(2)(b). "Early termination savings" includes an interest charge that the wheelchair lessor would have paid to finance the wheelchair or, if the wheelchair lessor does not finance the wheelchair, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(6) "Manufacturer" means a person who manufactures or assembles wheelchairs and agents of the person, including an importer, a distributor, factory branch, distributor branch, and a warrantor of the manufacturer's wheelchairs, but does not include a wheelchair dealer.

(7) "Nonconformity" means a condition or defect that substantially impairs the use, value, or safety of a wheelchair, and that is covered by an express warranty applicable to the wheelchair or to a component of the wheelchair, but does not include a condition or defect that is the result of abuse, neglect, or unauthorized modification or alteration of the wheelchair by a consumer.

(8) "Reasonable attempt to repair" means any of the following occurring within the term of an express warranty applicable to a new wheelchair or within one year after first delivery of a wheelchair to a consumer, whichever is sooner:

(a) An attempted repair by the manufacturer, wheelchair lessor, or the manufacturer's authorized dealer is made to the same warranty nonconformity at least four times and the nonconformity continues; or

(b) The wheelchair is out of service for an aggregate of at least thirty days because of warranty nonconformity.

(9) "Wheelchair" means a wheelchair, including a demonstrator, that a consumer purchases or accepts transfer of in this state.

(10) "Wheelchair dealer" means a person who is in the business of selling wheelchairs.

(11) "Wheelchair lessor" means a person who leases a wheelchair to a consumer, or who holds the lessor's rights, under a written lease. [1995 c 14 § 1; 1994 c 104 § 1.]

19.184.020 Warranty—Implied. A manufacturer who sells a wheelchair to a consumer, either directly or through a wheelchair dealer, shall furnish the consumer with an express warranty for the wheelchair. The duration of the express warranty must be for at least one year after the first delivery of the wheelchair to the consumer. If the manufacturer fails to furnish an express warranty as required under this section, the wheelchair is covered by an implied warranty as if the manufacturer had furnished an express warranty to the consumer as required under this section. [1995 c 14 § 2; 1994 c 104 § 2.]

19.184.030 Failure to conform with warranty—Remedy—Disclosure of returned wheelchair. (1) If a new wheelchair does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the wheelchair lessor, or any of the manufacturer's authorized wheelchair dealers and makes the wheelchair available for repair before one year after first delivery of the wheelchair to the consumer, the nonconformity must be repaired.

(2) If, after a reasonable attempt to repair, the nonconformity is not repaired, the manufacturer shall do one of the following, whichever is appropriate:

(a) At the direction of a consumer described under RCW 19.184.010(2) (a), (b), or (c), do one of the following:

(i) Accept return of the wheelchair and replace the wheelchair with a comparable new wheelchair and refund any collateral costs; or

(ii) Accept return of the wheelchair and refund to the consumer and to a holder of a perfected security interest in the consumer's wheelchair, as their interest may appear, the full purchase price plus any finance charge, amount paid by the consumer at the point of sale, and collateral costs, less a reasonable allowance for use. Under this subsection (2)(a)(ii), a reasonable allowance for use may not exceed the amount obtained by multiplying the full purchase price of the wheelchair by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the wheelchair was driven before the consumer first reported the nonconformity to the wheelchair dealer; or

(b)(i) For a consumer described in RCW 19.184.010(2)(d), accept return of the wheelchair, refund to the wheelchair lessor and to a holder of a perfected security interest in the wheelchair, as their interest may appear, the current value of the written lease and refund to the consumer the amount that the consumer paid under the written lease plus any collateral costs, less a reasonable allowance for use.

(ii) Under this subsection (2)(b), the current value of the written lease equals the total amount for which the lease obligates the consumer during the period of the lease remaining after its early termination, plus the wheelchair dealer's early termination costs and the value of the wheelchair at the lease expiration date if the lease sets forth the value, less the wheelchair lessor's early termination savings.

(iii) Under this subsection (2)(b), a reasonable allowance for use may not exceed the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the consumer drove the wheelchair before first reporting the nonconformity to the manufacturer, wheelchair lessor, or wheelchair dealer.

(3) To receive a comparable new wheelchair or a refund due under subsection (2)(a) of this section, a consumer described under RCW 19.184.010(2) (a), (b), or (c) shall offer to the manufacturer of the wheelchair having the nonconformity to transfer possession of the wheelchair to the manufacturer. Within thirty days after the offer, the manufacturer shall provide the consumer with a comparable new wheelchair or a refund. When the manufacturer provides a new wheelchair or refund under this subsection, the consumer shall return to the manufacturer the wheelchair having the nonconformity.

(4)(a) To receive a refund due under subsection (2)(b) of this section, a consumer described under RCW 19.184.010(2)(d) shall offer to return the wheelchair having the nonconformity to its manufacturer. Within thirty days after the offer, the manufacturer shall provide the refund to the consumer. When the manufacturer provides the refund, the consumer shall return to the manufacturer the wheelchair having the nonconformity.

(b) To receive a refund due under subsection (2)(b) of this section, a wheelchair lessor shall offer to transfer possession of the wheelchair having the nonconformity to the manufacturer. Within thirty days after the offer, the manufacturer shall provide a refund to the wheelchair lessor. When the manufacturer provides the refund, the wheelchair lessor shall provide to the manufacturer the endorsements necessary to transfer legal possession to the manufacturer.

(c) A person may not enforce the lease against the consumer after the consumer receives a refund due under subsection (2)(b) of this section.

(5) A person may not sell or lease again in this state a wheelchair returned by a consumer or wheelchair lessor in this state under subsection (2) of this section or by a consumer or wheelchair lessor in another state under a similar law of that state, unless full disclosure of the reasons for return is made to a prospective buyer or lessee. [1995 c 14 § 3; 1994 c 104 § 3.]

19.184.040 Rights or remedies not limited. This chapter does not limit rights or remedies available under other law to a consumer. [1994 c 104 § 4.]

19.184.050 Consumer waiver void. A waiver by a consumer of rights under this section is void. [1994 c 104 § 5.]

19.184.060 Action for damages—Pecuniary loss doubled—Costs, disbursements, attorneys' fees, equitable relief. In addition to pursuing another remedy, a consumer may bring an action to recover damages caused by a violation of this chapter. The court shall award a consumer who prevails in an action under this section twice the amount of pecuniary loss, together with costs, disbursements, reasonable attorneys' fees, and equitable relief that the court determines is appropriate. [1994 c 104 § 6.]

Chapter 19.186

ROOFING AND SIDING CONTRACTORS AND SALESPERSONS

Sections

- 19.186.005 Findings—Intent.
- 19.186.010 Definitions.
- 19.186.020 Written contract—Requirements—Right to rescind—Notice.
- 19.186.030 Waiting period to begin work if customer obtaining loan—Effect.
- 19.186.040 Liability of contract purchaser or assignee—Notice.
- 19.186.050 Violation—Consumer protection act.
- 19.186.060 Liability for failure to comply with chapter.

19.186.005 Findings—Intent. The legislature finds that many homeowners are solicited by siding and roofing contractors to purchase home improvements. Some contractors misrepresent the financing terms or the cost of the improvements, preventing the homeowner from making an informed decision about whether the improvements are affordable. The result is that many homeowners face financial hardship including the loss of their homes through foreclosure. The legislature declares that this is a matter of public interest. It is the intent of the legislature to establish rules of business practice for roofing and siding contractors to promote honesty and fair dealing with homeowners. [1994 c 285 § 1.]

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

(1) "Roofing or siding contract" means an agreement between a roofing or siding contractor or salesperson and a homeowner that includes, in part, an agreement to install, repair or replace residential roofing or siding for a total cost including labor and materials in excess of one thousand dollars.

This chapter does not apply to the following contracts:

(a) Residential remodel or repair contracts where the cost specified for roofing or siding is less than twenty percent of the total contract price;

(b) Contracts where the roofing or siding is part of a contract to build a new dwelling or an addition that provides additional living space;

(c) Contracts for emergency repairs made necessary by a natural disaster such as an earthquake, wind storm, or hurricane, or after a fire in the dwelling;

(d) Homes being prepared for resale; or

(e) Roofing or siding contracts in which the homeowner was not directly solicited by a roofing or siding contractor or salesperson. If a roofing or siding contractor or roofing or siding salesperson generally does business by soliciting, it shall be a rebuttable presumption that any roofing or siding contract entered into with a homeowner shall have been the result of a solicitation.

(2) "Roofing or siding contractor" means a person who owns or operates a contracting business that purports to install, repair, or replace or subcontracts to install, repair, or replace residential roofing or siding.

(3) "Roofing or siding salesperson" means a person who solicits, negotiates, executes, or otherwise endeavors to procure a contract with a homeowner to install, repair, or replace residential roofing or siding on behalf of a roofing or siding contractor.

(4) "Residential roofing or siding" means roofing or siding installation, repair or replacement for an existing single-family dwelling or multiple family dwelling of four or less units, provided that this does not apply to a residence under construction.

(5) "Person" includes an individual, corporation, company, partnership, joint venture, or a business entity.

(6) "Siding" means material used to cover the exterior walls of a residential dwelling, excluding paint application.

(7)(a) "Solicit" means to initiate contact with the homeowner for the purpose of selling or installing roofing or siding by one of the following methods:

(i) Door-to-door contact;

(ii) Telephone contact;

(iii) Flyers left at a residence; or

(iv) Other promotional advertisements which offer gifts, cash, or services if the homeowner contacts the roofing or siding contractor or salesperson, except for newspaper advertisements which offer a seasonal discount.

(b) "Solicit" does not include:

(i) Calls made in response to a request or inquiry by the homeowner; or

(ii) Calls made to homeowners who have prior business or personal contact with the residential roofing or siding contractor or salesperson. [1994 c 285 § 2.]

19.186.020 Written contract—Requirements—Right to rescind—Notice. A roofing or siding contract shall be in

writing. A copy of the contract shall be given to the homeowner at the time the homeowner signs the contract. The contract shall be typed or printed legibly and contain the following provisions:

- (1) An itemized list of all work to be performed;
- (2) The grade, quality, or brand name of materials to be used;
- (3) The dollar amount of the contract;
- (4) The name and address of the roofing or siding salesperson;
- (5) The name, address, and contractor's registration number of the roofing or siding contractor;
- (6) A statement as to whether all or part of the work is to be subcontracted to another person;
- (7) The contract shall require the homeowner to disclose whether he or she intends to obtain a loan in order to pay for all or part of the amount due under the contract;
- (8) If the customer indicates that he or she intends to obtain a loan to pay for a portion of the roofing or siding contract, the homeowner shall have the right to rescind the contract within three business days of receiving truth-in-lending disclosures or three business days of receiving written notification that the loan application was denied, whichever date is later; and
- (9) The contract shall provide the following notice in ten-point boldface type in capital letters:

"CUSTOMER'S RIGHT TO CANCEL

IF YOU HAVE INDICATED IN THIS CONTRACT THAT YOU INTEND TO OBTAIN A LOAN TO PAY FOR ALL OR PART OF THE WORK SPECIFIED IN THE CONTRACT, YOU HAVE THE RIGHT TO CHANGE YOUR MIND AND CANCEL THIS CONTRACT WITHIN THREE DAYS OF THE DATE WHEN THE LENDER PROVIDES YOU WITH YOUR TRUTH-IN-LENDING DISCLOSURE STATEMENT OR THE DATE WHEN YOU RECEIVE WRITTEN NOTIFICATION THAT YOUR LOAN WAS DENIED.

BE SURE THAT ALL PROMISES MADE BY YOUR CONTRACTOR ARE PUT IN WRITING BEFORE YOU SIGN THIS CONTRACT."

[1994 c 285 § 3.]

19.186.030 Waiting period to begin work if customer obtaining loan—Effect. If the customer indicates that he or she intends to obtain a loan to pay for all or part of the cost of the roofing or siding contract, the roofing or siding contractor shall not begin work until after the homeowner's rescission rights provided in RCW 19.186.020(9) have expired. If the roofing or siding contractor commences work under the contract before the homeowner's rescission rights have expired, the roofing or siding contractor or salesperson shall be prohibited from enforcing terms of the contract, including claims for labor or materials, in a court of law and shall terminate any security interest or statutory lien created under the transaction within twenty days of receiving written rescission of the contract from the customer. [1994 c 285 § 4.]

[Title 19 RCW—page 218]

19.186.040 Liability of contract purchaser or assignee—Notice. A person who purchases or is otherwise assigned a roofing or siding contract shall be subject to all claims and defenses with respect to the contract that the homeowner could assert against the siding or roofing contractor or salesperson. A person who sells or otherwise assigns a roofing or siding contract shall include a prominent notice of the potential liability under this section. [1994 c 285 § 5.]

19.186.050 Violation—Consumer protection act. The legislature finds and declares that a violation of this chapter substantially affects the public interest and is an unfair and deceptive act or practice and unfair method of competition in the conduct of trade or commerce as set forth under chapter 19.86 RCW. [1994 c 285 § 6.]

19.186.060 Liability for failure to comply with chapter. A roofing or siding contractor or salesperson who fails to comply with the requirements of this chapter shall be liable to the homeowner for any actual damages sustained by the person as a result of the failure. Nothing in this section shall limit any cause of action or remedy available under RCW 19.186.050 or chapter 19.86 RCW. [1994 c 285 § 7.]

Chapter 19.188

ELECTRONIC MEDIA VIOLENCE

Sections

- 19.188.010 Finding.
- 19.188.020 Television time/channel locks.
- 19.188.030 Library access policies.

19.188.010 Finding. The legislature finds that, to the extent that electronic media, including television, motion pictures, video games, and entertainment uses of virtual reality are conducive to increased violent behaviors, especially in children, the state has a duty to protect the public health and safety.

Many parents, educators, and others are concerned about protecting children and youth from the negative influences of the media, and want more information about media content and more control over media contact with their children. [1994 sp.s. c 7 § 801.]

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

19.188.020 Television time/channel locks. All new televisions sold in this state after January 1, 1995, shall be equipped with a time/channel lock or shall be sold with an offer to the customer to purchase a channel blocking device, or other device that enables a person to regulate a child's access to unwanted television programming. All cable television companies shall make available to all customers at the company's cost the opportunity to purchase a channel blocking device, or other device that enables a person to regulate a child's access to unwanted television programming. The commercial television sellers and cable television companies shall offer time/channel locks to their customers, when these devices are available. Notice of this availability shall be clearly made to all existing customers and to all new

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customers at the time of their signing up for service. [1994 sp.s. c 7 § 803.]

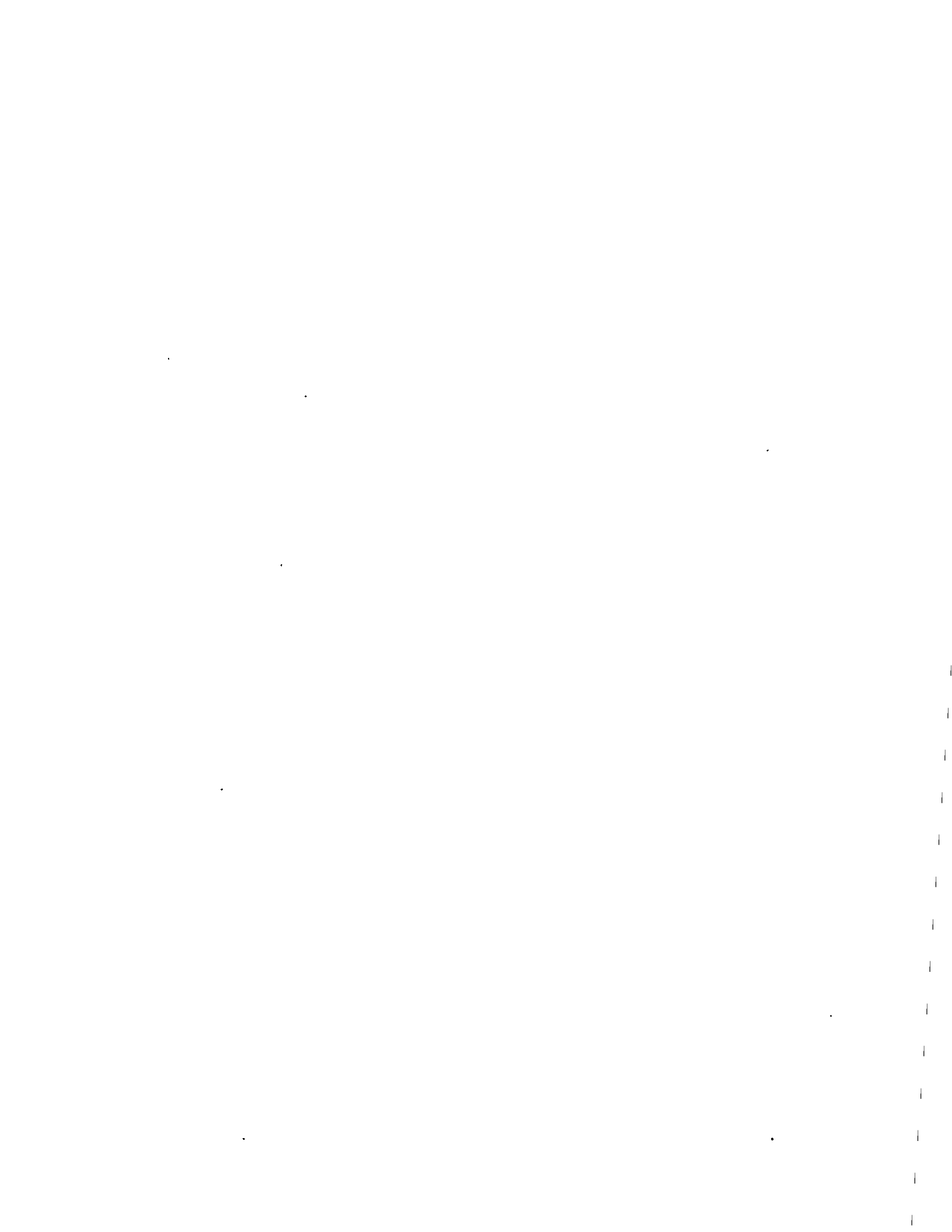
~~Finding—Intent—Severability—1994 sp.s. c 7: See notes following RCW 43.70.540.~~

19.188.030 Library access policies. The legislature finds that, as a matter of public health and safety, access by minors to violent videos and violent video games is the responsibility of parents and guardians.

Public libraries, with the exception of university, college, and community college libraries, shall establish policies on minors' access to violent videos and violent video games. Libraries shall make their policies known to the public in their communities.

Each library system shall formulate its own policies, and may, in its discretion, include public hearings, consultation with community networks as defined under chapter 70.190 RCW, or consultation with the Washington library association in the development of its policies. [1994 sp.s. c 7 § 806.]

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



Title 20

COMMISSION MERCHANTS—AGRICULTURAL PRODUCTS

Chapters

20.01 Agricultural products—Commission merchants, dealers, brokers, buyers, agents.

Sales of personal property: Title 62A RCW.

Washington wholesome eggs and egg products act: Chapter 69.25 RCW.

Chapter 20.01

AGRICULTURAL PRODUCTS—COMMISSION MERCHANTS, DEALERS, BROKERS, BUYERS, AGENTS

Sections

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| <p>20.01.010 Definitions.</p> <p>20.01.020 Rules and regulations—Enforcement of chapter—Interference prohibited.</p> <p>20.01.030 Exemptions.</p> <p>20.01.038 License required of persons dealing in livestock, hay, grain, or straw.</p> <p>20.01.040 License—Generally.</p> <p>20.01.050 License renewals.</p> <p>20.01.060 Licensee in one class may obtain license in another—Additional fee.</p> <p>20.01.070 Application for license—Contents.</p> <p>20.01.080 Commission merchant's schedule of commissions and charges—Changes, posting.</p> <p>20.01.086 Waiver of reporting, accounting, and record-keeping requirements prohibited.</p> <p>20.01.090 Agent to disclose principal licensee and his endorsement.</p> <p>20.01.100 Issuance of license—Expiration date—Fraudulent application grounds for refusal, revocation.</p> <p>20.01.110 Publication of list of licensees and rules—Posting license.</p> <p>20.01.120 Vehicle license plates.</p> <p>20.01.125 Hay or straw—Certified vehicle tare and load 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claim.</p> <p>20.01.220 Action on bond for fraud.</p> <p>20.01.230 Action on bond for failure to comply with chapter.</p> <p>20.01.240 Claims against commission merchant, dealer.</p> <p>20.01.250 Failure of consignor to file claim, time limitation.</p> <p>20.01.260 Director not liable if circumstances prevent ascertainment of creditors—Demand on bond.</p> | <p>20.01.270 Demand on bond after claims ascertained—Power of director to settle, compromise.</p> <p>20.01.280 Action on bond after refusal to pay—New bond, failure to file.</p> <p>20.01.300 Verified complaints of consignor—Investigations.</p> <p>20.01.310 Oaths, testimony, witnesses, subpoenas—Contempt proceedings—Records as evidence.</p> <p>20.01.320 Investigations, examinations, inspections.</p> <p>20.01.330 Denial, revocation, suspension, or condition of licenses, probationary orders—Grounds.</p> <p>20.01.340 Denial, revocation, suspension of licenses, probationary orders—Previous violations as grounds.</p> <p>20.01.350 Denial, 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20.01.930 Repealer.

20.01.940 Repealer—Savings—1979 ex.s. c 115.

Administrative Procedure Act: Chapter 34.05 RCW.

Lien for transportation, storage, advancements, etc.: Chapter 60.60 RCW.

20.01.010 Definitions. As used in this title the terms defined in this section have the meanings indicated unless the context clearly requires otherwise.

(1) "Director" means the director of agriculture or his duly authorized representative.

(2) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof or assignee for the benefit of creditors.

(3) "Agricultural product" means any unprocessed horticultural, vermicultural and its byproducts, viticultural, berry, poultry, poultry product, grain, bee, or other agricultural products, and includes mint or mint oil processed by or for the producer thereof and hay and straw baled or prepared for market in any manner or form and livestock.

(4) "Producer" means any person engaged in the business of growing or producing any agricultural product, whether as the owner of the products, or producing the products for others holding the title thereof.

(5) "Consignor" means any producer, person, or his agent who sells, ships, or delivers to any commission merchant, dealer, cash buyer, or agent, any agricultural product for processing, handling, sale, or resale.

(6) "Commission merchant" means any person who receives on consignment for sale or processing and sale from the consignor thereof any agricultural product for sale on commission on behalf of the consignor, or who accepts any farm product in trust from the consignor thereof for the purpose of resale, or who sells or offers for sale on commission any agricultural product, or who in any way handles for the account of or as an agent of the consignor thereof, any agricultural product.

(7) "Dealer" means any person other than a cash buyer, as defined in subsection (10) of this section, who solicits, contracts for, or obtains from the consignor thereof for reselling or processing, title, possession, or control of any agricultural product, or who buys or agrees to buy any agricultural product from the consignor thereof for sale or processing and includes any person, other than one who acts solely as a producer, who retains title in an agricultural product and delivers it to a producer for further production or increase. For the purposes of this chapter, the term dealer includes any person who purchases livestock on behalf of and for the account of another, or who purchases cattle in another state or country and imports these cattle into this state for resale.

(8) "Limited dealer" means any person operating under the alternative bonding provision in RCW 20.01.211.

(9) "Broker" means any person other than a commission merchant, dealer, or cash buyer who negotiates the purchase or sale of any agricultural product, but no broker may handle the agricultural products involved or proceeds of the sale.

(10) "Cash buyer" means any person other than a commission merchant, dealer, or broker, who obtains from the consignor thereof for the purpose of resale or processing, title, possession, or control of any agricultural product or who contracts for the title, possession, or control of any agri-

cultural product, or who buys or agrees to buy for resale any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product, in coin or currency, lawful money of the United States. However, a cashier's check, certified check, or bankdraft may be used for the payment. For the purposes of this subsection, "agricultural product," does not include hay, grain, straw, or livestock.

(11) "Agent" means any person who, on behalf of any commission merchant, dealer, broker, or cash buyer, acts as liaison between a consignor and a principal, or receives, contracts for, or solicits any agricultural product from the consignor thereof or who negotiates the consignment or purchase of any agricultural product on behalf of any commission merchant, dealer, broker, or cash buyer and who transacts all or a portion of that business at any location other than at the principal place of business of his employer. With the exception of an agent for a commission merchant or dealer handling horticultural products, an agent may operate only in the name of one principal and only to the account of that principal.

(12) "Retail merchant" means any person operating from a bona fide or established place of business selling agricultural products twelve months of each year.

(13) "Fixed or established place of business" for the purpose of this chapter means any permanent warehouse, building, or structure, at which necessary and appropriate equipment and fixtures are maintained for properly handling those agricultural products generally dealt in, and at which supplies of the agricultural products being usually transported are stored, offered for sale, sold, delivered, and generally dealt with in quantities reasonably adequate for and usually carried for the requirements of such a business, and that is recognized as a permanent business at such place, and carried on as such in good faith and not for the purpose of evading this chapter, and where specifically designated personnel are available to handle transactions concerning those agricultural products generally dealt in, which personnel are available during designated and appropriate hours to that business, and shall not mean a residence, barn, garage, tent, temporary stand or other temporary quarters, any railway car, or permanent quarters occupied pursuant to any temporary arrangement.

(14) "Processor" means any person, firm, company, or other organization that purchases agricultural crops from a consignor and that cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes those crops in any manner whatsoever for eventual resale.

(15) "Pooling contract" means any written agreement whereby a consignor delivers a horticultural product to a commission merchant under terms whereby the commission merchant may commingle the consignor's horticultural products for sale with others similarly agreeing, which must include all of the following:

(a) A delivery receipt for the consignor that indicates the variety of horticultural product delivered, the number of containers, or the weight and tare thereof;

(b) Horticultural products received for handling and sale in the fresh market shall be accounted for to the consignor with individual pack-out records that shall include variety, grade, size, and date of delivery. Individual daily packing

summaries shall be available within forty-eight hours after packing occurs. However, platform inspection shall be acceptable by mutual contract agreement on small deliveries to determine variety, grade, size, and date of delivery;

(c) Terms under which the commission merchant may use his judgment in regard to the sale of the pooled horticultural product;

(d) The charges to be paid by the consignor as filed with the state of Washington;

(e) A provision that the consignor shall be paid for his pool contribution when the pool is in the process of being marketed in direct proportion, not less than eighty percent of his interest less expenses directly incurred, prior liens, and other advances on the grower's crop unless otherwise mutually agreed upon between grower and commission merchant.

(16) "Date of sale" means the date agricultural products are delivered to the person buying the products.

(17) "Conditioner" means any person, firm, company, or other organization that receives turf, forage, or vegetable seeds from a consignor for drying or cleaning.

(18) "Seed bailment contract" means any contract meeting the requirements of chapter 15.48 RCW.

(19) "Proprietary seed" means any seed that is protected under the Federal Plant Variety Protection Act.

(20) "Licensed public weighmaster" means any person, licensed under the provisions of chapter 15.80 RCW, who weighs, measures, or counts any commodity or thing and issues therefor a signed certified statement, ticket, or memorandum of weight, measure, or count upon which the purchase or sale of any commodity or upon which the basic charge of payment for services rendered is based.

(21) "Certified weight" means any signed certified statement or memorandum of weight, measure or count issued by a licensed public weighmaster in accordance with the provisions of chapter 15.80 RCW. [1991 c 174 § 1; 1989 c 354 § 37; 1986 c 178 § 6; 1985 c 412 § 8; 1983 c 305 § 1; 1982 c 194 § 1; 1981 c 296 § 30; 1979 ex.s. c 115 § 1; 1977 ex.s. c 304 § 1; 1974 ex.s. c 102 § 2; 1971 ex.s. c 182 § 1; 1967 c 240 § 40; 1963 c 232 § 1; 1959 c 139 § 1.]

Severability—1989 c 354: See note following RCW 15.36.012.

Severability—1983 c 305: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 305 § 78.]

Severability—1981 c 296: See note following RCW 15.04.020.

20.01.020 Rules and regulations—Enforcement of chapter—Interference prohibited. The director, but not his duly authorized representative, may adopt such rules and regulations as are necessary to carry out the purpose of this chapter. It shall be the duty of the director to enforce and carry out the provisions of this chapter, rules and regulations adopted hereunder. No person shall interfere with the director when he is performing or carrying out duties imposed on him by this chapter, rules and regulations adopted hereunder. [1959 c 139 § 2.]

20.01.030 Exemptions. This chapter does not apply to:

(1) Any cooperative marketing associations or federations incorporated under, or whose articles of incorporation and bylaws are equivalent to, the requirements of chapter 23.86 RCW, except as to that portion of the activities of the association or federation that involve the handling or dealing in the agricultural products of nonmembers of the organization: PROVIDED, That the associations or federations may purchase up to fifteen percent of their gross from nonmembers for the purpose of filling orders: PROVIDED FURTHER, That if the cooperative or association acts as a processor as defined in RCW 20.01.500(2) and markets the processed agricultural crops on behalf of the grower or its own behalf, the association or federation is subject to the provisions of RCW 20.01.500 through 20.01.560 and the license provision of this chapter excluding bonding provisions: PROVIDED FURTHER, That none of the foregoing exemptions in this subsection apply to any such cooperative or federation dealing in or handling grain in any manner, and not licensed under the provisions of chapter 22.09 RCW;

(2) Any person who sells exclusively his or her own agricultural products as the producer thereof;

(3) Any public livestock market operating under a bond required by law or a bond required by the United States to secure the performance of the public livestock market's obligation. However, any such market operating as a livestock dealer or order buyer, or both, is subject to all provisions of this chapter except for the payment of the license fee required in RCW 20.01.040;

(4) Any retail merchant having a bona fide fixed or permanent place of business in this state, but only for the retail merchant's retail business conducted at such fixed or established place of business;

(5) Any person buying farm products for his or her own use or consumption;

(6) Any warehouseman or grain dealer licensed under the state grain warehouse act, chapter 22.09 RCW, with respect to his or her handling of any agricultural product as defined under that chapter;

(7) Any nurseryman who is required to be licensed under the horticultural laws of the state with respect to his or her operations as such licensee;

(8) Any person licensed under the now existing dairy laws of the state with respect to his or her operations as such licensee;

(9) Any producer who purchases less than fifteen percent of his or her volume to complete orders;

(10) Any person, association, or corporation regulated under chapter 67.16 RCW and the rules adopted thereunder while performing acts regulated by that chapter and the rules adopted thereunder;

(11) Any domestic winery, as defined in RCW 66.04.010, licensed under Title 66 RCW, with respect to its transactions involving agricultural products used by the domestic winery in making wine. [1993 c 104 § 1. Prior: 1989 c 354 § 38; 1989 c 307 § 37; 1988 c 254 § 10; 1983 c 305 § 2; 1982 c 194 § 2; 1981 c 296 § 31; 1979 ex.s. c 115 § 2; 1977 ex.s. c 304 § 2; 1975 1st ex.s. c 7 § 18; 1971 ex.s. c 182 § 2; 1969 ex.s. c 132 § 1; 1967 c 240 § 41; 1959 c 139 § 3.]

Severability—1989 c 354: See note following RCW 15.36.012.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Application—1989 c 307: See RCW 23.86.900.

Severability—1983 c 305: See note following RCW 20.01.010.

Severability—1981 c 296: See note following RCW 15.04.020.

20.01.038 License required of persons dealing in livestock, hay, grain, or straw. Any person who deals in livestock, hay, grain or straw, other than the producer or grower thereof, shall license as a dealer or commission merchant and shall be subject to all the provisions of this chapter regulating such a licensee. [1963 c 232 § 9.]

20.01.040 License—Generally. No person may act as a commission merchant, dealer, broker, cash buyer, or agent without a license. Any person applying for such a license shall file an application with the director prior to conducting business pursuant to this chapter. No application shall be considered complete unless an effective bond or other acceptable form of security is also filed with the director, as provided under RCW 20.01.210, 20.01.211, or 20.01.212. Each license issued under this chapter shall require renewal on or before the renewal date prescribed by the director by rule. License fees shall be prorated where necessary to accommodate staggered renewals of a license or licenses. The application shall be accompanied by a license fee as prescribed by the director by rule. [1991 c 109 § 16; 1989 c 354 § 39; 1987 c 393 § 13; 1983 c 305 § 3; 1979 ex.s. c 115 § 3; 1974 ex.s. c 102 § 3; 1971 ex.s. c 182 § 3; 1959 c 139 § 4.]

Severability—1989 c 354: See note following RCW 15.36.012.

Severability—1983 c 305: See note following RCW 20.01.010.

20.01.050 License renewals. If an application for renewal of a commission merchant, dealer, broker or cash buyer license is not filed prior to the prescribed renewal date a penalty of twenty-five percent shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued. [1991 c 109 § 17; 1959 c 139 § 5.]

20.01.060 Licensee in one class may obtain license in another—Additional fee. Any person licensed as a commission merchant, dealer, or broker, in the manner prescribed in this chapter, may apply for and secure a license in any or all of the remaining such classifications upon payment of an additional fee of twenty-five dollars for each such additional classification: PROVIDED, That the applicant's principal license shall be in that classification requiring the greatest license fee. Such applicant shall further comply with those parts of this chapter regulating the licensing of the other particular classifications involved. [1979 ex.s. c 115 § 4; 1977 ex.s. c 304 § 3; 1974 ex.s. c 102 § 4; 1971 ex.s. c 182 § 4; 1959 c 139 § 6.]

20.01.070 Application for license—Contents. Application for a license shall be on a form prescribed by the director and shall state the full name of the person applying for such license and if the applicant is an individual, receiver, trustee, firm, exchange, partnership, association or corporation, the full name of each member of the firm or partnership, or the names of the officers of the exchange, association or corporation shall be given in the application.

Such application shall further state the principal business address of the applicant in the state and elsewhere and the name or names of the person authorized to receive and accept service of summons and legal notices of all kinds for the applicant and any other necessary information prescribed by the director. [1959 c 139 § 7.]

20.01.080 Commission merchant's schedule of commissions and charges—Changes, posting. Any person applying for a commission merchant's license shall include in his or her application a schedule of commissions, together with an itemized list of all charges for services to be rendered to a consignor and shall post a copy of such charges on his or her premises in a conspicuous place where it is clearly visible and available to consignors. In addition to the posting of the itemized list of charges, such list shall be distributed to each consignor along with each contract entered into between the consignor and the commission merchant. Such commissions and charges shall not be changed or varied for the license period except by written contract between the consignor or his or her agent and the licensee or thirty days after written notice to the director, and proper posting of such changes, as prescribed by the director, on the licensee's premises. Charges for services rendered and not listed on the schedule of commissions and charges filed with the director, or for increases in charges listed and filed which are directly caused by increases in labor rates or in cost of materials which occur after the signing of the contract by the grower, shall be rendered only on an actual cost to the licensee basis. [1988 c 254 § 16; 1977 ex.s. c 304 § 4; 1971 ex.s. c 182 § 5; 1959 c 139 § 8.]

20.01.086 Waiver of reporting, accounting, and record-keeping requirements prohibited. Except where specifically provided in this chapter, the reporting, accounting, and record-keeping requirements of this chapter, being matters of public interest, may not be waived by contract between the consignor and/or the commission merchant or dealer. [1977 ex.s. c 304 § 5; 1974 ex.s. c 102 § 8.]

20.01.090 Agent to disclose principal licensee and his endorsement. Any person applying for an agent's license shall include the name and address of the principal licensee represented or sought to be represented by such agent and the written endorsement or nomination of such principal licensee. [1959 c 139 § 9.]

20.01.100 Issuance of license—Expiration date—Fraudulent application grounds for refusal, revocation. The director, upon his satisfaction that the applicant has met the requirements of this chapter and rules and regulations adopted hereunder, shall issue a license entitling the applicant to carry on the business described on the application. Such license shall expire on December 31st following the issuance of the license, provided that it has not been revoked or suspended prior thereto, by the director, after due notice and hearing. Fraud and misrepresentation in making an application for a license shall be cause for refusal to grant a license or revocation of license granted pursuant to a fraudulent application after due notice and hearing. [1959 c 139 § 10.]

20.01.110 Publication of list of licensees and rules—Posting license. The director may publish a list, as often as he deems necessary, of all persons licensed under this chapter together with all the necessary rules and regulations concerning the enforcement of this chapter. Each person licensed under [the] provisions of this chapter shall post his license or a copy thereof in his place or places of business in plain view of the public. [1959 c 139 § 11.]

20.01.120 Vehicle license plates. The licensee shall prominently display license plates issued by the director on the front and back of any vehicle used by the licensee to transport upon public highways unprocessed agricultural products which he has not produced as a producer of such agricultural products. If the licensee operates more than one vehicle to transport unprocessed agricultural products on public highways he shall apply to the director for license plates for each such additional vehicle. Such additional license plates shall be issued to the licensee at the actual cost to the department for such license plates and necessary handling charges. Such license plates are not transferable to any other person and may be used only on the licensee's vehicle or vehicles. The display of such license plates on the vehicle or vehicles of a person whose license has been revoked, or the failure to surrender such license plates forthwith to the department after such revocation, shall be deemed a violation of this chapter. [1959 c 139 § 12.]

20.01.125 Hay or straw—Certified vehicle tare and load weights—Violations. Every dealer and commission merchant dealing in hay or straw shall obtain a certified vehicle tare weight and a certified vehicle gross weight for each load hauled and shall furnish the consignor with a copy of such certified weight ticket within seventy-two hours after taking delivery. It shall be a violation of this chapter for any licensee to transport hay or straw which has been purchased by weight without having obtained a certified weight ticket from the first licensed public weighmaster which would be encountered on the ordinary route to the destination where the hay or straw is to be unloaded. [1986 c 178 § 7; 1971 ex.s. c 182 § 6; 1963 c 232 § 8.]

20.01.130 Disposition of moneys. All fees and other moneys received by the department under the provisions of this chapter shall be paid to the director and shall be used solely for the purpose of carrying out the provisions of this chapter and rules adopted hereunder or for departmental administrative expenses during the 1993-95 biennium. All civil fines received by the courts as the result of notices of infractions issued by the director shall be paid to the director, less any mandatory court costs and assessments. [1993 sp.s. c 24 § 929; 1986 c 178 § 8; 1973 c 142 § 1; 1971 ex.s. c 182 § 7; 1959 c 139 § 13.]

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.165.070.

20.01.140 Change in organization of firm to be reported. Any change in the organization of any firm, association, exchange, corporation, or partnership licensed under the provisions of this chapter shall be reported to the

director and the licensee's surety or sureties. [1959 c 139 § 14.]

20.01.150 Denial, suspension, revocation of licenses, probationary orders—Authority. The director is authorized to deny, suspend, or revoke a license or issue conditional or probationary orders in the manner prescribed herein, in any case in which he finds that there has been a failure and/or refusal to comply with the requirements of this chapter, rules or regulations adopted hereunder. [1959 c 139 § 15.]

20.01.160 Denial, suspension, revocation of licenses, probationary orders—Procedure. In all proceedings for revocation, suspension, or denial of a license, or the issuance of a conditional or probationary order, the licensee or applicant shall be given an opportunity to be heard and may be represented by counsel. The director shall give the licensee or applicant twenty days' notice in writing and such notice shall specify the charges or reasons for the hearing for such revocation, suspension, denial or the issuance of a conditional or probationary order. The notice shall also state the date, time and place where such hearing is to be held. A copy of such notice shall be mailed to the licensee's surety. Such hearings shall be held in the city of Olympia, unless a different place is fixed by the director. [1959 c 139 § 16.]

20.01.170 Denial, suspension, revocation of licenses, probationary orders—Subpoenas, witnesses, testimony, fees. The director may issue subpoenas to compel the attendance of witnesses, and/or the production of books or documents, anywhere in the state. The licensee or applicant shall have opportunity to make his defense, and may have such subpoenas issued as he desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the director. Testimony shall be recorded and may be taken by deposition under such rules as the director may prescribe. Witnesses, except complaining witnesses, shall be entitled to fees for attendance and travel, as provided for in chapter 2.40 RCW, as enacted or hereafter amended. [1963 c 232 § 2; 1959 c 139 § 17.]

20.01.180 Denial, suspension, revocation of licenses, probationary orders—Findings and conclusions—Record. The director shall hear and determine the charges, make findings and conclusions upon the evidence produced, and file them in his office, together with a record of all of the evidence, and serve upon the accused a copy of such findings and conclusions. [1959 c 139 § 18.]

20.01.190 Denial, suspension, revocation of licenses, probationary orders—Final action in writing—Appeal to superior court. The revocation, suspension or denial of a license, or the issuance of conditional or probationary orders, shall be in writing signed by the director, stating the grounds upon which such order is based and the aggrieved person shall have the right to appeal from such order within fifteen days after a copy thereof is served upon him, to the superior court of Thurston county or the county in which the hearing

was held. A copy of such findings shall be mailed to the licensee's surety. In such appeal the entire record shall be certified by the director to the court, and the review on appeal shall be confined to the evidence adduced at the hearing before the director. [1959 c 139 § 19.]

20.01.200 Denial, suspension, revocation of licenses, probationary orders—Appellate review. Appellate review of the judgment of the superior court may be sought as provided in other civil cases. [1988 c 202 § 24; 1971 c 81 § 66; 1959 c 139 § 20.]

Severability—1988 c 202: See note following RCW 2.24.050.

20.01.210 Commission merchants, dealers—Bonds.

(1) Before the license is issued to any commission merchant or dealer, or both, the applicant shall execute and deliver to the director a surety bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. Said bond shall be to the state for the benefit of qualified consignors of agricultural products in this state. All such sureties on a bond, as provided herein, shall be released and discharged from all liability to the state accruing on such bond by giving notice to the principal and the director by certified mail. Upon receipt of such notice the director shall notify the surety and the principal of the effective date of termination which shall be thirty days from the receipt of such notice by the director, but this shall not relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration period provided for above.

(2) The bond for a commission merchant or dealer in hay, straw or turf, forage or vegetable seed shall be not less than fifteen thousand dollars. The actual amount of such bond shall be determined by dividing the annual dollar volume of the licensee's net proceeds or net payments due consignors by twelve and increasing that amount to the next multiple of five thousand dollars, except that the bond amount for dollar volume arising from proprietary seed bailment contracts shall be computed as provided in subsection (4) of this section. Such bond for a new commission merchant or dealer in hay, straw or turf, forage or vegetable seed shall be subject to increase at any time during the licensee's first year of operation based on the average of business volume for any three months. Except as provided in subsection (3) of this section, the bond shall be not less than ten thousand dollars for any other dealer.

(3) The bond for a commission merchant or dealer in livestock shall be not less than ten thousand dollars. The actual amount of such bond shall be determined in accordance with the formula set forth in the packers and stockyard act of 1921 (7 U.S.C. 181), except that a commission merchant or dealer in livestock shall increase the commission merchant's or dealer's bond by five thousand dollars for each agent the commission merchant or dealer has endorsed under RCW 20.01.090. A dealer who also acts as an order buyer for other persons who are also licensed and bonded under this chapter or under the packers and stockyards act (7 U.S.C. 181) may subtract that amount of business from the annual gross volume of purchases reported to the director in determining the amount of bond coverage that must be provided and maintained for the purposes of this chapter.

(4) The bond for a commission merchant handling agricultural products other than livestock, hay, straw or turf, forage or vegetable seed shall not be less than ten thousand dollars. The bond for a dealer handling agricultural products other than livestock, hay, straw or turf, forage or vegetable seed shall not be less than ten thousand dollars. The actual amount of such bond shall be determined by dividing the annual dollar volume of the licensee's net proceeds or net payments due consignors by fifty-two and increasing that amount to the next multiple of two thousand dollars. However, bonds above twenty-six thousand dollars shall be increased to the next multiple of five thousand dollars.

(5) When the annual dollar volume of any commission merchant or dealer reaches two million six hundred thousand dollars, the amount of the bond required above this level shall be on a basis of ten percent of the amount arrived at by applying the appropriate formula. [1991 c 109 § 18; 1986 c 178 § 9; 1983 c 305 § 4; 1982 c 194 § 3; 1977 ex.s. c 304 § 6; 1974 ex.s. c 102 § 5; 1971 ex.s. c 182 § 8; 1963 c 232 § 5. Prior: 1959 c 139 § 21.]

Severability—1983 c 305: See note following RCW 20.01.010.

Cash or other security in lieu of surety bond: RCW 20.01.570.

20.01.211 Alternative bonding provision for certain dealers. In lieu of the bonding provision required by RCW 20.01.210, any dealer who buys, agrees to buy, or pays for the production or increase of any agricultural product by paying to the consignor at the time of obtaining possession or control of any agricultural product the full agreed price of the agricultural product may file a bond in an amount equal to the dealer's maximum monthly purchases, divided by fifteen, but the minimum bond provided by this section shall be in a minimum of seven thousand five hundred dollars.

Any dealer using the bonding provisions of this section shall file an affidavit with the director that sets forth the dealer's maximum monthly purchases from or payments to consignors. The affidavit shall be filed at the time of application and with each renewal.

Any dealer bonded under this section who is found to be in violation of this chapter shall be required to comply with the bonding requirements of RCW 20.01.210 for a minimum of two years. [1983 c 305 § 5; 1977 ex.s. c 304 § 16.]

Severability—1983 c 305: See note following RCW 20.01.010.

20.01.212 Livestock dealers bonded under federal law. If an applicant for a commission merchant's and/or dealer's license is bonded as a livestock dealer or packer under the provisions of the Packers and Stockyards Act of 1921 (7 U.S.C. 181), as amended, on June 13, 1963, and acts as a commission merchant, packer, and/or a dealer only in livestock as defined in said Packers and Stockyards Act of 1921 (7 U.S.C. 181), the director may accept such bond in lieu of the bond required in RCW 20.01.210 as good and sufficient and issue the applicant a license limited solely to dealing in livestock. A dealer buying and selling livestock who has furnished a bond as required by the packers and stockyards administration to cover acting as order buyer as well as dealer may also act as an order buyer for others under the provisions of this chapter, and all persons who act as order buyers of livestock shall license under this chapter

as a livestock dealer: PROVIDED, That the applicant shall furnish the director with a bond approved by the United States secretary of agriculture. Such bond shall be in a minimum amount of ten thousand dollars. It shall be a violation for the licensee to act as a commission merchant and/or dealer in any other agricultural commodity without first having notified the director and furnishing him with a bond as required under the provisions of RCW 20.01.210, and failure to furnish the director with such bond shall be cause for the immediate suspension of the licensee's license, and revocation subject to a hearing. [1991 c 109 § 19; 1977 ex.s. c 304 § 7; 1971 ex.s. c 182 § 9; 1963 c 232 § 6.]

20.01.214 Appeal from rejected bond claim. Upon any bond claim being denied by the director the claimant must appeal such action to the superior court in the county where this claimant resides in this state or Thurston county, within sixty days after receipt of written notice of such rejection or such rejection shall become final and binding upon the claimant. [1971 ex.s. c 182 § 10; 1963 c 232 § 7.]

20.01.220 Action on bond for fraud. Any consignor of an agricultural product claiming to be injured by the fraud of any commission merchant and/or dealer or their agents may bring action upon said bond against principal, surety, and agent in any court of competent jurisdiction to recover the damages caused by such fraud. Any consignor undertaking such an action shall name the director as a party. [1986 c 178 § 10; 1982 c 194 § 4; 1959 c 139 § 22.]

20.01.230 Action on bond for failure to comply with chapter. The director or any consignor of an agricultural product may also bring action upon said bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by any failure to comply with the provisions of this chapter or the rules adopted hereunder. Any consignor undertaking such an action shall name the director as a party. [1986 c 178 § 11; 1959 c 139 § 23.]

20.01.240 Claims against commission merchant, dealer. (1) Except as provided in subsection (2) of this section, any consignor who believes he or she has a valid claim against the bond of a commission merchant or dealer shall file a claim with the director. Upon the filing of a claim under this subsection against any commission merchant or dealer handling any agricultural product, the director may, after investigation, proceed to ascertain the names and addresses of all consignor creditors of such commission merchant and dealer, together with the amounts due and owing to them by such commission merchant and dealer, and shall request all such consignor creditors to file a verified statement of their respective claims with the director. Such request shall be addressed to each known consignor creditor at his last known address.

(2) Any consignor who believes he or she has a valid claim against the bond of a commission merchant or dealer in hay or straw, shall file a claim with the director within twenty days of the licensee's default. In the case of a claim against the bond of a commission merchant or unlimited dealer in hay or straw, default occurs when the licensee fails to make payment within thirty days of the date the licensee

took possession of the hay or straw. In the case of a claim against a limited dealer in hay or straw, default occurs when the licensee fails to make payment upon taking possession of the hay or straw. Upon verifying the consignor's claim either through investigation or, if necessary, an administrative action, the director shall, within ten working days of the filing of the claim, make demand for payment of the claim by the licensee's surety without regard to any other potentially valid claim. Any subsequent claim will likewise result in a demand against the licensee's surety, subject to the availability of any remaining bond proceeds. [1986 c 178 § 12; 1959 c 139 § 24.]

20.01.250 Failure of consignor to file claim, time limitation. If a consignor creditor so addressed fails, refuses or neglects to file in the office of the director his verified claim as requested by the director within sixty days from the date of such request, the director shall thereupon be relieved of further duty or action hereunder on behalf of said consignor creditor. [1959 c 139 § 25.]

20.01.260 Director not liable if circumstances prevent ascertainment of creditors—Demand on bond. Where by reason of the absence of records, or other circumstances making it impossible or unreasonable for the director to ascertain the names and addresses of all said consignor creditors, the director after exerting due diligence and making reasonable inquiry to secure said information from all reasonable and available sources, may make demand on said bond on the basis of information then in his possession, and thereafter shall not be liable or responsible for claims or the handling of claims which may subsequently appear or be discovered. [1959 c 139 § 26.]

20.01.270 Demand on bond after claims ascertained—Power of director to settle, compromise. Upon ascertaining all claims and statements in the manner herein set forth, the director may then make demand upon the bond on behalf of those claimants whose statements have been filed, and shall have the power to settle or compromise said claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and discharge of the bond involved. [1959 c 139 § 27.]

20.01.280 Action on bond after refusal to pay—New bond, failure to file. Upon the refusal of the surety company to pay the demand the director may thereupon bring an action on the bond in behalf of said consignor creditors. Upon any action being commenced on said bond the director may require the filing of a new bond and immediately upon the recovery in any action on such bond such commission merchant and/or dealer shall file a new bond and upon failure to file the same within ten days in either case such failure shall constitute grounds for the suspension or revocation of his license. [1959 c 139 § 28.]

20.01.300 Verified complaints of consignor—Investigations. For the purpose of enforcing the provisions of this chapter the director is authorized to receive verified complaints from any consignor against any commission merchant, dealer, broker, cash buyer, or agent or any person,

assuming or attempting to act as such, and upon receipt of such verified complaint shall have full authority to make any and all necessary investigations relative to the said complaint. [1959 c 139 § 30.]

20.01.310 Oaths, testimony, witnesses, subpoenas—Contempt proceedings—Records as evidence. The director or his authorized agents are empowered to administer oaths of verification on said complaints. He shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas in the manner prescribed in RCW 20.01.170 requiring attendance of witnesses before him, together with all books, memoranda, papers, and other documents, articles or instruments; to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation, and all parties disobeying the orders or subpoenas of said director shall be guilty of contempt and shall be certified to the superior court of the state for punishment for such contempt. Copies of records, audits and reports of audits, inspection certificates, certified reports, findings and all papers on file in the office of the director shall be prima facie evidence of the matters therein contained, and may be admitted into evidence in any hearing provided in this chapter. [1959 c 139 § 31.]

20.01.320 Investigations, examinations, inspections. The director on his own motion or upon the verified complaint of any interested party may investigate, examine or inspect (1) any transaction involving solicitation, receipt, sale or attempted sale of agricultural products by any person or persons acting or assuming to act as a commission merchant, dealer, broker, cash buyer, or agent; (2) failure to make proper and true account of sales and settlement thereof as required under this chapter and/or rules and regulations adopted hereunder; (3) the intentional making of false statements as to conditions and quantity of any agricultural products received or in storage; (4) the intentional making of false statements as to market conditions; (5) the failure to make payment for products within the time required by this chapter; (6) any and all other injurious transactions. In furtherance of any such investigation, examination, or inspection, the director or his authorized representative, may examine that portion of the ledgers, books, accounts, memoranda and other documents, agricultural products, scales, measures and other articles and things used in connection with the business of such person relating to the transactions involved. For the purpose of such investigation the director shall at all times have free and unimpeded access to all buildings, yards, warehouses, storage, and transportation facilities or any other place where agricultural products are kept, stored, handled or transported. The director may also, for the purpose of such investigation, issue subpoenas to compel the attendance of witnesses, as provided in RCW 20.01.170, and/or the production of books or documents, anywhere in the state. [1959 c 139 § 32.]

20.01.330 Denial, revocation, suspension, or condition of licenses, probationary orders—Grounds. The director may refuse to grant a license or renew a license and may revoke or suspend a license or issue a conditional or probationary order if he is satisfied after a hearing, as herein

provided, of the existence of any of the following facts, which are hereby declared to be a violation of this chapter:

(1) That fraudulent charges or returns have been made by the applicant, or licensee, for the handling, sale or storage of, or for rendering of any service in connection with the handling, sale or storage of any agricultural product.

(2) That the applicant, or licensee, has failed or refused to render a true account of sales, or to make a settlement thereon, or to pay for agricultural products received, within the time and in the manner required by this chapter.

(3) That the applicant, or licensee, has made any false statement as to the condition, quality or quantity of agricultural products received, handled, sold or stored by him.

(4) That the applicant, or licensee, directly or indirectly has purchased for his own account agricultural products received by him upon consignment without prior authority from the consignor together with the price fixed by consignor or without promptly notifying the consignor of such purchase. This shall not prevent any commission merchant from taking to account of sales, in order to close the day's business, miscellaneous lots or parcels of agricultural products remaining unsold, if such commission merchant shall forthwith enter such transaction on his account of sales.

(5) That the applicant, or licensee, has intentionally made any false or misleading statement as to the conditions of the market for any agricultural products.

(6) That the applicant, or licensee, has made fictitious sales or has been guilty of collusion to defraud the consignor.

(7) That a commission merchant to whom any consignment is made has reconsigned such consignment to another commission merchant and has received, collected, or charged by such means more than one commission for making the sale thereof, for the consignor, unless by written consent of such consignor.

(8) That the licensee was guilty of fraud or deception in the procurement of such license.

(9) That the licensee or applicant has failed or refused to file with the director a schedule of his charges for services in connection with agricultural products handled on account of or as an agent of another, or that the applicant, or licensee, has indulged in any unfair practice.

(10) That the licensee has rejected, without reasonable cause, or has failed or refused to accept, without reasonable cause, any agricultural product bought or contracted to be bought from a consignor by such licensee; or failed or refused, without reasonable cause, to furnish or provide boxes or other containers, or hauling, harvesting, or any other service contracted to be done by licensee in connection with the acceptance, harvesting, or other handling of said agricultural products bought or handled or contracted to be bought or handled; or has used any other device to avoid acceptance or unreasonably to defer acceptance of agricultural products bought or handled or contracted to be bought or handled.

(11) That the licensee has otherwise violated any provision of this chapter and/or rules and regulations adopted hereunder.

(12) That the licensee has knowingly employed an agent, as defined in this chapter, without causing said agent to comply with the licensing requirements of this chapter applicable to agents.

(13) That the applicant or licensee has, in the handling of any agricultural products, been guilty of fraud, deceit, or negligence.

(14) That the licensee has failed or refused, upon demand, to permit the director or his agents to make the investigations, examination or audits, as provided in this chapter, or that the licensee has removed or sequestered any books, records, or papers necessary to any such investigations, examination, or audits, or has otherwise obstructed the same.

(15) That the licensee, without reasonable cause, has failed or refused to execute or carry out a lawful contract with a consignor.

(16) That the licensee has failed or refused to keep and maintain the records as required by this chapter and/or rules and regulations adopted hereunder.

(17) That the licensee has attempted payment by a check the licensee knows not to be backed by sufficient funds to cover such check.

(18) That the licensee has been guilty of fraud or deception in his dealings with purchasers including misrepresentation of goods as to grade, quality, weights, quantity, or any other essential fact in connection therewith.

(19) That the licensee has permitted a person to in fact operate his own separate business under cover of the licensee's license and bond.

(20) That a commission merchant or dealer has failed to furnish additional bond coverage within fifteen days of when it was requested in writing by the director.

(21) That the licensee has discriminated in the licensee's dealings with consignors on the basis of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap. [1989 c 354 § 40; 1982 c 20 § 1; 1981 c 296 § 32; 1977 ex.s. c 304 § 8; 1971 ex.s. c 182 § 11; 1959 c 139 § 33.]

Severability—1989 c 354: See note following RCW 15.36.012.

Severability—1981 c 296: See note following RCW 15.04.020.

20.01.340 Denial, revocation, suspension of licenses, probationary orders—Previous violations as grounds. Previous violation by the applicant or licensee, or by any person connected with him, of any of the provisions of this chapter and/or rules and regulations adopted hereunder, shall be good and sufficient ground for denial, suspension or revocation of a license, or the issuance of a conditional or probationary order. [1959 c 139 § 34.]

20.01.350 Denial, revocation, suspension of licenses, probationary orders—Hearing, investigation—Findings required—Notices. The director, after hearing or investigation, may refuse to grant a license or renewal thereof and may revoke or suspend any license or issue a conditional or probationary order, as the case may require, when he is satisfied that the licensee has executory or executed contracts for the purchase of agricultural products, or for the handling of agricultural products on consignment.

In such cases, if the director is satisfied that to permit the dealer or commission merchant to continue to purchase or to receive further shipments or deliveries of agricultural products would be likely to cause serious and irreparable loss to said consignor-creditors, or to consignors with whom

the said dealer or commission merchant has said contracts, then the director within his discretion may thereupon and forthwith shorten the time herein provided for hearing upon an order to show cause why the license of said dealer or commission merchant should not be forthwith suspended, or revoked: PROVIDED, That the time of notice of said hearing, shall in no event be less than twenty-four hours, and the director shall, within that period, call a hearing at which the dealer or commission merchant proceeded against shall be ordered to show cause why the license should not be suspended, or revoked, or continued under such conditions and provisions, if any, as the director may consider just and proper and for the protection of the best interests of the producer-creditors involved. Said hearing, in the case of such emergency, may be called upon written notice, said notice to be served personally or by mail on the dealer or commission merchant involved, and may be held at the nearest office of the director or at such place as may be most convenient at the discretion of the director, for the attendance of all parties involved. [1959 c 139 § 35.]

20.01.360 Order of revocation, suspension. Any order revoking or suspending a license may, within the discretion of the director, be made conditional upon the settlement, adjustment or satisfaction of the consequence of the violation or violations as specified, and the operation of such an order may be deferred for such purpose. Any such order may contain provisions for modification or dismissal thereof upon presentation to the director of evidence that the matter of complaint has been settled, adjusted or withdrawn at any time before such order becomes final. [1959 c 139 § 36.]

20.01.370 Commission merchants—Recordkeeping. Every commission merchant taking control of any agricultural products for sale as such commission merchant, shall promptly make and keep for a period of three years, beginning on the day the sale of the product is complete, a correct record showing in detail the following with reference to the handling, sale, or storage of such agricultural products:

- (1) The name and address of the consignor.
- (2) The date received.
- (3) The quality and quantity delivered by the consignor, and where applicable the dockage, tare, grade, size, net weight, or quantity.
- (4) An accounting of all sales, including dates, terms of sales, quality and quantity of agricultural products sold, and proof of payments received on behalf of the consignor.
- (5) The terms of payment to the producer.
- (6) An itemized statement of the charges to be paid by consignor in connection with the sale.
- (7) The names and addresses of all purchasers if said commission merchant has any financial interest in the business of said purchasers, or if said purchasers have any financial interest in the business of said commission merchant, directly or indirectly, as holder of the other's corporate stock, as copartner, as lender or borrower of money to or from the other, or otherwise. Such interest shall be noted in said records following the name of any such purchaser.
- (8) A lot number or other identifying mark for each consignment, which number or mark shall appear on all sales

tags and other essential records needed to show what the agricultural products actually sold for.

(9) Any claim or claims which have been or may be filed by the commission merchant against any person for overcharges or for damages resulting from the injury or deterioration of such agricultural products by the act, neglect or failure of such person and such records shall be open to the inspection of the director and the consignor of agricultural products for whom such claim or claims are made.

Before a commission merchant may handle an agricultural product in a pooling arrangement or accounting, the consignor must have agreed in writing to allow the pooling.

Where a pooling arrangement is agreed to in writing between the consignor and commission merchant, the reporting requirements of subsections (4), (5), (6), and (8) of this section shall apply to the pool rather than to the individual consignor or consignment and the records of the pool shall be available for inspection by any consignor to that pool.

For individual accounting, the commission merchant shall transmit a copy of the record required by this section to the consignor on the same day the final remittance is made to the consignor as required by RCW 20.01.430. For a consignor who is participating in a pooling arrangement, the commission merchant shall, on the same day final remittance and accounting are made to the consignor as required by RCW 20.01.430, transmit to the consignor a summary of the records which are available for inspection by any consignor to that pool. [1991 c 109 § 20; 1989 c 354 § 41; 1988 c 254 § 18; 1979 ex.s. c 115 § 5; 1977 ex.s. c 304 § 9; 1974 ex.s. c 102 § 6; 1963 c 232 § 3; 1959 c 139 § 37.]

Severability—1989 c 354: See note following RCW 15.36.012.

20.01.380 Dealers, cash buyers, livestock dealers—Recordkeeping. Every dealer or cash buyer purchasing any agricultural products from the consignor thereof shall promptly make and keep for three years a correct record showing in detail the following:

- (1) The name and address of the consignor.
- (2) The date received.
- (3) The terms of the sale.
- (4) The quality and quantity delivered by the consignor, and where applicable the dockage, tare, grade, size, net weight, or quantity.
- (5) An itemized statement of any charges paid by the dealer or cash buyer for the account of the consignor.
- (6) The name and address of the purchaser: PROVIDED, That the name and address of the purchaser may be deleted from the record furnished to the consignor.

A copy of such record containing the above matters shall be forwarded to the consignor forthwith.

Livestock dealers must also maintain individual animal identification and disposition records as may be required by law, or regulation adopted by the director. [1991 c 109 § 21; 1989 c 354 § 42; 1988 c 254 § 17; 1981 c 296 § 33; 1963 c 232 § 4; 1959 c 139 § 38.]

Severability—1989 c 354: See note following RCW 15.36.012.

Severability—1981 c 296: See note following RCW 15.04.020.

20.01.385 Failure to comply—Construction of transaction. Whenever a commission merchant or dealer

handling any agricultural products fails to carry out the provisions of RCW 20.01.370 as now or hereafter amended or RCW 20.01.380, whichever is applicable, it shall be prima facie evidence that the transaction involving the handling of any agricultural products between the consignor and the commission merchant or dealer was either a commission type transaction, or dealer transaction constituting an outright sale by the consignor, whichever is most favorable to the consignor. Such determination in favor of the consignor shall be based on the market price of the agricultural product in question at the time the complaint is filed against said commission merchant or dealer by the consignor: PROVIDED, That if the return to the consignor is determined most favorably on a commission basis, the total commission shall not exceed ten percent, and all other charges for handling the agricultural product in question shall be figured on the basis of the actual cost of said handling. [1977 ex.s. c 304 § 10; 1974 ex.s. c 102 § 7; 1967 c 240 § 42.]

20.01.390 When dealer must pay for products delivered to him. (1) Every dealer must pay for agricultural products, except livestock, delivered to him at the time and in the manner specified in the contract with the producer, but if no time is set by such contract, or at the time of said delivery, then within thirty days from the delivery or taking possession of such agricultural products.

(2) Every dealer must pay for livestock delivered to him at the time and in the manner specified in the contract, but if no time is set by such contract, or at the time of said delivery, then within seven days from the delivery or taking possession of such livestock. Where payment for livestock is made by mail, payment is timely if mailed within seven days of the date of sale. [1982 c 20 § 2; 1959 c 139 § 39.]

20.01.400 Broker's memorandum of sale. Every broker, upon negotiating the sale of agricultural products, shall issue to both buyer and seller a written memorandum of sale, showing price, date of delivery, quality, and other details concerned in the transaction. A copy of this memorandum shall be retained by the broker for a period of one year. [1959 c 139 § 40.]

20.01.410 Manifest of cargo. A copy of a manifest of cargo, on a form prescribed by the director, shall be carried on any vehicle transporting agricultural products purchased by a dealer or cash buyer, or consigned to a commission merchant from the consignor thereof when prescribed by the director. The commission merchant, dealer or cash buyer shall issue a copy of such manifest to the consignor of such agricultural products and the original shall be retained by the licensee for a period of one year during which time it shall be surrendered upon request to the director. Such manifest of cargo shall be valid only when signed by the licensee or his agent and the consignor of such agricultural products. [1971 ex.s. c 182 § 12; 1959 c 139 § 41.]

20.01.420 Commission merchant's report of sale to consignor. When requested by a consignor, a commission merchant shall promptly make available to the consignor or to the director all records of the ongoing sales of the

consignor's agricultural products showing the amount sold, the selling price, and any other information required under RCW 20.01.370. [1991 c 109 § 22; 1959 c 139 § 42.]

20.01.430 Commission merchant's remittance to consignor. Every commission merchant shall remit to the consignor of any agricultural product the full price for which such agricultural product was sold within thirty days of the date of sale, or in the case of livestock within seven days of the date of sale unless otherwise mutually agreed between grower and commission merchant. The remittance to the consignor shall include all collections, overcharges, and damages, less the agreed commission and other charges and advances, and a complete account of the sale. Where payment for livestock is made by mail, payment is timely if mailed within seven days of the date of sale unless otherwise specified in an agreement between the producer and the dealer in livestock. [1982 c 20 § 3; 1977 ex.s. c 304 § 11; 1974 ex.s. c 102 § 9; 1959 c 139 § 43.]

20.01.440 Commission merchant's copy of records to be retained—Inspection—Department's certificate of condition, quality, etc. Every commission merchant shall retain a copy of all records covering each transaction for a period of three years from the date thereof, which copy shall at all times be available for, and open to, the confidential inspection of the director and the consignor, or authorized representative of either. In the event of any dispute or disagreement between a consignor and a commission merchant arising at the time of delivery as to condition, quality, grade, pack, quantity, or weight of any lot, shipment or consignment of agricultural products, the department shall furnish, upon the payment of a reasonable fee therefor by the requesting party, a certificate establishing the condition, quality, grade, pack, quantity, or weight of such lot, shipment or consignment. Such certificate shall be prima facie evidence in all courts of this state as to the recitals thereof. The burden of proof shall be upon the commission merchant to prove the correctness of his accounting as to any transaction which may be questioned. [1991 c 109 § 23; 1959 c 139 § 44.]

20.01.450 Claims against seller by dealer, cash buyer—Credit to dealer, cash buyer against consignor—Certificate of proof. No claim may be made as against the seller of agricultural products by a dealer or cash buyer under this chapter, and no credit may be allowed to such dealer or cash buyer as against a consignor of agricultural products by reason of damage to, or loss, dumping, or disposal of agricultural products sold to said dealer or cash buyer, in any payment, accounting or settlement made by said dealer or cash buyer to said consignor, unless said dealer or cash buyer has secured and is in possession of a certificate, issued by an agricultural inspector, county health officer, director, a duly authorized officer of the state department of social and health services, or by some other official now or hereafter authorized by law, to the effect that the agricultural products involved have been damaged, dumped, destroyed or otherwise disposed of as unfit for the purpose intended. Such certificate will not be valid as proof of proper claim, credit or offset unless issued within twenty-

four hours, or a reasonable time as prescribed by the director, of the receipt by the dealer or cash buyer of the agricultural products involved. [1979 c 141 § 33; 1959 c 139 § 45.]

20.01.460 Prohibited acts—Penalties. (1) Any person who violates the provisions of this chapter or fails to comply with the rules adopted under this chapter is guilty of a gross misdemeanor, except as provided in subsections (2) and (3) of this section.

(2) Any commission merchant, dealer, or cash buyer, or any person assuming or attempting to act as a commission merchant, dealer, or cash buyer without a license is guilty of a class C felony who:

(a) Imposes false charges for handling or services in connection with agricultural products.

(b) Makes fictitious sales or is guilty of collusion to defraud the consignor.

(c) Intentionally makes false statement or statements as to the grade, conditions, markings, quality, or quantity of goods shipped or packed in any manner.

(d) With the intent to defraud the consignor, fails to comply with the requirements set forth under RCW 20.01.010(10), 20.01.390 or 20.01.430.

(3) Any person who violates the provisions of RCW 20.01.040, 20.01.080, 20.01.120, 20.01.125, 20.01.410 or 20.01.610 has committed a civil infraction. [1989 c 354 § 43; 1988 c 254 § 19; 1986 c 178 § 13; 1982 c 20 § 4; 1959 c 139 § 46.]

Severability—1989 c 354: See note following RCW 15.36.012.

20.01.465 Time of sale requirement—Unlawful. In the preparation and use of written contracts, it is unlawful for a commission merchant to include in such contracts a requirement that a consignor give up all involvement in determining the time the consignor's agricultural products will be sold. This provision does not apply to agricultural products consigned to a commission merchant under a written pooling agreement. [1991 c 109 § 24.]

20.01.470 Action to enjoin violation of chapter. The director may bring an action to enjoin the violation or the threatened violation of any provision of this chapter or of any order made pursuant to this chapter in the superior court in the county in which such violation occurs or is about to occur. [1959 c 139 § 47.]

20.01.475 Licensee under chapter—Prima facie evidence acting as licensee handling agricultural products. It shall be prima facie evidence that a licensee licensed under the provisions of *this 1971 amendatory act is acting as such in the handling of any agricultural product. [1971 ex.s. c 182 § 13; 1967 c 240 § 43.]

*Reviser's note: The term "this 1971 amendatory act" [1971 ex.s. c 182] refers to the 1971 amendments to RCW 20.01.010, 20.01.030, 20.01.040, 20.01.060, 20.01.080, 20.01.125, 20.01.130, 20.01.210, 20.01.212, 20.01.214, 20.01.330, 20.01.410, 20.01.475, and the enactment of RCW 20.01.480, 20.01.500 through 20.01.560.

20.01.480 Violations resulting in improper or nonpayment—Charges. When a violation has occurred

which results in improper payment or nonpayment and a claim is made to the department and the payment is secured through the actions of the department, the charges made to the consignor for the action of the department in the matter will depend upon the delay of reporting after such improper payment or nonpayment would normally become obvious to the consignor as follows:

- (1) When reported within thirty days, no charge.
- (2) When reported thirty days to one hundred eighty days, five percent.
- (3) When reported after one hundred eighty days, ten percent. [1977 ex.s. c 304 § 13; 1971 ex.s. c 182 § 14.]

20.01.482 Civil infractions—Notice—Promise to appear or respond—Misdemeanors. The director shall have the authority to issue a notice of civil infraction if an infraction is committed in his or her presence or, if after investigation, the director has reasonable cause to believe an infraction has been committed. It shall be a misdemeanor for any person to refuse to properly identify himself or herself for the purpose of issuance of a notice of infraction or to refuse to sign the written promise to appear or respond to a notice of infraction. Any person wilfully violating a written and signed promise to respond to a notice of infraction shall be guilty of a misdemeanor regardless of the disposition of the notice of infraction. [1986 c 178 § 1.]

20.01.484 Civil infractions—Response to notice. (1) Any person who receives a notice of infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) Any employee or agent of a licensee under this chapter is fully authorized to accept a notice of infraction on behalf of the licensee. The director shall also furnish a copy of the notice of infraction to the licensee by certified mail within five days of issuance.

(3) If the person determined to have committed the infraction does not contest the determination, that person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction must be submitted with the response. When a response, which does not contest the determination, is received, an appropriate order shall be entered into the courts record and a record of the response shall be furnished to the director.

(4) If a person determined to have committed the infraction wishes to contest the determination, that person shall respond by completing the portion of the notice of the infraction requesting a hearing and submitted either by mail or in person to the court specified in the notice. The court shall notify the person in writing of the time, place, and the date of the hearing which shall not be sooner than fifteen days from the date of the notice, except by agreement.

(5) If the person determined to have committed the infraction does not contest the determination, but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it either by mail or in person to the court speci-

fied in the notice. The court shall notify the person in writing of the time, place and date of the hearing.

(6) If a person issued a notice of infraction fails to respond to the notice of infraction or fails to appear at the hearing requested pursuant to this section, the court shall enter an appropriate order in assessing the monetary penalty prescribed in the schedule of penalties submitted to the court by the director and shall notify the director of the failure to respond to the notice of infraction or to appear at a requested hearing. [1986 c 178 § 2.]

20.01.486 Civil infractions—Hearing to contest charge—Order—Appeal. A hearing held for the purpose of contesting the determination that an infraction has been committed shall be held without jury. The court may consider the notice of infraction and any other written report submitted by the director. The person named in the notice may subpoena witnesses and has the right to present evidence and examine witnesses present in court. The burden of proof is upon the state to establish the commission of the infraction by preponderance of evidence.

After consideration of the evidence and argument, the court shall determine whether the infraction was committed. Where it is not established that the infraction was committed, an order dismissing the notice shall be entered in the court's record. When it is established that the infraction was committed, an appropriate order shall be entered in the court's record, a copy of which shall be furnished to the director. Appeal from the court's determination or order shall be to the superior court and must be appealed within ten days. The decision of the superior court is subject only to discretionary review pursuant to Rule 2.3 of the rules of appellate procedure. [1986 c 178 § 3.]

20.01.488 Civil infractions—Informal hearing on mitigating circumstances—Order—No appeal. A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person named in the notice may not subpoena witnesses. The determination that the infraction has been committed may not be contested at a hearing held for the purpose of explaining circumstances. After the court has heard the explanation of the circumstances surrounding the commission of the infraction, an appropriate order shall be entered in the court's record. A copy of the order shall be furnished to the director. There may be no appeal from the court's determination or order. [1986 c 178 § 4.]

20.01.490 Civil infractions—Monetary penalty—Failure to pay, misdemeanor. Any person found to have committed a civil infraction under this chapter shall be assessed a monetary penalty. No monetary penalty so assessed may exceed one thousand dollars. The director shall adopt a schedule of monetary penalties for each violation of this chapter classified as a civil infraction and shall submit the schedule to the proper courts. Whenever a monetary penalty is imposed by the court, the penalty is immediately due and payable. The court may, at its discretion, grant an extension of time, not to exceed thirty days, in which the penalty must be paid. Failure to pay any monetary penalties imposed

under this chapter shall be punishable as a misdemeanor. [1986 c 178 § 5.]

20.01.500 "Grower," "processor" defined—Application of exemption contained in RCW 20.01.030(1). Notwithstanding any other provision of law, for the purposes of RCW 20.01.510 through 20.01.550 the term "grower" and the term "processor" shall have the meanings ascribed thereto by this section:

(1) "Grower" means any person, firm, company, or other organization that is engaged in the production of agricultural crops which must be planted, cultivated, and harvested within a twelve month period.

(2)(a) "Processor" means any person, firm, company, or other organization that purchases agricultural crops from a grower and who cans, freezes, dries, dehydrates, cooks, presses, powders, or otherwise processes such crops in any manner whatsoever for eventual resale.

(b) The exemption provided for in RCW 20.01.030(1) shall not apply to a cooperative or association as defined therein, which acts as a processor defined herein, and markets such agricultural crops on behalf of the grower or on its own behalf. [1977 ex.s. c 304 § 14; 1971 ex.s. c 182 § 15.]

20.01.510 Processor's form showing maximum processing capacity. In order to carry out the purposes of *this 1971 amendatory act, the director may require a processor to annually complete a form prescribed by the director, which, when completed, will show the maximum processing capacity of each plant operated by the processor in the state of Washington. Such completed form shall be returned to the director by a date prescribed by him. [1971 ex.s. c 182 § 16.]

*Reviser's note: For "this 1971 amendatory act," see note following RCW 20.01.475.

20.01.520 Processor to have grower contracts and commitments on file. By a date or dates prescribed prior to planting time by the director, the director, in order to carry out the purposes of *this 1971 amendatory act, may require a processor to have filed with him:

(1) A copy of each contract he has entered into with a grower for the purchase of acres of crops and/or quantity of crops to be harvested during the present or next growing season; and

(2) A notice of each oral commitment he has given to growers for the purchase of acres of crops and/or quantity of crops to be harvested during the present or next growing season, and such notice shall disclose the amount of acres and/or quantity to which the processor has committed himself. [1971 ex.s. c 182 § 17.]

*Reviser's note: For "this 1971 amendatory act," see note following RCW 20.01.475.

20.01.530 Grower may file form showing crops processor is committed to purchase. Any grower may file with the director on a form prescribed by him the acres of crops and/or quantity of crops to be harvested during the present or next growing season, which he understands a processor has orally committed himself to purchase. [1971 ex.s. c 182 § 18.]

20.01.540 Committing to purchase more crops than plants can process—Violation. Any processor who, from the information filed with the director, appears to or has committed himself either orally or in writing to purchase more crops than his plants are capable of processing shall be in violation of this chapter and his dealer's license subject to denial, suspension, or revocation as provided for in RCW 20.01.330. [1971 ex.s. c 182 § 19.]

20.01.550 Discrimination by processor. Any processor who discriminates between growers with whom he contracts as to price, conditions for production, harvesting, and delivery of crops which is not supportable by economic cost factors shall be in violation of this chapter and the director may subsequent to a hearing deny, suspend, or revoke such processor's license to act as a dealer. [1977 ex.s. c 304 § 15; 1971 ex.s. c 182 § 20.]

20.01.560 Effective date of RCW 20.01.500 through 20.01.550. RCW 20.01.500 through 20.01.550 shall take effect beginning on September 1, 1972. [1971 ex.s. c 182 § 21.]

20.01.570 Cash or other security in lieu of surety bond. In lieu of the surety bond required under the provisions of this chapter, an applicant or licensee may file with the director a deposit consisting of cash or other security acceptable to the director. The director may adopt rules and regulations necessary for the administration of such security. [1973 c 142 § 2.]

20.01.610 Authority to stop vehicle violating chapter—Failure to stop, civil infraction. The director or his appointed officers may stop a vehicle transporting hay or straw upon the public roads of this state if there is reasonable cause to believe the carrier, seller, or buyer may be in violation of this chapter. Any operator of a vehicle failing or refusing to stop when directed to do so has committed a civil infraction. [1986 c 178 § 14; 1983 c 305 § 8.]

Severability—1983 c 305: See note following RCW 20.01.010.

20.01.900 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1959 c 139 § 48.]

20.01.910 Severability—1959 c 139. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof, not adjudged invalid or unconstitutional. [1959 c 139 § 49.]

20.01.911 Severability—1963 c 232. See RCW 15.61.900.

20.01.912 Severability—1967 c 240. See note following RCW 43.23.010.

20.01.913 Severability—1979 ex.s. c 115. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 115 § 7.]

20.01.920 Effective date—1959 c 139. The effective date of this chapter shall be January 1, 1960. [1959 c 139 § 50.]

20.01.930 Repealer. Chapter 14, Laws of 1955 as amended by section 4, chapter 262, Laws of 1955, section 3, chapter 262, Laws of 1955, sections 1 and 2, chapter 262, Laws of 1955 and RCW 20.04.010 through 20.04.120, 20.08.010 through 20.08.110, 20.12.020 through 20.12.040, 20.16.010 through 20.16.040, 20.20.010 through 20.20.060, 20.24.010 through 20.24.070 and 20.98.010 through 20.98.060 are hereby repealed. [1959 c 139 § 51.]

20.01.940 Repealer—Savings—1979 ex.s. c 115. Section 10, chapter 102, Laws of 1974 ex. sess., section 12, chapter 304, Laws of 1977 ex. sess. and RCW 20.01.445 are each repealed.

Such repeals shall not be construed as affecting any existing right acquired under the statutes repealed, nor as affecting any proceeding instituted thereunder, nor any rule, regulation, or order promulgated thereunder, nor any administrative action taken thereunder. [1979 ex.s. c 115 § 6.]

Title 21

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- 21.30** Commodity transactions.
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Chapter 21.20

SECURITIES ACT OF WASHINGTON

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- 21.20.940 Short title.

Reviser's note: Powers, duties, and functions of the department of licensing relating to securities were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

"Bucket shop": RCW 9.47.080, 9.47.090.

Business corporations: Title 23B RCW.

Camping resort contracts—Nonapplicability of certain laws to: RCW 19.105.510.

Corporate seals, effect of nonuse: RCW 64.04.105.

Exemption of timeshares from chapter: RCW 64.36.290.

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Securities of public utilities: Chapter 80.08 RCW.

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Uniform Commercial Code—Investment securities: Article 62A.8 RCW.

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DEFINITIONS

21.20.005 Definitions. The definitions set forth in this section shall apply throughout this chapter, unless the context otherwise requires:

(1) "Director" means the director of financial institutions of this state.

(2) "Salesperson" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but "salesperson" does not include an individual who represents an issuer in (a) effecting a transaction in a security exempted by RCW 21.20.310(1), (2), (3), (4), (9), (10), (11), (12), or (13), (b) effecting transactions exempted by RCW 21.20.320 unless otherwise expressly required by the terms of the exemption, or (c) effecting transactions with existing

employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for that person's own account. "Broker-dealer" does not include (a) a salesperson, issuer, bank, savings institution, or trust company, (b) a person who has no place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (c) a person who has no place of business in this state if during any period of twelve consecutive months that person does not direct more than fifteen offers to sell or to buy into or make more than five sales in this state in any manner to persons other than those specified in subsection (b) above.

(4) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(5) "Full business day" means all calendar days, excluding therefrom Saturdays, Sundays, and all legal holidays, as defined by statute.

(6) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, (a) provide the foregoing investment advisory services to others for compensation as part of a business or (b) hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser shall also include any person who holds himself out as a financial planner.

"Investment adviser" does not include (a) a bank, savings institution, or trust company, (b) a lawyer, accountant, certified public accountant licensed under chapter 18.04 RCW, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (c) a broker-dealer, (d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation, (e) a radio or television station, (f) a person whose advice, analyses, or reports relate only to securities exempted by RCW 21.20.310(1), (g) a person who has no place of business in this state if (i) that person's only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during any period of twelve consecutive months that person does not direct business communications into this state in any manner to more than five clients other than those specified in clause (i) above, or

(h) such other persons not within the intent of this paragraph as the director may by rule or order designate.

(7) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type; the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(8) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(9) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interest of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(10) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(11) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" means the federal statutes of those names as amended before or after June 10, 1959.

(12) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; investment of money or other consideration in the risk capital of a venture with the expectation of some valuable benefit to the investor where the investor does not receive the right to exercise practical and actual control over the managerial decisions of the venture; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; charitable gift annuity; any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof; or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of,

or warrant or right to subscribe to or purchase, any of the foregoing; or any sale of or indenture, bond or contract for the conveyance of land or any interest therein where such land is situated outside of the state of Washington and such sale or its offering is not conducted by a real estate broker licensed by the state of Washington. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

(13) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(14) "Investment adviser representative" means a person retained or employed by an investment adviser to solicit clients or offer the services of the investment adviser or manage the accounts of said clients.

(15) "Relatives," as used in RCW 21.20.310(11) includes:

- (a) A member's spouse;
- (b) Parents of the member or the member's spouse;
- (c) Grandparents of the member or the member's spouse;
- (d) Natural or adopted children of the member or the member's spouse;
- (e) Aunts and uncles of the member or the member's spouse; and
- (f) First cousins of the member or the member's spouse.

(16) "Customer" means a person other than a broker-dealer or investment adviser. [1994 c 256 § 3. Prior: 1993 c 472 § 14; 1993 c 470 § 4; 1989 c 391 § 1; 1979 ex.s. c 68 § 1; 1979 c 130 § 3; 1977 ex.s. c 188 § 1; 1975 1st ex.s. c 84 § 1; 1967 c 199 § 1; 1961 c 37 § 1; 1959 c 282 § 60.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Effective date—Implementation—1993 c 472: See RCW 43.320.900 and 43.320.901.

Severability—1979 c 130: See note following RCW 28B.10.485.

FRAUDULENT AND OTHER PROHIBITED PRACTICES

21.20.010 Unlawful offers, sales, purchases. It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

- (1) To employ any device, scheme, or artifice to defraud;
- (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. [1959 c 282 § 1.]

21.20.020 Unlawful acts of person advising another. It is unlawful for any person who receives any consideration from another party primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

- (1) To employ any device, scheme, or artifice to defraud the other person; or

- (2) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person. [1959 c 282 § 2.]

21.20.030 Unlawful acts of investment adviser. It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

- (1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client; however, this subsection does not prohibit: (a) An investment advisory contract which provides for compensation based upon the total of a fund averaged over a definite period, or as of definite dates or taken as of a definite date; or (b) performance compensation arrangements permitted under any rule the director may adopt in order to allow performance compensation arrangements permitted under the Investment Advisers Act of 1940 and regulations promulgated by the securities and exchange commission thereunder;

- (2) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

- (3) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

"Assignment", as used in subsection (2) of this section, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business. [1993 c 114 § 1; 1959 c 282 § 3.]

21.20.035 Unlawful purchases or sales for customer's account. It is unlawful for a broker-dealer, salesperson, investment adviser, or investment adviser representative knowingly to effect or cause to be effected, with or for a customer's account, transactions of purchase or sale (1) that are excessive in size or frequency in view of the financial resources and character of the account and (2) that are effected because the broker-dealer, salesperson, investment adviser, or investment adviser representative is vested with discretionary power or is able by reason of the customer's trust and confidence to influence the volume and frequency of the trades. [1994 c 256 § 4; 1993 c 470 § 1.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

REGISTRATION OF BROKER-DEALERS, SALESPERSONS, INVESTMENT ADVISERS, AND INVESTMENT ADVISER SALESPERSONS

21.20.040 Registration required—Exemptions. (1)

It is unlawful for any person to transact business in this state as a broker-dealer or salesperson, unless he or she is registered under this chapter: PROVIDED, That an exemption from registration as a broker-dealer or salesperson to sell or resell condominium units sold in conjunction with an investment contract, may be provided by rule or regulation of the director as to persons who are licensed pursuant to the provisions of chapter 18.85 RCW. It is unlawful for any broker-dealer or issuer to employ a salesperson unless the salesperson is registered or exempted from registration. It is unlawful for any person to transact business in this state as an investment adviser unless (a) the person is so registered under this chapter, or (b) the person is registered as a broker-dealer under this chapter, or (c) the person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, or insurance companies. It is unlawful for any person to transact business in this state as an investment adviser representative or for any investment adviser to employ an investment adviser representative unless such person is registered.

(2) It is unlawful for any person to hold himself or herself out as, or otherwise represent that he or she is a "financial planner", "investment counselor", or other similar term, as may be specified in rules adopted by the director, unless the person is registered as an investment adviser or investment adviser representative, is exempt from registration under RCW 21.20.040(1), or is excluded from the definition of investment adviser under RCW 21.20.005(6). [1994 c 256 § 5; 1989 c 391 § 2; 1979 ex.s. c 68 § 2; 1975 1st ex.s. c 84 § 2; 1974 ex.s. c 77 § 1; 1959 c 282 § 4.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Effective date—1974 ex.s. c 77: "This 1974 amendatory act shall take effect on July 1, 1974." [1974 ex.s. c 77 § 14.]

Insurance, solicitation permits for sale of securities: RCW 48.06.090.

21.20.050 Application for registration—Consent to service of process. A broker-dealer, salesperson, investment adviser, or investment adviser representative may apply for registration by filing with the director or his authorized agent an application together with a consent to service of process in such form as the director shall prescribe and payment of the fee prescribed in RCW 21.20.340. [1994 c 256 § 6; 1981 c 272 § 1; 1979 ex.s. c 68 § 3; 1975 1st ex.s. c 84 § 3; 1961 c 37 § 2; 1959 c 282 § 5.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.060 Contents of application for registration—Capital requirements. The application shall contain whatever information the director requires concerning such matters as:

- (1) The applicant's form and place of organization;
- (2) The applicant's proposed method of doing business;
- (3) The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, any partner, officer, or director;
- (4) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
- (5) The applicant's financial condition and history; and

(6) The address of the principal place of business of the applicant and the addresses of all branch offices of the applicant in this state.

The director may by rule require a minimum capital for registered broker-dealers and investment advisers or prescribe a ratio between net capital and aggregate indebtedness by type or classification and may by rule allow registrants to maintain a surety bond of appropriate amount as an alternative method of compliance with minimum capital or net capital requirements. [1995 c 46 § 1; 1994 c 256 § 7; 1965 c 17 § 1; 1959 c 282 § 6.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.070 When registration effective—Written examinations. If no denial order is in effect and no proceeding is pending under RCW 21.20.110, registration becomes effective when the applicant has successfully passed a written examination as prescribed by rule or order of the director with the advice of the advisory committee, or has satisfactorily demonstrated that the applicant is exempt from the written examination requirements of this section. [1981 c 272 § 2; 1979 ex.s. c 68 § 4; 1975 1st ex.s. c 84 § 4; 1974 ex.s. c 77 § 2; 1959 c 282 § 7.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

21.20.080 Duration of registration—Association with issuer, broker-dealer, or investment adviser—Extension of licensing period. Registration of a broker-dealer, salesperson, investment adviser representative, or investment adviser shall be effective for a one-year period unless the director by rule or order provides otherwise. The director by rule or order may schedule registration or renewal so that all registrations and renewals expire December 31st. The director may adjust the fee for registration or renewal proportionately. The registration of a salesperson or investment adviser representative is not effective during any period when the salesperson is not associated with an issuer or a registered broker-dealer or when the investment adviser representative is not associated with a registered investment adviser. To be associated with an issuer, broker-dealer, or investment adviser within the meaning of this section written notice must be given to the director. When a salesperson begins or terminates an association with an issuer or registered broker-dealer, the salesperson and the issuer or broker-dealer shall promptly notify the director. When an investment adviser representative begins or terminates an association with a registered investment adviser, the investment adviser representative and registered investment adviser shall promptly notify the director.

Notwithstanding any provision of law to the contrary, the director may, from time to time, extend the duration of a licensing period for the purpose of staggering renewal periods. Such extension of a licensing period shall be by rule or regulation adopted in accordance with the provisions of chapter 34.05 RCW. Such rules and regulations may provide a method for imposing and collecting such additional proportional fee as may be required for the extended period. [1994 c 256 § 8; 1981 c 272 § 3; 1979 ex.s. c 68 § 5; 1975 1st ex.s. c 84 § 5; 1959 c 282 § 8.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.090 Renewal of registration—Financial reports—Application for a successor. Registration of a broker-dealer, salesperson, investment adviser representative, or investment adviser may be renewed by filing with the director or his or her authorized agent prior to the expiration thereof an application containing such information as the director may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesperson, investment adviser representative, or investment adviser filed with the director or his or her authorized agent by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer or investment adviser such financial reports as the director may by rule prescribe. A registered broker-dealer or investment adviser may file an application for registration of a successor, and the administrator may at his or her discretion grant or deny the application. [1995 c 46 § 2; 1994 c 256 § 9; 1981 c 272 § 4; 1979 ex.s. c 68 § 6; 1975 1st ex.s. c 84 § 6; 1961 c 37 § 3; 1959 c 282 § 9.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.100 Accounts and records—Examination. Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under RCW 21.20.310(1), which accounts and other records shall be prescribed by the director. All records so required shall be preserved for three years unless the director prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for the protection of investors. [1959 c 282 § 10.]

21.20.110 Denial, suspension, revocation of registration—Censure, fine, restrict the registrant—Grounds. The director may by order deny, suspend, or revoke registration of any broker-dealer, salesperson, investment adviser representative, or investment adviser; censure or fine the registrant or an officer, director, partner, or person occupying similar functions for a registrant; or restrict or limit a registrant's function or activity of business for which registration is required in this state; if the director finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(1) Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false, or misleading with respect to any material fact;

(2) Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor act or any rule or order under this chapter or a predecessor act, or any provision of chapter 21.30 RCW or any rule or order thereunder;

(3) Has been convicted, within the past five years, of any misdemeanor involving a security, or a commodity contract or commodity option as defined in RCW 21.30.010, or any aspect of the securities or investment commodities business, or any felony involving moral turpitude;

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities or investment commodities business;

(5) Is the subject of an order of the director denying, suspending, or revoking registration as a broker-dealer, salesperson, investment adviser, or investment adviser representative;

(6) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesperson, or a commodity broker-dealer or sales representative, or the substantial equivalent of those terms as defined in this chapter or by the commodity futures trading commission denying or revoking registration as a commodity merchant as defined in RCW 21.30.010, or is the subject of an order of suspension or expulsion from membership in or association with a self-regulatory organization registered under the securities exchange act of 1934 or the federal commodity exchange act, or is the subject of a United States post office fraud order; but (a) the director may not institute a revocation or suspension proceeding under this clause more than one year from the date of the order relied on, and (b) the director may not enter any order under this clause on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(7) Has engaged in dishonest or unethical practices in the securities or investment commodities business;

(8) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature; but the director may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser;

(9) Has not complied with a condition imposed by the director under RCW 21.20.100, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(10)(a) Has failed to supervise reasonably a salesperson or an investment adviser representative. For the purposes of this subsection, no person fails to supervise reasonably another person, if:

(i) There are established procedures, and a system for applying those procedures, that would reasonably be expected to prevent and detect, insofar as practicable, any violation by another person of this chapter, or a rule or order under this chapter; and

(ii) The supervising person has reasonably discharged the duties and obligations required by these procedures and system without reasonable cause to believe that another person was violating this chapter or rules or orders under this chapter.

(b) The director may issue a summary order pending final determination of a proceeding under this section upon a finding that it is in the public interest and necessary or

appropriate for the protection of investors. The director may not impose a fine under this section except after notice and opportunity for hearing. The fine imposed under this section may not exceed five thousand dollars for each act or omission that constitutes the basis for issuing the order. [1994 c 256 § 10; 1993 c 470 § 3; 1986 c 14 § 45; 1979 ex.s. c 68 § 7; 1975 1st ex.s. c 84 § 7; 1965 c 17 § 2; 1959 c 282 § 11.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Severability—Effective date—1986 c 14: See RCW 21.30.900 and 21.30.901.

21.20.120 Denial, suspension, revocation of registration—Order—Request for, notice of hearing—Findings and conclusions. Upon the entry of an order under RCW 21.20.110, the director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesperson or investment adviser representative, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within fifteen days after the receipt of the director's notification the matter will be promptly set down for hearing. If no hearing is requested and none is ordered by the director, the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination. No order may be entered under RCW 21.20.110 denying or revoking registration without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is a salesperson or an investment adviser representative), opportunity for hearing, and written findings of fact and conclusions of law. [1994 c 256 § 11; 1979 ex.s. c 68 § 8; 1975 1st ex.s. c 84 § 8; 1959 c 282 § 12.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.130 Cancellation of registration or application—Grounds. If the director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, investment adviser representative, or salesperson, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the director may by order cancel the registration or application. [1994 c 256 § 12; 1979 ex.s. c 68 § 9; 1975 1st ex.s. c 84 § 9; 1959 c 282 § 13.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.135 License as salesperson or broker-dealer prerequisite to suit for commission. No suit or action shall be brought for the collection of a commission for the sale of a security, as defined within this chapter without alleging and proving that the plaintiff was a duly licensed salesperson for an issuer or a broker-dealer, or exempt under the provisions of RCW 21.20.040, or a duly licensed broker-dealer in this state or another state at the time the alleged cause of action arose. [1979 ex.s. c 68 § 10; 1974 ex.s. c 77 § 3; 1961 c 37 § 10.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

REGISTRATION OF SECURITIES

21.20.140 Unlawful to offer or sell unregistered securities—Exceptions. It is unlawful for any person to offer or sell any security in this state, except securities exempt under RCW 21.20.310 or when sold in transactions exempt under RCW 21.20.320, unless such security is registered by coordination or qualification under this chapter. [1975 1st ex.s. c 84 § 10; 1959 c 282 § 14.]

REGISTRATION BY COORDINATION

21.20.180 Registration by coordination—Requirements—Statement, contents. Any security for which a registration statement has been filed under the securities act of 1933 or any securities for which filings have been made pursuant to regulation A pursuant to subsection (b) of Sec. 3 of the securities act in connection with the same offering may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in RCW 21.20.340 and, if required under RCW 21.20.330, a consent to service of process meeting the requirements of that section:

(1) One copy of the prospectus, offering circular and/or letters of notification, filed under the securities act of 1933 together with all amendments thereto;

(2) The amount of securities to be offered in this state;

(3) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;

(4) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the securities and exchange commission;

(5) If the director, by rule or otherwise, requires a copy of the articles of incorporation and bylaws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(6) If the director requests, any other information, or copies of any other documents, filed under the securities act of 1933;

(7) An undertaking to forward promptly all amendments to the federal registration statement, offering circular and/or letters of notification, other than an amendment which merely delays the effective date; and

(8) If the aggregate sales price of the offering exceeds one million dollars, audited financial statements and other financial information prepared as to form and content under rules adopted by the director. [1994 c 256 § 13; 1979 ex.s. c 68 § 11; 1961 c 37 § 4; 1959 c 282 § 18.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.190 Time of taking effect of registration statement by coordination—Conditions—"Price amendment", notification. A registration statement by coordination under RCW 21.20.180 automatically becomes effective at the moment the federal registration statement or other

filing becomes effective if all the following conditions are satisfied:

(1) No stop order is in effect and no proceeding is pending under RCW 21.20.280 and 21.20.300;

(2) The registration statement has been on file with the director for at least ten full business days; and

(3) A statement of the maximum and minimum proposed offering prices, and the maximum underwriting discounts and commissions has been on file for two full business days or such shorter period as the director permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the director or such person as the director may by rule or order designate by facsimile, electronic transmission, or telegram of the date and time when the federal registration statement or other filing became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. [1994 c 256 § 14; 1961 c 37 § 5; 1959 c 282 § 19.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.200 Failure to notify of price amendment, proof of compliance—Stop order—Waiver of certain conditions. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment referred to in RCW 21.20.190, the director may enter a stop order, without notice of hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with RCW 21.20.190, if the director promptly notified the registrant by telephone, facsimile, or electronic transmission (and promptly confirms by letter or facsimile when the director notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements as to notice and post-effective amendment, the stop order is void as of the time of its entry. The director may by rule or otherwise waive either or both of the conditions specified in RCW 21.20.190(2) and (3). If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the director of the date when the federal registration statement or other filing is expected to become effective the director shall promptly advise the registrant by telephone, electronic transmission, or facsimile, at the registrant's expense, whether all the conditions are satisfied and whether the director then contemplates the institution of a proceeding under RCW 21.20.280 and 21.20.300; but this advice by the director does not preclude the institution of such a proceeding at any time. [1994 c 256 § 15; 1979 ex.s. c 68 § 12; 1959 c 282 § 20.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

REGISTRATION BY QUALIFICATION

21.20.210 Registration by qualification—Statements—Requirements—Audits. Any security may be registered by qualification. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in RCW 21.20.340, and, if required under RCW 21.20.330, a consent to service of process meeting the requirements of that section:

(1) With respect to the issuer and any significant subsidiary: Its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; and a description of its physical properties and equipment.

(2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: His or her name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him or her as of a specified date within ninety days of the filing of the registration statement; the remuneration paid to all such persons in the aggregate during the past twelve months, and estimated to be paid during the next twelve months, directly or indirectly, by the issuer (together with all predecessors, parents and subsidiaries).

(3) With respect to any person not named in RCW 21.20.210(2), owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: The information specified in RCW 21.20.210(2) other than his or her occupation.

(4) With respect to every promoter, not named in RCW 21.20.210(2), if the issuer was organized within the past three years: The information specified in RCW 21.20.210(2), any amount paid to that person by the issuer within that period or intended to be paid to that person, and the consideration for any such payment.

(5) The capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.

(6) The kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering); the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a finders' fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement

whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

(7) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price.

(8) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in RCW 21.20.210(2), (3), (4), (5) or (7) and by any person who holds or will hold ten percent or more in the aggregate of any such options.

(9) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed.

(10) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission; a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities).

(11) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering.

(12) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.

(13) A signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered.

(14)(a) The following financial statements:

(i)(A) Balance sheets as of the end of each of the three most recent fiscal years; and, if the date of the most recent fiscal year end is more than four months prior to the date of filing, (B) a balance sheet of the issuer as of a date within four months prior to the filing of the registration statement.

(ii)(A) Statements of income, shareholders' equity, and cash flows for each of the three fiscal years preceding the date of the latest balance sheet or for the period of the issuer's and any predecessor's existence if less than three years and (B) statements of income, shareholders' equity, and cash flows for any period between the close of the last fiscal year and the date of the latest balance sheet.

(iii) If any part of the proceeds of the offering is to be applied to the purchase of any business whose annual sales or revenues are in excess of fifteen percent of the registrant's sales or revenues or involves acquisition of assets in excess of fifteen percent of the registrant's assets, except as specifically exempted by the director, financial statements shall be filed which would be required if that business were the registrant.

(b)(i) If the estimated proceeds to be received from the offering, together with the proceeds from securities registered under this section during the year preceding the date of the filing of this registration statement, exceed one million dollars, the balance sheet specified in (a)(i)(A) of this subsection as of the end of the last fiscal year and the related financial statements specified in (a)(ii)(A) of this subsection for the last fiscal year shall be audited.

(ii) If such proceeds exceed one million dollars but are not more than five million dollars, the balance sheet specified in (a)(i)(A) of this subsection as of the end of the most recent fiscal year and the financial statements specified in (a)(ii)(A) of this subsection for the last fiscal year shall be audited.

(iii) If such proceeds exceed five million dollars but are not more than twenty-five million dollars, the balance sheets specified in (a)(i)(A) of this subsection as of the end of the last two fiscal years and the related financial statements specified in (a)(ii)(A) of this subsection for the last two fiscal years shall be audited.

(iv) If such proceeds exceed twenty-five million dollars, the balance sheets specified in (a)(i)(A) of this subsection and the related financial statements specified in (a)(ii)(A) of this subsection for the last three fiscal years shall be audited.

(c) The financial statements of this subsection and such other financial information as may be prescribed by the director shall be prepared as to form and content in accordance with generally accepted accounting principles and with the rules prescribed by the director, and when applicable, shall be audited by an independent certified public accountant who is registered and in good standing as a certified public accountant under the laws of the place of his or her residence or principal office and who is not an employee, officer, or member of the board of directors of the issuer or a holder of the securities of the issuer. An audit report of such independent certified public accountant shall be based upon an audit made in accordance with generally accepted auditing standards. The audit report shall have no limitations on its scope unless expressly authorized in writing by the director. The director may also verify such statements by examining the issuer's books and records.

(15) The written consent of any accountant, engineer, appraiser, attorney, or any person whose profession gives authority to a statement made by him or her, who is named as having prepared or audited any part of the registration statement or is named as having prepared or audited a report or valuation for use in connection with the registration statement. [1994 c 256 § 16; 1979 ex.s. c 68 § 13; 1973 1st ex.s. c 171 § 1; 1959 c 282 § 21.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.220 Information not required when nonissuer distribution. In the case of a nonissuer distribution, information may not be required under RCW 21.20.210 unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense. [1959 c 282 § 22.]

21.20.230 Time of taking effect of registration statement by qualification—Conditions. A registration statement by qualification under RCW 21.20.210 becomes effective if no stop order is in effect and no proceeding is pending under RCW 21.20.280 and 21.20.300, at three o'clock Pacific standard time in the afternoon of the fifteenth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the director determines. The director may require as a condition of registration under this section that a prospectus containing any information necessary for complete disclosure of any material fact relating to the security offering be sent or given to each person to whom an offer is made before or concurrently with (1) the first written offer made to him or her (other than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him or her as a participant in the distribution, (2) the confirmation of any sale made by or for the account of any such person, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs; but the director may accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder. [1979 ex.s. c 68 § 14; 1975 1st ex.s. c 84 § 11; 1974 ex.s. c 77 § 4; 1961 c 37 § 6; 1959 c 282 § 23.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

GENERAL PROVISIONS REGARDING REGISTRATION OF SECURITIES

21.20.240 Registration statements—Generally. A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. The director may by rule or otherwise permit the omission of any item of information or document from any registration statement. [1975 1st ex.s. c 84 § 12; 1959 c 282 § 24.]

21.20.250 Registration by qualification or coordination—Escrow—Impounding proceeds. The director may by rule or order require as a condition of registration by qualification or coordination (1) that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The director may by rule or order determine the conditions of any escrow or impounding required hereunder but the director may not reject a depository solely because of location in another state. [1979 ex.s. c 68 § 15; 1959 c 282 § 25.]

21.20.260 Registration by coordination or qualification—Offer and sale—Duration of effectiveness. When securities are registered by coordination or qualification, they

may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer or any person acting within the exemption provided in RCW 21.20.040. Every registration shall remain effective until its expiration date or until revoked by the director or until terminated upon request of the registrant with the consent of the director. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction. [1975 1st ex.s. c 84 § 13; 1974 ex.s. c 77 § 5; 1959 c 282 § 26.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

21.20.270 Reports by filer of statement—Annual financial statements. (1) The director may require the person who filed the registration statement to file reports, not more often than quarterly to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which (a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the investment company act of 1940, or (b) are being offered and sold directly by or for the account of the issuer.

(2) During the period of public offering of securities registered under the provisions of this chapter by qualification financial data or statements corresponding to those required under the provisions of RCW 21.20.210 and to the issuer's fiscal year shall be filed with the director annually, not more than one hundred twenty days after the end of each such year. Such statements at the discretion of the director or administrator shall be certified by a certified public accountant who is not an employee of the issuer, and the director may verify them by examining the issuer's books and records. The certificate of such independent certified public accountant shall be based upon an audit of not less in scope or procedures followed than that which independent public accountants would ordinarily make for the purpose of presenting comprehensive and dependable financial statements, and shall contain such information as the director may prescribe, by rules in the public interest or for the protection of investors, as to the nature and scope of the audit and the findings and opinions of the accountants. Each such report shall state that such independent certified public accountant has verified securities owned, either by actual examination, or by receipt of a certificate from the custodian, as the director may prescribe by rules. [1995 c 46 § 3; 1975 1st ex.s. c 84 § 14; 1965 c 17 § 3; 1961 c 37 § 7; 1959 c 282 § 27.]

21.20.275 Pending registration—Notice of termination—Application for continuation. The director may in his or her discretion send notice to the registrant in any pending registration in which no action has been taken for nine months immediately prior to the sending of such notice, advising such registrant that the pending registration will be terminated thirty days from the date of sending unless on or before the termination date the registrant makes application in writing to the director showing good cause why it should be continued as a pending registration. If such application

is not made or good cause shown, the director shall terminate the pending registration. [1994 c 256 § 17; 1979 ex.s. c 68 § 16; 1974 ex.s. c 77 § 12.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

DENIAL, SUSPENSION AND REVOCATION OF REGISTRATION OF SECURITIES

21.20.280 Stop orders—Grounds. The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the director finds that the order is in the public interest and that:

(1) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been wilfully violated, in connection with the offering by (a) the person filing the registration statement, (b) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (c) any underwriter;

(3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (a) the director may not institute a proceeding against an effective registration statement under this clause more than one year from the date of the injunction relied on, and (b) the director may not enter an order under this clause on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(5) The offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by RCW 21.20.180(7), or

(7) The applicant or registrant has failed to pay the proper registration fee; but the director may enter only a denial order under this subsection and shall vacate any such order when the deficiency has been corrected;

(8) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or compensation or promoters' profits or participation, or unreasonable amounts or kinds of options. [1979 ex.s. c 68 § 17; 1975 1st ex.s. c 84 § 15; 1959 c 282 § 28.]

21.20.290 Stop order prohibited if facts known on effective date of statement. The director may not enter a stop order against an effective registration statement on the basis of a fact or transaction known to the director when the registration statement became effective. [1979 ex.s. c 68 § 18; 1959 c 282 § 29.]

21.20.300 Notification of entry of stop order—Hearing—Findings, conclusions, modification, etc. Upon the entry of a stop order under any part of RCW 21.20.280, the director shall promptly notify the issuer of the securities and the applicant or registrant that the order has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen days and none is ordered by the director, the director shall enter written findings of fact and conclusions of law and the order will remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearings to the issuer and to the applicant or registrant, shall enter written findings of fact and conclusions of law and may modify or vacate the order. The director may modify or vacate a stop order if the director finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so. [1979 ex.s. c 68 § 19; 1959 c 282 § 30.]

EXEMPT SECURITIES

21.20.310 Securities exempt from registration. RCW 21.20.140 through 21.20.300, inclusive, do not apply to any of the following securities:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing; but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such payments are made or unconditionally guaranteed by a person whose securities are exempt from registration by subsections (7) or (8) of this section: PROVIDED, That the director, by rule or order, may exempt any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise if the director finds that registration with respect to such securities is not necessary in the public interest and for the protection of investors.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless such payments shall be made or unconditionally guaranteed by a person whose securities are exempt from registration by subsections (7) or (8) of this section.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank or trust company organized or supervised under the laws of any state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(5) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of this state and authorized to do and actually doing business in this state.

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state.

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) subject to the jurisdiction of the interstate commerce commission; (b) a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act; (c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (d) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect of equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection.

(8) Any security which meets the criteria for investment grade securities that the director may adopt by rule.

(9) Any prime quality negotiable commercial paper not intended to be marketed to the general public and not advertised for sale to the general public that is of a type eligible for discounting by federal reserve banks, that arises out of a current transaction or the proceeds of which have been or are to be used for a current transaction, and that evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal.

(10) Any security issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if: (a) The plan meets the requirements for qualification as a pension, profit sharing, or stock bonus plan under section 401 of the internal revenue code, as an incentive stock option plan under section 422 of the internal revenue code, or as an employee stock purchase plan under section 423 of the internal revenue code; or (b) the director is notified in writing with a copy of the plan thirty days before offering the plan to employees in this state. In the event of late filing of notification the director may upon application, for good cause excuse such late filing if he or she finds it in the public interest to grant such relief.

(11) Any security issued by any person organized and operated as a nonprofit organization as defined in RCW 84.36.800(4) exclusively for religious, educational, fraternal, or charitable purposes and which nonprofit organization also possesses a current tax exempt status under the laws of the

United States, which security is offered or sold only to persons who, prior to their solicitation for the purchase of said securities, were members of, contributors to, or listed as participants in, the organization, or their relatives, if such nonprofit organization first files a notice specifying the terms of the offering and the director does not by order disallow the exemption within the next ten full business days: PROVIDED, That no offerings may be made until expiration of the ten full business days. Every such nonprofit organization which files a notice of exemption of such securities shall pay a filing fee as set forth in RCW 21.20.340(11) as now or hereafter amended.

The notice shall consist of the following:

- (a) The name and address of the issuer;
- (b) The names, addresses, and telephone numbers of the current officers and directors of the issuer;
- (c) A short description of the security, price per security, and the number of securities to be offered;
- (d) A statement of the nature and purposes of the organization as a basis for the exemption under this section;
- (e) A statement of the proposed use of the proceeds of the sale of the security; and
- (f) A statement that the issuer shall provide to a prospective purchaser written information regarding the securities offered prior to consummation of any sale, which information shall include the following statements: (i) "ANY PROSPECTIVE PURCHASER IS ENTITLED TO REVIEW FINANCIAL STATEMENTS OF THE ISSUER WHICH SHALL BE FURNISHED UPON REQUEST."; (ii) "RECEIPT OF NOTICE OF EXEMPTION BY THE WASHINGTON ADMINISTRATOR OF SECURITIES DOES NOT SIGNIFY THAT THE ADMINISTRATOR HAS APPROVED OR RECOMMENDED THESE SECURITIES, NOR HAS THE ADMINISTRATOR PASSED UPON THE OFFERING. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE."; and (iii) "THE RETURN OF THE FUNDS OF THE PURCHASER IS DEPENDENT UPON THE FINANCIAL CONDITION OF THE ORGANIZATION."

(12) Any charitable gift annuities issued by a board of a state university, regional university, or of the state college.

(13) Any charitable gift annuity issued by an insurer or institution holding a certificate of exemption under RCW 48.38.010. [1995 c 46 § 4; 1994 c 256 § 18; 1981 c 272 § 5; 1979 ex.s. c 68 § 20; 1979 c 130 § 4; 1979 c 8 § 1. Prior: 1977 ex.s. c 188 § 2; 1977 ex.s. c 172 § 1; 1975 1st ex.s. c 84 § 16; 1959 c 282 § 31.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Severability—1979 c 130: See note following RCW 28B.10.485.

EXEMPT TRANSACTIONS

21.20.320 Exempt transactions. The following transactions are exempt from RCW 21.20.040 through 21.20.300 except as expressly provided:

(1) Any isolated transaction, or sales not involving a public offering, whether effected through a broker-dealer or not; or any transaction effected in accordance with any rule by the director establishing a nonpublic offering exemption pursuant to this subsection where registration is not neces-

sary or appropriate in the public interest or for the protection of investors.

(2) Any nonissuer distribution of an outstanding security by a registered broker-dealer if (a) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security.

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the director may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit. A bond or other evidence of indebtedness is not offered and sold as a unit if the transaction involves:

(a) A partial interest in one or more bonds or other evidences of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels; or

(b) One of multiple bonds or other evidences of indebtedness secured by one or more real or chattel mortgages or deeds of trust, or agreements for the sale of real estate or chattels, sold to more than one purchaser as part of a single plan of financing; or

(c) A security including an investment contract other than the bond or other evidence of indebtedness.

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter.

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(9) Any transaction pursuant to an offering not exceeding five hundred thousand dollars effected in accordance with any rule by the director if the director finds that registration is not necessary in the public interest and for the protection of investors.

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospec-

tive subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber.

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days.

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets.

(15) The offer or sale by a registered broker-dealer, or a person exempted from the registration requirements pursuant to RCW 21.20.040, acting either as principal or agent, of securities previously sold and distributed to the public: PROVIDED, That:

(a) Such securities are sold at prices reasonably related to the current market price thereof at the time of sale, and, if such broker-dealer is acting as agent, the commission collected by such broker-dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;

(b) Such securities do not constitute the whole or a part of an unsold allotment to or subscription or participation by such broker-dealer as an underwriter of such securities or as a participant in the distribution of such securities by the issuer, by an underwriter or by a person or group of persons in substantial control of the issuer or of the outstanding securities of the class being distributed; and

(c) The security has been lawfully sold and distributed in this state or any other state of the United States under this or any act regulating the sale of such securities.

(16) Any transaction by a mutual or cooperative association meeting the requirements of (a) and (b) of this subsection:

(a) The transaction:

(i) Does not involve advertising or public solicitation; or

(ii) Involves advertising or public solicitation, and:

(A) The association first files a notice of claim of exemption on a form prescribed by the director specifying the terms of the offer and the director does not by order deny the exemption within the next ten full business days; or

(B) The association is an employee cooperative and identifies itself as an employee cooperative in advertising or public solicitation.

(b) The transaction involves an instrument or interest, that:

(i)(A) Qualifies its holder to be a member or patron of the association;

(B) Represents a contribution of capital to the association by a person who is or intends to become a member or patron of the association;

(C) Represents a patronage dividend or other patronage allocation; or

(D) Represents the terms or conditions by which a member or patron purchases, sells, or markets products, commodities, or services from, to, or through the association; and

(ii) Is nontransferable except in the case of death, operation of law, bona fide transfer for security purposes only to the association, a bank, or other financial institution, intrafamily transfer, or transfer to an existing member or person who will become a member and, in the case of an instrument, so states conspicuously on its face.

(17) Any transaction effected in accordance with any rule adopted by the director establishing a limited offering exemption which furthers objectives of compatibility with federal exemptions and uniformity among the states, provided that in adopting any such rule the director may require that no commission or other remuneration be paid or given to any person, directly or indirectly, for effecting sales unless the person is registered under this chapter as a broker-dealer or salesperson. [1989 c 307 § 34. Prior: 1987 c 457 § 13; 1987 c 421 § 9; 1986 c 90 § 1; 1981 c 272 § 6; 1979 ex.s. c 68 § 21; 1977 ex.s. c 172 § 2; 1975 1st ex.s. c 84 § 17; 1974 ex.s. c 77 § 6; 1972 ex.s. c 79 § 1; 1961 c 37 § 8; 1959 c 282 § 32.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Application—1989 c 307: See RCW 23.86.900.

Severability—1987 c 457: See RCW 23.78.902.

Application—Severability—1987 c 421: See notes following RCW 21.20.705.

Effective date—1986 c 90: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1986." [1986 c 90 § 3.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

EXEMPT SECURITIES AND TRANSACTIONS

21.20.325 Denial, revocation, condition, of exemptions—Authority—Procedure. The director or administrator may by order deny, revoke, or condition any exemption specified in subsections (10), (11), (12) or (13) of RCW 21.20.310 or in RCW 21.20.320, as now or hereafter amended, with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the director or administrator may by order summarily deny, revoke, or condition any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the director or adminis-

trator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the director or administrator, the order will remain in effect until it is modified or vacated by the director or administrator. If a hearing is requested or ordered, the director or administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this section may operate retroactively. No person may be considered to have violated RCW 21.20.140 as now or hereafter amended by reason of any offer or sale effected after the entry of an order under this section if he or she sustains the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the order. [1979 ex.s. c 68 § 22; 1979 c 130 § 14; 1977 ex.s. c 188 § 3; 1975 1st ex.s. c 84 § 18; 1974 ex.s. c 77 § 7; 1967 c 199 § 3.]

Severability—1979 c 130: See note following RCW 28B.10.485.

CONSENT TO SERVICE OF PROCESS

21.20.330 Consent to service of process—Service, how made. Every applicant for registration as a broker-dealer, investment adviser, investment adviser representative, or salesperson under this chapter and every issuer that files an application to register or files a claim of exemption from registration to offer a security in this state through any person acting on an agency basis in the common law sense shall file with the director or with such person as the director may by rule or order designate, in such form as the director by rule prescribes, an irrevocable consent appointing the director or the director's successor in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the director, but it is not effective unless (1) the plaintiff, who may be the director in a suit, action, or proceeding instituted by him or her, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address of the respondent or defendant on file with the director, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows. [1994 c 256 § 19; 1979 ex.s. c 68 § 23; 1975 1st ex.s. c 84 § 19; 1959 c 282 § 33.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

FEEES

21.20.340 Fees—Disposition. The following fees shall be paid in advance under the provisions of this chapter:

(1) For registration of securities by qualification, the fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered during that year: PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty dollar fee renew for one additional twelve-month period only the unsold portion for which the registration fee has been paid.

(2) For registration by coordination of securities issued by an investment company, other than a closed-end company, as those terms are defined in the Investment Company Act of 1940, the fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-twentieth of one percent for any excess over one hundred thousand dollars which are to be offered in this state during that year: PROVIDED, HOWEVER, That an issuer may upon the payment of a fifty dollar fee renew for an additional twelve-month period the unsold portion for which the registration fee has been paid.

(3) For registration by coordination of securities not covered by subsection (2) of this section, the initial filing fee shall be one hundred dollars for the first one hundred thousand dollars of initial issue, or portion thereof in this state, based on offering price, plus one-fortieth of one percent for any excess over one hundred thousand dollars for the first twelve-month period plus one hundred dollars for each additional twelve months in which the same offering is continued.

(4) For filing annual financial statements, the fee shall be twenty-five dollars.

(5)(a) For filing an amended offering circular after the initial registration permit has been granted the fee shall be ten dollars.

(b) For filing a report under RCW 21.20.270(1) the fee shall be ten dollars.

(6) For registration of a broker-dealer or investment adviser, the fee shall be one hundred fifty dollars for original registration and seventy-five dollars for each annual renewal. When an application is denied or withdrawn the director shall retain one-half of the fee.

(7) For registration of a salesperson or investment adviser representative, the fee shall be forty dollars for original registration with each employer and twenty dollars for each annual renewal. When an application is denied or withdrawn the director shall retain one-half of the fee.

(8) If a registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative is not renewed on or before December 31st of each year the renewal is delinquent. The director by rule or order may set and assess a fee for delinquency not to exceed two hundred dollars. Acceptance by the director of an application for renewal after December 31st is not a waiver of delinquency. A delinquent application for renewal will not be accepted for filing after March 1st.

(9)(a) For the transfer of a broker-dealer license to a successor, the fee shall be fifty dollars.

(b) For the transfer of a salesperson license from a broker-dealer or issuer to another broker-dealer or issuer, the transfer fee shall be twenty-five dollars.

(c) For the transfer of an investment adviser representative license from an investment adviser to another investment adviser, the transfer fee shall be twenty-five dollars.

(d) For the transfer of an investment adviser license to a successor, the fee shall be fifty dollars.

(10) The director may provide by rule for the filing of notice of claim of exemption under RCW 21.20.320 (1), (9), and (17) and set fees accordingly not to exceed three hundred dollars.

(11) For filing of notification of claim of exemption from registration pursuant to RCW 21.20.310(11), as now or hereafter amended, the fee shall be fifty dollars for each filing.

(12) For rendering interpretative opinions, the fee shall be thirty-five dollars.

(13) For certified copies of any documents filed with the director, the fee shall be the cost to the department.

(14) For a duplicate license the fee shall be five dollars.

All fees collected under this chapter shall be turned in to the state treasury and are not refundable, except as herein provided. [1995 c 46 § 5; 1994 c 256 § 20; 1988 c 244 § 17; 1986 c 90 § 2; 1981 c 272 § 7; 1979 ex.s. c 68 § 24. Prior: 1977 ex.s. c 188 § 4; 1977 ex.s. c 172 § 3; 1975 1st ex.s. c 84 § 20; 1974 ex.s. c 77 § 8; 1965 c 17 § 4; 1961 c 37 § 9; 1959 c 282 § 34.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

Effective date—1986 c 90: See note following RCW 21.20.320.

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

Effective date—1965 c 17: "Section 4 of this amendatory act shall take effect July 1, 1965." [1965 c 17 § 6.]

MISLEADING FILINGS

21.20.350 False or misleading statements in filed documents. It is unlawful for any person to make or cause to be made, in any document filed with the director or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect. [1959 c 282 § 35.]

UNLAWFUL REPRESENTATIONS CONCERNING REGISTRATION OR EXEMPTION

21.20.360 Filing, registration, statement, exemption not conclusive as to truth or completeness—Unlawful representations. Neither the fact that an application for registration under RCW 21.20.050, a registration statement under RCW 21.20.180 or 21.20.210 has been filed, nor the fact that a person or security if effectively registered, constitutes a finding by the director that any document filed under this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the director has passed in any way upon the merits of qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or

client any representation inconsistent with this section. [1975 1st ex.s. c 84 § 21; 1959 c 282 § 36.]

INVESTIGATIONS AND SUBPOENAS

21.20.370 Investigations—Statement of facts relating to investigation may be permitted—Publication of information. The director in his or her discretion (1) may annually, or more frequently, make such public or private investigations within or without this state as the director deems necessary to determine whether any registration should be granted, denied or revoked or whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder, (2) may require or permit any person to file a statement in writing, under oath or otherwise as the director may determine, as to all the facts and circumstances concerning the matter to be investigated, and (3) may publish information concerning any violation of this chapter or any rule or order hereunder. [1994 c 256 § 21; 1979 ex.s. c 68 § 25; 1973 1st ex.s. c 171 § 2; 1959 c 282 § 37.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

Investigations, additional authority, scope: RCW 21.20.700.

21.20.380 Oaths—Subpoenas—Assisting another state—Compelling obedience—Punishment. (1) For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(2) If the activities constituting an alleged violation for which the information is sought would be a violation of this chapter had the activities occurred in this state, the director may issue and apply to enforce subpoenas in this state at the request of a securities agency or administrator of another state.

(3) In case of disobedience on the part of any person to comply with any subpoena lawfully issued by the director, or on the refusal of any witness to testify to any matters regarding which the witness may be lawfully interrogated, a court of competent jurisdiction of any county or the judge thereof, on application of the director, and after satisfactory evidence of wilful disobedience, may compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such a court on a refusal to testify therein. [1995 c 46 § 6; 1994 c 256 § 22; 1979 ex.s. c 68 § 26; 1975 1st ex.s. c 84 § 22; 1974 ex.s. c 77 § 9; 1959 c 282 § 38.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

INJUNCTIONS AND OTHER REMEDIES

21.20.390 Injunction, cease and desist order, restraining order, mandamus—Appointment of receiver or conservator for insolvent—Restitution or damages. Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the director may in his or her discretion:

(1) Issue an order directing the person to cease and desist from continuing the act or practice and to take appropriate affirmative action within a reasonable period of time, as prescribed by the director, to correct conditions resulting from the act or practice including, without limitation, a requirement to provide restitution: PROVIDED, That reasonable notice of and opportunity for a hearing shall be given: PROVIDED, FURTHER, That the director may issue a temporary order pending the hearing which shall remain in effect until ten days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within fifteen days after the receipt of notice; or

(2) The director may without issuing a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order hereunder. The court may grant such ancillary relief as it deems appropriate. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The director may not be required to post a bond. If the director prevails, the director shall be entitled to a reasonable attorney's fee to be fixed by the court.

(3) Whenever it appears to the director that any person who has received a permit to issue, sell, or otherwise dispose of securities under this chapter, whether current or otherwise, has become insolvent, the director may petition a court of competent jurisdiction to appoint a receiver or conservator for the defendant or the defendant's assets. The director may not be required to post a bond.

(4) The director may bring an action for restitution or damages on behalf of the persons injured by a violation of this chapter, if the court finds that private civil action would be so burdensome or expensive as to be impractical. [1995 c 46 § 7; 1994 c 256 § 23; 1981 c 272 § 8; 1979 ex.s. c 68 § 27; 1975 1st ex.s. c 84 § 23; 1974 ex.s. c 77 § 10; 1959 c 282 § 39.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

CRIMINAL LIABILITIES

21.20.400 Penalty for violation of chapter—Limitation of actions. Any person who wilfully violates any provision of this chapter except RCW 21.20.350, or who wilfully violates any rule or order under this chapter, or who wilfully violates RCW 21.20.350 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than five thousand dollars or imprisoned not more than ten years, or both; but no

person may be imprisoned for the violation of any rule or order if that person proves that he or she had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation. [1979 ex.s. c 68 § 28; 1965 c 17 § 5; 1959 c 282 § 40.]

21.20.410 Attorney general, prosecuting attorney may institute criminal proceeding—Referral of evidence by director. The director may refer such evidence as may be available concerning violations of this chapter or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, institute the appropriate criminal proceedings under this chapter. [1979 ex.s. c 68 § 29; 1959 c 282 § 41.]

21.20.420 Criminal punishment, chapter not exclusive. Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law. [1959 c 282 § 42.]

CIVIL LIABILITIES

21.20.430 Civil liabilities—Survival, limitation of actions—Waiver of chapter void—Scienter. (1) Any person, who offers or sells a security in violation of any provisions of RCW 21.20.010 or 21.20.140 through 21.20.230, is liable to the person buying the security from him or her, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at eight percent per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he or she no longer owns the security. Damages are the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at eight percent per annum from the date of disposition.

(2) Any person who buys a security in violation of the provisions of RCW 21.20.010 is liable to the person selling the security to him or her, who may sue either at law or in equity to recover the security, together with any income received on the security, upon tender of the consideration received, costs, and reasonable attorneys' fees, or if the security cannot be recovered, for damages. Damages are the value of the security when the buyer disposed of it, and any income received on the security, less the consideration received for the security, plus interest at eight percent per annum from the date of disposition, costs, and reasonable attorneys' fees.

(3) Every person who directly or indirectly controls a seller or buyer liable under subsection (1) or (2) above, every partner, officer, director or person who occupies a similar status or performs a similar function of such seller or buyer, every employee of such a seller or buyer who materially aids in the transaction, and every broker-dealer, salesperson, or person exempt under the provisions of RCW 21.20.040 who materially aids in the transaction is also liable jointly and severally with and to the same extent as the seller or buyer, unless such person sustains the burden of proof

that he or she did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(4)(a) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(b) No person may sue under this section more than three years after the contract of sale for any violation of the provisions of RCW 21.20.140 through 21.20.230, or more than three years after a violation of the provisions of RCW 21.20.010, either was discovered by such person or would have been discovered by him or her in the exercise of reasonable care. No person may sue under this section if the buyer or seller receives a written rescission offer, which has been passed upon by the director before suit and at a time when he or she owned the security, to refund the consideration paid together with interest at eight percent per annum from the date of payment, less the amount of any income received on the security in the case of a buyer, or plus the amount of income received on the security in the case of a seller.

(5) No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order hereunder is void.

(6) Any tender specified in this section may be made at any time before entry of judgment.

(7) Notwithstanding subsections (1) through (6) of this section, if an initial offer or sale of securities that are exempt from registration under RCW 21.20.310 is made by this state or its agencies, political subdivisions, municipal or quasi-municipal corporations, or other instrumentality of one or more of the foregoing and is in violation of RCW 21.20.010(2), and any such issuer, member of the governing body, committee member, public officer, director, employee, or agent of such issuer acting on its behalf, or person in control of such issuer, member of the governing body, committee member, public officer, director, employee, or agent of such person acting on its behalf, materially aids in the offer or sale, such person is liable to the purchaser of the security only if the purchaser establishes scienter on the part of the defendant. The word "employee" or the word "agent," as such words are used in this subsection, do not include a bond counsel or an underwriter. Under no circumstances whatsoever shall this subsection be applied to require purchasers to establish scienter on the part of bond counsels or underwriters. The provisions of this subsection are retroactive and apply to any action commenced but not final before July 27, 1985. In addition, the provisions of this subsection apply to any action commenced on or after July 27, 1985. [1986 c 304 § 1; 1985 c 171 § 1; 1981 c 272 § 9; 1979 ex.s. c 68 § 30; 1977 ex.s. c 172 § 4; 1975 1st ex.s. c 84 § 24; 1974 ex.s. c 77 § 11; 1967 c 199 § 2; 1959 c 282 § 43.]

Severability—1986 c 304: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 304 § 2.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

DISCONTINUANCE OF VIOLATIONS

21.20.435 Assurance of discontinuance of violations—Acceptance—Filing. In the enforcement of this chapter, the director may accept an assurance of discontinuance of violations of the provisions of this chapter from any person deemed by the director to be in violation hereof. Any such assurance shall be in writing, may state that the person giving such assurance does not admit to any violation of this chapter, and shall be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his or her principal place of business, or in Thurston county. Proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter. [1979 ex.s. c 68 § 31; 1974 ex.s. c 77 § 13.]

Effective date—1974 ex.s. c 77: See note following RCW 21.20.040.

JUDICIAL REVIEW OF ORDERS

21.20.440 Judicial review of order—Modification of order by director on additional evidence. Any person aggrieved by a final order of the director may obtain a review of the order in the county in which that person resides or in any other court of competent jurisdiction by filing in court, within sixty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the director, and thereupon the director shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. No objection to the order may be considered by the court unless it was urged before the director or there were reasonable grounds for failure to do so. The findings of the director as to the facts, if supported by substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the director, the court may order the additional evidence to be taken before the director and to be adduced upon the hearing in such manner and upon such conditions as the court may consider proper. The director may modify his or her findings by reason of the additional evidence so taken; and the director shall file any modified or new findings, which if supported by substantial evidence shall be conclusive, and any recommendation for the modification or setting aside of the original order. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the director's order. [1979 ex.s. c 68 § 32; 1959 c 282 § 44.]

ADMINISTRATION OF CHAPTER

21.20.450 Administration of chapter—Rules and forms, publication—Cooperation with other state and federal authorities. (1) The administration of the provisions of this chapter shall be under the department of financial institutions. The director may from time to time make, amend, and repeal such rules, forms, and orders as are necessary to carry out the provisions of this chapter, including rules defining any term, whether or not such term is used in the Washington securities law. The director may classify securities, persons, and matters within the director's jurisdiction, and prescribe different requirements for different classes. No rule, form, or order may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter. In prescribing rules and forms the director may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable. All rules and forms of the director shall be published.

(2) To encourage uniform interpretation and administration of this chapter and effective securities regulation and enforcement, the director may cooperate with the securities agencies or administrators of one or more states, Canadian provinces or territories, or another country, the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, any self-regulatory organization, any national or international organization of securities officials or agencies, and any governmental law enforcement or regulatory agency.

(3) The cooperation authorized by subsection (2) of this section includes:

(a) Establishing a central depository for licensing or registration under this chapter and for documents or records required or allowed to be maintained under this chapter;

(b) Making a joint license or registration examination or investigation;

(c) Holding a joint administrative hearing;

(d) Filing and prosecuting a joint civil or administrative hearing;

(e) Sharing and exchanging personnel;

(f) Sharing and exchanging information and documents; and

(g) Formulating under chapter 34.05 RCW, rules or proposed rules on matters such as statements of policy, guidelines, and interpretative opinions and releases. [1994 c 256 § 24; 1993 c 472 § 15; 1979 ex.s. c 68 § 33; 1979 c 158 § 86; 1975 1st ex.s. c 84 § 25; 1959 c 282 § 45.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Effective date—Implementation—1993 c 472: See RCW 43.320.900 and 43.320.901.

21.20.460 Administrator of securities—Appointment, qualifications, term, etc. The director shall appoint a competent person to administer this chapter who shall be designated administrator of securities. The director

shall delegate to the administrator such powers, subject to the authority of the director, as may be necessary to carry out the provisions of this chapter. The administrator shall hold office at the pleasure of the director. [1959 c 282 § 46.]

21.20.470 Compensation, travel expenses of administrator and employees. The administrator, and any person employed by the administrator, shall be paid, in addition to regular compensation, travel expenses incurred by each of them in the performance of their duties under this chapter in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1979 ex.s. c 68 § 34; 1975-'76 2nd ex.s. c 34 § 64; 1959 c 282 § 47.]

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

21.20.480 Unlawful use or disclosure of filed information. It is unlawful for the director or any of the director's officers or employees to use for personal benefit any information which is filed with or obtained by the director and which is not made public. The director or any of the director's officers or employees shall not disclose any such information or the fact that any investigation is being made except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the director or any of the director's officers or employees. [1979 ex.s. c 68 § 35; 1959 c 282 § 48.]

21.20.490 No liability under chapter for act in good faith. No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the director, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason. [1959 c 282 § 49.]

21.20.500 Administrative hearings public—Exception. Every hearing in an administrative proceeding shall be public unless the director in his or her discretion grants a request joined in by all the respondents that the hearing be conducted privately. [1979 ex.s. c 68 § 36; 1959 c 282 § 50.]

21.20.510 Document filed when received—Register—Inspection of register, information, etc. A document is filed with the director when it is received by the director or by a person as the director designates by rule or order. The director or the director's designee shall keep a register of all applications for registration and registration statements which are or have ever been effective under this chapter and all denial, suspension, or revocation orders which have ever been entered under this chapter. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under

such rules as the director prescribes. [1994 c 256 § 25; 1959 c 282 § 51.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.520 Copies of entries, documents to be furnished—Copies as prima facie evidence. Upon request and at such reasonable charges as the director prescribes, the director shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified. [1979 ex.s. c 68 § 37; 1959 c 282 § 52.]

21.20.530 Interpretative opinions by director. The director in his or her discretion may honor requests from interested persons for interpretative opinions. [1979 ex.s. c 68 § 38; 1959 c 282 § 53.]

PROOF OF EXEMPTION

21.20.540 Exemptions and exceptions, burden of proof. In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it. [1959 c 282 § 54.]

ADVISORY COMMITTEE

21.20.550 State advisory committee—Composition, appointment, qualifications. There is hereby created a state advisory committee which shall consist of seven members to be appointed by the governor on the basis of their experience and qualifications. The membership shall be selected, insofar as possible, on the basis of giving both geographic representation and representation to all phases of the securities business including the legal and accounting professions. [1973 1st ex.s. c 171 § 3; 1959 c 282 § 55.]

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.560 State advisory committee—Chairperson, secretary—Meetings. (1) The committee shall select a chairperson and a secretary from their group.

(2) Regular meetings may be held quarterly, or semiannually, and special meetings may be called by the chairperson upon at least seven days' written notice to each committee member sent by regular mail. [1979 ex.s. c 68 § 39; 1973 1st ex.s. c 171 § 4; 1959 c 282 § 56.]

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.570 State advisory committee—Terms—Vacancies. The first members of the committee shall hold office as follows: Two members to serve two years; two members to serve three years; and three members to serve four years. Upon the expiration of said original terms subsequent appointment shall be for four years except in the case of a vacancy, in which event appointment shall be only

for the remainder of the unexpired term in which the vacancy occurs. [1959 c 282 § 57.]

21.20.580 State advisory committee—Duties. The advisory committee shall:

(1) Serve in an advisory capacity to the director on all matters pertaining to this chapter.

(2) Acquaint themselves fully with the operations of the director's office as to the administration of securities, broker-dealers, salespersons, and investment advisers, and periodically recommend to the director such changes in the rules and regulations of the department in connection therewith as they deem advisable.

(3) Prepare and publish a mimeographed report on their recommendations. [1981 c 272 § 10; 1979 ex.s. c 68 § 40; 1959 c 282 § 58.]

21.20.590 State advisory committee—Reimbursement of travel expenses. The advisory committee shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1981 c 272 § 11; 1975-'76 2nd ex.s. c 34 § 65; 1959 c 282 § 59.]

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

ADDITIONAL PROVISIONS

21.20.700 Investigations and examinations—Additional authority—Scope. (1) In addition to the authority conferred in RCW 21.20.370 the director at any time during a public offering whether registered or not, or one year thereafter or at any time that any debt or equity securities which have been sold to the public pursuant to registration under this chapter are still an outstanding obligation of the issuer: (a) May investigate the issuer for the purpose of ascertaining whether there have been violations of this chapter, rules adopted under this chapter, or any conditions imposed by the director expressed in any permit for a public offering or otherwise; (b) may visit and examine the issuer for the purpose of assuring compliance with this chapter, rules adopted under this chapter, or any conditions imposed by the director whether expressed in the permit for the public offering or otherwise; (c) may require or permit any person to file a statement in writing, under oath or otherwise as the director may determine, as to all the facts and circumstances concerning the matter to be investigated; and (d) may publish information concerning any violation of this chapter, or any rule, order, or condition adopted or imposed under this chapter.

(2) The examination or investigation, whether conducted within or without this state, shall include the right to reasonably examine the issuer's books, accounts, records, files, papers, feasibility reports, other pertinent information and obtain written permission from the issuer to consult with the independent accountant who audited the financial statements of the issuer. The reasonable costs of the examination shall be paid by the issuer to the director. The issuer shall not be liable for the costs of second or subsequent examinations during a calendar year. [1988 c 244 § 1; 1973 1st ex.s. c 171 § 5.]

Severability—1988 c 244: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 244 § 18.]

Effective date—1988 c 244: "Sections 1 through 16 of this act shall take effect July 1, 1988." [1988 c 244 § 20.]

Implementation—Application—1988 c 244: "The director of licensing may take whatever action is necessary to implement this act on its effective date. This act applies to any person, individual, corporation, partnership, or association whether or not in existence on or prior to July 1, 1988. The director of licensing may adopt transition rules in order to allow debenture companies in existence prior to July 1, 1988, a reasonable amount of time to comply with the requirements of this act. Transition rules shall require compliance with this act not later than January 1, 1990." [1988 c 244 § 21.]

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

Investigations: RCW 21.20.370.

21.20.702 Suitability of recommendation—Reasonable grounds required. (1) In recommending to a customer the purchase, sale, or exchange of a security, a broker-dealer, salesperson, investment adviser, or investment adviser representative must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer as to his or her other security holdings and as to his or her financial situation and needs.

(2) Before the execution of a transaction recommended to a noninstitutional customer, other than transactions with customers where investments are limited to money market mutual funds, a broker-dealer, salesperson, investment adviser, or investment adviser representative shall make reasonable efforts to obtain information concerning:

(a) The customer's financial status;

(b) The customer's tax status;

(c) The customer's investment objectives; and

(d) Such other information used or considered to be reasonable by the broker-dealer, salesperson, investment adviser, or investment adviser representative in making recommendations to the customer. [1994 c 256 § 26; 1993 c 470 § 2.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

21.20.705 Debenture companies—Definitions. When used in this chapter, unless the context otherwise requires:

(1) "Debenture company" means an issuer of any note, debenture, or other debt obligation for money used or to be used as capital or operating funds of the issuer, which is offered or sold in this state, and which issuer is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in: (a) Notes, or other debt obligations, whether or not secured by real or personal property; (b) vendors' interests in real estate contracts; (c) real or personal property to be leased to third parties; or (d) real or personal property. The term "debenture company" does not include an issuer by reason of any of its securities which are exempt from registration under RCW 21.20.310 or offered or sold in transactions exempt from registration under RCW 21.20.320 (1) or (8); and

(2) "Acquiring party" means any person becoming or attempting to become a controlling person under RCW 21.20.717. [1988 c 244 § 2; 1987 c 421 § 1; 1979 c 140 § 1; 1973 1st ex.s. c 171 § 6.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

Effective date—Application—1987 c 421: "Sections 1 through 8 of this act shall take effect January 1, 1988. The director of licensing may take whatever action is necessary to implement this act on its effective date. This act applies to any person, individual, corporation, partnership, or association whether or not in existence on or prior to January 1, 1988." [1987 c 421 § 12.] For codification of 1987 c 421, see Codification Tables, Volume 0.

Severability—1987 c 421: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 421 § 10.]

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.710 Debenture companies—Capital requirements. (1) Except as provided in subsection (2) of this section, a debenture company shall not offer for sale any security other than capital stock if such sale would result in the violation of the following capital requirements:

(a) For outstanding securities other than capital stock totaling from \$1 to \$1,000,000, a debenture company shall have a net worth of at least \$200,000.

(b) In addition to the requirement set forth in (a) of this subsection:

(i) A debenture company with outstanding securities other than capital stock totaling in excess of \$1,000,000 but not over \$100,000,000 shall have additional net worth equal to at least ten percent of the outstanding securities in excess of \$1,000,000 but not over \$100,000,000; and

(ii) A debenture company with outstanding securities other than capital stock totaling in excess of \$100,000,000 shall have additional net worth equal to at least five percent of the outstanding securities in excess of \$100,000,000.

(c) Every debenture company shall hold at least one-half the amount of its required net worth in cash or comparable liquid assets as defined by rule, or shall demonstrate comparable liquidity to the satisfaction of the director.

(2) The director may for good cause in the interest of the existing investors, waive the requirements of subsection (1) of this section. If the director waives the minimum requirements set forth in subsection (1) of this section, the debenture company shall increase its new [net] worth or liquidity in accordance with conditions imposed by the director until such time as the debenture company can meet the requirements of this section without waiver from the director. [1988 c 244 § 3; 1973 1st ex.s. c 171 § 7.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.715 Debenture companies—Maturity date requirements. Any debenture company offering debt securities to the public shall provide that at least fifty percent of the amount of those securities sold have maturity dates of two years or more. [1987 c 421 § 2; 1973 1st ex.s. c 171 § 8.]

Effective date—Application—Severability—1987 c 421: See notes following RCW 21.20.705.

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.717 Debenture companies—Controlling person—Exceptions. (1) For purposes of the provisions of this chapter relating to debenture companies a person shall be deemed a controlling person if:

(a) Such person directly or indirectly, or acting through one or more other persons owns, controls, or has power to vote twenty-five percent or more of any class of voting securities of a debenture company;

(b) Such person controls in any manner the election of a majority of the directors or trustees of a debenture company; or

(c) The director determines, after notice and opportunity for hearing, that such person, directly or indirectly, exercises a controlling influence over the management or policies of a debenture company.

(2) The director may except, by order, for good cause shown, any person from subsection (1) of this section if the director finds the exception to be in the public interest and that the exception does not threaten the protection of investors. [1987 c 421 § 3.]

Effective date—Application—Severability—1987 c 421: See notes following RCW 21.20.705.

21.20.720 Debenture companies—Prohibited activities by directors, officers, or controlling persons.

(1) A director, officer, or controlling person of a debenture company shall not:

(a) Have any interest, direct or indirect, in the gains or profits of the debenture company, except to receive dividends upon the amounts contributed by him or her, the same as any other investor or shareholder and under the same regulations and conditions: PROVIDED, That nothing in this subsection shall be construed to prohibit salaries as may be approved by the debenture company's board of directors;

(b) Become a member of the board of directors or a controlling shareholder of another debenture company or a bank, trust company, or national banking association, of which board enough other directors or officers of the debenture company are members so as to constitute with him or her a majority of the board of directors.

(2) A director, an officer, or controlling person shall not:

(a) For himself or herself or as agent or partner of another, directly or indirectly use any of the funds held by the debenture company, except to make such current and necessary payments as are authorized by the board of directors;

(b) Receive directly or indirectly and retain for his or her own use any commission on or benefit from any loan made by the debenture company, or any pay or emolument for services rendered to any borrower from the debenture company in connection with such loan;

(c) Become an indorser, surety, or guarantor, or in any manner an obligor, for any loan made from the debenture company and except when approval has been given by the director of financial institutions or the director's administrator of securities upon recommendation by the company's board of directors.

(d) For himself or herself or as agent or partner of another, directly or indirectly borrow any of the funds held by the debenture company, or become the owner of real or personal property upon which the debenture company holds

a mortgage, deed of trust, or property contract. A loan to or a purchase by a corporation in which he or she is a stockholder to the amount of fifteen percent of the total outstanding stock, or in which he or she and other directors, officers, or controlling persons of the debenture company hold stock to the amount of twenty-five percent of the total outstanding stock, shall be deemed a loan to or a purchase by such director or officer within the meaning of this section, except when the loan to or purchase by such corporation occurred without his or her knowledge or against his or her protest. [1993 c 472 § 16; 1987 c 421 § 4; 1979 ex.s. c 68 § 41; 1979 c 158 § 87; 1973 1st ex.s. c 171 § 9.]

Effective date—Implementation—1993 c 472: See RCW 43.320.900 and 43.320.901.

Effective date—Application—Severability—1987 c 421: See notes following RCW 21.20.705.

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.725 Debenture companies—Debentures payable on demand—Interest—Certificates of debenture.

(1) A debenture company shall not issue any debenture payable on demand nor pay or accrue interest beyond the maturity date of any debenture.

(2) Debenture companies shall not issue certificates of debentures in passbook form, or in any other form which suggests to the holder that such moneys may be withdrawn on demand.

(3) Each certificate of debenture or an application for a certificate shall specify on the face of the certificate or application therefor, in twelve point bold face type or larger, that such debenture is not insured by the United States government, the state of Washington, or any agency thereof. [1988 c 244 § 4; 1973 1st ex.s. c 171 § 10.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.727 Debenture companies—Acquisition of control—Requirements—Violation—Penalty.

(1) It is unlawful for any person to acquire control of a debenture company until thirty days after filing with the director a copy of the notice of change of control on the form specified by the director. The notice or application shall be under oath and contain substantially all of the following information plus any additional information that the director may prescribe as necessary or appropriate in the particular instance for the protection of investors, borrowers, or shareholders and the public interest:

(a) The identity and business experience of each person by whom or on whose behalf acquisition is to be made;

(b) The financial and managerial resources and future prospects of each person involved in the acquisition;

(c) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(d) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(e) Any plan or proposal which any person making the acquisition may have to liquidate the debenture company, to sell its assets, to merge it with any other company, or to make any other major change in its business or corporate structure or management;

(f) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation; and

(g) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their stock to be used in connection with the proposed acquisition.

(2) When a person, other than an individual or corporation, is required to file an application under this section, the director may require that the information required by subsection (1)(a), (b), and (f) of this section be given with respect to each person who has an interest in or controls a person filing an application under this subsection.

(3) When a corporation is required to file an application under this section, the director may require that the information required by subsection (1)(a), (b), and (f) of this section be given for the company, each officer and director of the company, and each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the company.

(4) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the Securities Act of 1933 (48 Stat. 74; 15 U.S.C. Sec. 77(a)), as amended, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934 (48 Stat. 881; 15 U.S.C. Sec. 78(a)), as amended, the registration statement or application may be filed with the director in lieu of the requirements of this section.

(5) Any acquiring party shall also deliver a copy of any notice or application required by this section to the debenture company proposed to be acquired within two days after the notice or application is filed with the director.

(6) Any acquisition of control in violation of this section shall be ineffective and void.

(7) Any person who wilfully or intentionally violates this section or any rule adopted pursuant thereto is guilty of a gross misdemeanor and shall be punished pursuant to chapter 9A.20 RCW. Each day's violation shall be considered a separate violation. [1987 c 421 § 5.]

Effective date—Application—Severability—1987 c 421: See notes following RCW 21.20.705.

21.20.730 Debenture companies—Acquisition of control—Grounds for disapproval.

The director may disapprove the acquisition of a debenture company within thirty days after the filing of a complete application under RCW 21.20.727 or an extended period not exceeding an additional fifteen days if:

(1) The poor financial condition of any acquiring party might jeopardize the financial stability of the debenture company or might prejudice the interests of the investors, borrowers, or shareholders;

(2) The plan or proposal of the acquiring party to liquidate the debenture company, to sell its assets, to merge it with any person, or to make any other major change in its business or corporate structure or management is not fair and reasonable to the debenture company's investors, borrowers, or stockholders or is not in the public interest;

(3) The business experience and integrity of any acquiring party who would control the operation of the debenture company indicates that approval would not be in the interest of the debenture company's investors, borrowers, or shareholders;

(4) The information provided by the application is insufficient for the director to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring party; or

(5) The acquisition would not be in the public interest. [1987 c 421 § 6.]

Effective date—Application—Severability—1987 c 421: See notes following RCW 21.20.705.

21.20.732 Debenture companies—Notice of charges—Hearing—Cease and desist orders. (1) The director may issue and serve upon a debenture company a notice of charges if in the opinion of the director any debenture company:

(a) Is engaging or has engaged in an unsafe or unsound practice in conducting the business of the debenture company;

(b) Is violating or has violated RCW 21.20.815, 21.20.820, or 21.20.830, or any rule, order, or condition adopted or imposed thereunder; or

(c) Is about to do the acts prohibited in (a) or (b) of this subsection when the opinion that the threat exists is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or violations or act or acts or the practice or practices and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the debenture company. The hearing shall be set in accordance with chapter 34.05 RCW.

Unless the debenture company appears at the hearing by a duly authorized representative, it shall be considered to have consented to the issuance of the cease and desist order. If the debenture company is deemed to have consented or if upon the record made at the hearing the director finds that any violation, act, or practice specified in the notice of charges has been established, the director may issue and serve upon the debenture company an order to cease and desist from the violation, act, or practice. The order may require the debenture company and its directors, officers, controlling persons, employees, and agents to cease and desist from the violation, act, or practice and may require the debenture company to take affirmative action to correct the conditions resulting from the violation, act, or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after the service of the order upon the debenture company concerned except that a cease and desist order issued upon consent shall become effective at the time specified in the order and shall remain effective as provided therein unless it is stayed, modified, terminated, or

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set aside by action of the director or a reviewing court. [1988 c 244 § 5; 1987 c 421 § 7.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

Effective date—Application—Severability—1987 c 421: See notes following RCW 21.20.705.

21.20.734 Debenture companies—Temporary cease and desist orders. Whenever the director determines that any violation, act, or practice specified in RCW 21.20.732 or its continuation is likely to cause insolvency or substantial dissipation of assets or earnings of the debenture company or to otherwise seriously prejudice the interests of its security holders, the director may also issue a temporary order requiring the debenture company and its directors, officers, controlling persons, employees, and agents to cease and desist from the violation, act, or practice. The order shall become effective upon service on the debenture company and shall remain effective pending the completion of the administrative proceedings under the notice and until such time as the director dismisses the charges specified in the notice or until the effective date of a cease and desist order issued against the debenture company under RCW 21.20.732. [1988 c 244 § 6; 1987 c 421 § 8.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

Effective date—Application—Severability—1987 c 421: See notes following RCW 21.20.705.

21.20.740 Reports—Requirements. (1) Every issuer which has registered securities under Washington state securities law shall file with the director reports described in subsection (2) of this section. Such reports shall be filed with the director not more than one hundred twenty days (unless extension of time is granted by the director) after the end of the issuer's fiscal year.

(2) The reports required by subsection (1) of this section shall contain such information, statements and documents regarding the financial and business conditions of the issuer and the number and description of securities of the issuer held by its officers, directors and controlling shareholders and shall be in such form and filed at such annual times as the director may require by rule or order. For the purposes of RCW 21.20.720, 21.20.740 and 21.20.745, a "controlling shareholder" shall mean a person who is directly or indirectly the beneficial holder of more than ten percent of the outstanding voting securities of an issuer.

(3)(a) The reports described in subsection (2) of this section shall include financial statements corresponding to those required under the provisions of RCW 21.20.210 and to the issuer's fiscal year setting forth in comparative form the corresponding information for the preceding year and such financial statements shall be furnished to all shareholders within one hundred twenty days (unless extension of time is granted by the director) after the end of such year, but at least twenty days prior to the date of the annual meeting of shareholders.

(b) Such financial statements shall be prepared as to form and content in accordance with rules and regulations prescribed by the director and shall be audited (except that financial statements filed prior to July 1, 1976 need be audited only as to the most recent fiscal year) by an indepen-

dent certified public accountant who is not an employee, officer or member of the board of directors of the issuer or a holder of securities of the issuer. The report of such independent certified public accountant shall be based upon an audit made in accordance with generally accepted auditing standards with no limitations on its scope.

(4) The director may by rule or order exempt any issuer or class of issuers from this section for a period of up to one year if the director finds that the filing of any such report by a specific issuer or class of issuers is not necessary for the protection of investors and the public interest.

(5) For the purposes of RCW 21.20.740 and 21.20.745, "issuer" does not include issuers of:

(a) Securities registered by the issuer pursuant to section 12 of the securities and exchange act of 1934 as now or hereafter amended or exempted from registration under that act on a basis other than the number of shareholders and total assets.

(b) Securities which are held of record by less than two hundred persons or whose total assets are less than \$500,000 at the close of the issuer's fiscal year.

(6) Any issuer who has been required to file under RCW 21.20.740 and who subsequently becomes excluded from the definition of "issuer" by virtue of RCW 21.20.740(5) must file a certification setting forth the basis on which they claim to no longer be an issuer within the meaning of *this act.

(7) The reports filed under this section shall be filed and maintained by the director for public inspection. Any person is entitled to receive copies thereof from the director upon payment of the reasonable costs of duplication.

(8) Filing of reports pursuant to this section shall not constitute an approval thereof by the director or a finding by the director that the report is true, complete and not misleading. It shall be unlawful to make, or cause to be made, to any prospective purchaser, seller, customer or client, any representation inconsistent with this subsection. [1979 ex.s. c 68 § 42; 1973 1st ex.s. c 171 § 11.]

*Reviser's note: "This act" apparently refers to 1973 1st ex.s. c 171 which consists of amendments to RCW 21.20.210, 21.20.370, 21.20.550, 21.20.560, and the enactment of RCW 21.20.700 through 21.20.805.

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.745 Reports—Violations of reporting requirements—Penalties—Contribution. (1) It is unlawful for any person, including the officers and directors of any issuer, to fail to file a report required by RCW 21.20.740 or to file any such report which contains an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading unless such person did not know, and in the exercise of reasonable care could not have known, of the failure, untruth or omission. In addition to any other penalties or remedies provided by chapter 21.20 RCW, each officer and director of an issuer which violates this subsection shall be personally liable for damages as provided in subsection (2) of this section if such officer or director:

(a) Had actual notice of the issuer's duty to file reports;

(b) Knew, or in the exercise of reasonable care could have known of the violation; and

(c) Could have prevented the violation.

(2) Any issuer and other person who violate subsection (1) of this section shall be liable jointly and severally for the damages occasioned by such violation, together with reasonable attorney fees and costs to any person who, during the continuation of the violation and without actual notice of the violation, purchases or sells any securities of the issuer within six months following the date the violation commenced.

(3) No suit or action may be commenced under subsection (2) of this section more than one year after the purchase or sale.

(4) Any person held liable under this section shall be entitled to contribution from those jointly and severally liable with that person. [1979 ex.s. c 68 § 43; 1973 1st ex.s. c 171 § 12.]

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.750 Reports—Suspension of sale of securities until reporting requirements complied with. In case of a violation of RCW 21.20.740 and 21.20.745, the director may suspend sale or trading by or through a broker-dealer of the securities of the issuer until the failure to file a report or statement or the inaccuracy or omissions in any report or statement are remedied as determined by the director. [1973 1st ex.s. c 171 § 13.]

Effective date—Construction—Severability—1973 1st ex.s. c 171: See RCW 21.20.800 and 21.20.805.

21.20.800 Severability—1973 1st ex.s. c 171. If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 171 § 15.]

21.20.805 Effective date—Construction—1973 1st ex.s. c 171. *This 1973 amendatory act shall take effect on January 1, 1975: PROVIDED HOWEVER, That debenture companies registered pursuant to chapter 21.20 RCW as of January 1, 1974, and for which there are no stop orders outstanding shall have until January 1, 1975, to comply with the requirements of section 7 of this 1973 amendatory act. [1973 1st ex.s. c 171 § 14.]

*Reviser's note: "This 1973 amendatory act," see note following RCW 21.20.740.

21.20.810 Application of chapter not limited. Nothing in RCW 21.20.700 through 21.20.750 and 21.20.815 through 21.20.855 limits the application of other provisions of this chapter. [1988 c 244 § 7.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.815 Debenture companies—Equity investments. (1) A debenture company shall not, without prior written consent of the director:

(a) Make equity investments in a single project or subsidiary of more than ten percent of its assets or of more than its net worth, whichever is greater; or

(b) Make equity investments, including investments in subsidiaries, other than investments in income-producing real property, which in the aggregate exceed twenty percent of its assets.

(2) For the purposes of this section, an equity investment does not include any acquisition of real property in satisfaction, or on account, of debts previously contracted in the regular course of the debenture company's business, or in satisfaction of judgments, vendors' interests in real property contracts, or liens if the real property has not been held by the debenture company for more than three years from the date it was acquired and any additional time permitted by the director. [1988 c 244 § 8.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.820 Debenture companies—Loans to any one borrower—Limitations. (1) Except as provided in subsection (3) of this section, a debenture company shall not loan or invest in a loan or loans to any one borrower more than two and one-half percent of the debenture company's assets without prior written consent of the director.

(2) For the purpose of this section, loans made to affiliates of the borrower are deemed to have been made to the borrower.

(3)(a) If good cause is shown, the director may waive in whole or in part the limitation in subsection (1) of this section.

(b) A loan or obligation shall not be subject to the limitation in subsection (1) of this section to the extent that the loan is secured or covered by guarantee, or by commitment or agreement to take over or to purchase the loan, made by any federal reserve bank or by the United States or any department, bureau, board, commission, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States. [1988 c 244 § 9.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.825 Debenture companies—Bad debts. (1) Any debt due a debenture company on which interest is one year or more past due and unpaid shall be considered a bad debt and shall be charged off the books of the debenture company unless:

(a) Such debt is well-secured and in the course of collection by legal process or probate proceedings; or

(b) Such debt is represented or secured by bonds having a determinable market value currently quoted on a national securities exchange, provided that in such case, such bonds shall be carried on the books of the debenture company at such value as the director may from time to time direct, but in no event may such carrying value exceed the market value thereof.

(2) A final judgment held by a debenture company shall not be considered an asset of the debenture company after two years from the date of its entry excluding any time for appeal unless extended by the director in writing for a specified period. [1988 c 244 § 10.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.830 Debenture companies—Investments in unsecured loans. (1) A debenture company shall not invest more than twenty percent of its assets in unsecured loans.

(2)(a) Except as provided in (b) of this subsection, a loan shall be deemed unsecured if the ascertained market value of the collateral securing the loan does not exceed one hundred twenty-five percent of the loan and all senior indebtedness.

(b) A loan shall not be deemed unsecured to the extent that the loan is guaranteed or insured by the federal housing administration, the administrator of veterans' affairs, the farmers home administration, or an insurer authorized to do business in this state, or any other guarantor or insurer approved by the director. [1988 c 244 § 11.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.835 Debenture companies—Debenture holders—Notice of maturity date of debenture. Every debenture company shall notify each of its debenture holders of the maturity date of the holder's debenture by sending a notice to the holder not more than forty-five days nor less than fifteen days prior to the maturity date of the debenture at the holder's last known address. [1988 c 244 § 12.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.840 Debenture companies—Annual financial statement. A debenture company shall send annually and in a timely manner either a copy of its annual financial statements or a summary of its financial statements for the most recent fiscal year to each debenture holder at the debenture holder's last known address. If a summary is sent, the debenture company shall make available to any debenture holder upon request a copy of its complete annual financial statements for its most recent fiscal year. [1988 c 244 § 13.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.845 Debenture companies—Rules. The director may adopt rules to govern examinations and reports of debenture companies and to otherwise govern the administration of debenture companies under this chapter. [1988 c 244 § 14.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.850 Debenture companies—Record maintenance and preservation—Examination. Every debenture company shall make and keep such accounts and other records as shall be prescribed by the director. All records so required shall be preserved for three years unless the director prescribes otherwise for particular types of records. All the records of a debenture company are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the director, within or without this state, as the director deems necessary or appropriate in the public interest or for protection of investors. [1988 c 244 § 15.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

21.20.855 Debenture companies—Examination reports and information—Exempt from public disclosure—Use in civil actions. (1) Examination reports and information obtained by the director or the director's representatives in conducting examinations pursuant to RCW 21.20.700 shall not be subject to public disclosure under chapter 42.17 RCW.

(2) In any civil action in which the reports are sought to be discovered or used as evidence, any party may, upon notice to the director, petition the court for an in camera review of the report. The court may permit discovery and introduction of only those portions of the report which are relevant and otherwise unobtainable by the requesting party. This subsection shall not apply to an action brought or defended by the director. [1988 c 244 § 16.]

Severability—Effective date—Implementation—Application—1988 c 244: See notes following RCW 21.20.700.

STATUTORY POLICY

21.20.900 Construction to secure uniformity. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this chapter with the related federal regulation. [1959 c 282 § 61.]

SEVERABILITY OF PROVISIONS

21.20.905 Severability—1959 c 282. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [1959 c 282 § 62.]

REPEAL AND SAVING PROVISIONS

21.20.910 Saving—Civil, criminal proceedings. Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this chapter, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued and in any event within two years after the *effective date of this chapter. [1959 c 282 § 63.]

***Reviser's note:** The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

21.20.915 Saving—Prior effective registrations. All effective registrations under prior law and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if they had become effective under this chapter. They are considered to have been filed, entered, or imposed under this chapter. All

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dealers who are duly registered as brokers and all salespersons and issuers' agents who are duly registered as agents under said securities act, mining act or oil and mining leases act, on the *effective date of this chapter shall be deemed to be duly registered under and subject to the provisions of this chapter, such registration to expire on the 30th day of June of the year in which this chapter becomes effective and to be subject to renewal as provided in this chapter. [1979 ex.s. c 68 § 44; 1959 c 282 § 64.]

***Reviser's note:** The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

21.20.920 Application of prior law. Prior law applies in respect to any offer or sale made within one year after the *effective date of this chapter pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law. [1959 c 282 § 65.]

***Reviser's note:** The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

21.20.925 Judicial review of prior administrative orders. Judicial review of all administrative orders as to which review proceedings have not been instituted by the *effective date of this chapter are governed by RCW 21.20.440 except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within sixty days after the *effective date of this chapter. [1959 c 282 § 66.]

***Reviser's note:** The "effective date of this chapter" is midnight June 10, 1959, see preface 1959 session laws.

21.20.930 Solicitation permits under insurance laws not limited. Nothing in this chapter shall in any way limit the provisions of RCW 48.06.030. [1959 c 282 § 67.]

21.20.935 Repealer. The following acts and parts of acts are hereby repealed:

(1) Chapter 69, Laws of 1923; chapter 97, Laws of 1935; chapter 182, Laws of 1937; chapter 124, Laws of 1939; chapter 169, Laws of 1943; chapter 231, Laws of 1943; chapter 189, Laws of 1947; chapter 150, Laws of 1949; chapter 230, Laws of 1951; and RCW 21.04.010 through 21.04.220; and

(2) Chapter 178, Laws of 1937; chapter 64, Laws of 1951; and RCW 21.08.010 through 21.08.120; and

(3) Chapter 110, Laws of 1939 and RCW 21.12.010 through 21.12.080. [1959 c 282 § 68.]

SHORT TITLE

21.20.940 Short title. This chapter shall be known as "The Securities Act of Washington." [1959 c 282 § 69.]

Chapter 21.30
COMMODITY TRANSACTIONS

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21.30.800	Securities laws not affected.
21.30.810	Construction and purpose.
21.30.900	Severability—1986 c 14.
21.30.901	Effective date—1986 c 14.

Reviser's note: Powers, duties, and functions of the department of licensing relating to chapter 21.30 RCW were transferred to the department of financial institutions by 1993 c 472, effective October 1, 1993. See RCW 43.320.011.

Agricultural commodities: Chapter 22.09 RCW.

21.30.005 Intent. The legislature intends that this chapter, and any rules, regulations, or orders promulgated pursuant hereto, apply to transactions in commodities which constitute commodity contracts or commodity options as defined in this chapter, unless the context clearly requires otherwise. [1987 c 243 § 1.]

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

(1) "Administrator" means the person designated by the director in accordance with the provisions of RCW 21.20.460.

(2) "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving any commodity for sale on consignment, whether such person or group of persons is characterized as a board of trade, exchange, or other form of marketplace.

(3) "Director" means the director of financial institu-
tions.

(4) "Commodity broker-dealer" means, for the purposes of registration in accordance with this chapter, any person engaged in the business of making offers, sales, or purchases of commodities under commodity contracts or under commodity options.

(5) "Commodity sales representative" means, for the purposes of registration in accordance with this chapter, any person authorized to act and acting for a commodity broker-dealer in effecting or attempting to effect a transaction in a commodity contract or commodity option.

(6) "Commodity exchange act" means the act of congress known as the commodity exchange act, as amended, codified at 7 U.S.C. Sec. 1 et seq.

(7) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the commodity exchange act.

(8) "CFTC rule" means any rule, regulation, or order of the commodity futures trading commission in effect on October 1, 1986, and all subsequent amendments, additions, or other revisions thereto, unless the administrator, within ten days following the effective date of any such amendment, addition, or revision, disallows the application thereof by rule or order.

(9) "Commodity" means, except as otherwise specified by the director by rule or order, any agricultural, grain, or livestock product or by-product, any metal or mineral (including a precious metal set forth in subsection (17) of this section), any gem or gemstone (whether characterized as precious, semiprecious, or otherwise), any fuel (whether liquid, gaseous, or otherwise), any foreign currency, and all other goods, articles, products, or items of any kind. However, the term commodity does not include (a) a numismatic coin whose fair market value is at least fifteen percent higher than the value of the metal it contains, (b) real property or any timber, agricultural, or livestock product grown or raised on real property and offered or sold by the owner or lessee of such real property, or (c) any work of art offered or sold by art dealers, at public auction, or offered or sold through a private sale by the owner thereof.

(10) "Commodity contract" means any account, agree-
ment, or contract for the purchase or sale, primarily for

speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. A commodity contract shall not include any contract or agreement which requires, and under which the purchaser receives, within twenty-eight calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

(11) "Commodity option" means any account, agreement, or contract giving a party thereto the right to purchase or sell one or more commodities and/or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise, but does not include a commodity option traded on a national securities exchange registered with the United States securities and exchange commission.

(12) "Commodity merchant" means any of the following, as defined or described in the commodity exchange act or by CFTC rule:

- (a) Futures commission merchant;
- (b) Commodity pool operator;
- (c) Commodity trading advisor;
- (d) Introducing broker;
- (e) Leverage transaction merchant;
- (f) An associated person of any of the foregoing;
- (g) Floor broker; and
- (h) Any other person (other than a futures association)

required to register with the commodity futures trading commission.

(13) "Financial institution" means a bank, savings institution, or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

(14) "Offer" or "offer to sell" includes every offer, every attempt to offer to dispose of, or solicitation of an offer to buy, to purchase, or to acquire, for value.

(15) "Sale" or "sell" includes every sale, contract of sale, contract to sell, or disposition, for value.

(16) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government, but does not include a contract market designated by the commodity futures trading commission or any clearinghouse thereof or a national securities exchange registered with the United States securities and exchange commission (or any employee, officer, or director of such contract market, clearinghouse, or exchange acting solely in that capacity).

(17) "Precious metal" means:

- (a) Silver, in either coin, bullion, or other form;
- (b) Gold, in either coin, bullion, or other form;
- (c) Platinum, in either coin, bullion, or other form; and

(d) Such other items as the director may specify by rule or order. [1994 c 92 § 5; 1987 c 243 § 2; 1986 c 14 § 1.]

21.30.020 Transactions involving commodity contract or option—Prohibition—Exceptions. Except as otherwise provided in RCW 21.30.030 and 21.30.040, no person may sell or purchase or offer to sell or purchase any commodity under any commodity contract or under any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or any commodity option. [1986 c 14 § 2.]

21.30.030 Transactions conducted by certain persons exempt from prohibition under RCW 21.30.020. The prohibition in RCW 21.30.020 does not apply to any transaction offered by and in which any of the following persons (or any employee, officer, or director thereof acting solely in that capacity) is the purchaser or seller:

(1) A person registered with the commodity futures trading commission as a futures commission merchant or as a leverage transaction merchant but only as to those activities that require such registration;

(2) A person affiliated with, and whose obligations and liabilities are guaranteed by, a person referred to in subsection (1) or (5) of this section;

(3) A person who is a member of a contract market designated by the commodity futures trading commission (or any clearinghouse thereof);

(4) A financial institution;

(5) A person registered under chapter 21.20 RCW as a securities broker-dealer holding a general securities license whose activities require such registration;

(6) A person registered as a commodity broker-dealer or commodity sales representative in accordance with this chapter; or

(7) Any person who meets all of the following conditions:

(a) Prior to engaging in any transaction which would otherwise be prohibited under RCW 21.30.020, the person:

(i) Files a claim of exemption on a form prescribed by the director; and

(ii) Files a consent to service of process pursuant to RCW 21.30.190;

(b) The person files a renewal of a claim for exemption not less than every two years on a form prescribed by the director;

(c) The person engages only in those commodity transactions in which the purchaser pays, and the seller receives, one hundred percent of the purchase price in cash or cash equivalent within ten days of the contract of sale;

(d) The person receives no more than twenty-five percent of the total dollar amount of its gross sales of commodities in any fiscal year from commodity contracts or commodity options;

(e) The person's gross profit on all transactions in commodity contracts or commodity options does not exceed five hundred thousand dollars in the fiscal year immediately preceding any year for which the person claims the exemption contained in this subsection, or one million dollars in the two fiscal years immediately preceding any year for which the person claims the exemption;

(f) The person maintains standard property and casualty insurance in an amount sufficient to cover the value of commodities stored for customers.

"Registered," for the purposes of this section, means holding a registration that has not expired, been suspended, or been revoked. The exemptions under this section shall not apply to any transaction or activity which is prohibited by the commodity exchange act or CFTC rule. [1987 c 243 § 3; 1986 c 14 § 3.]

21.30.040 Transactions and contracts exempt from prohibition under RCW 21.30.020—Rules. (1) The prohibition in RCW 21.30.020 does not apply to the following:

(a) An account, agreement, or transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the commodity exchange act;

(b) A commodity contract for the purchase of one or more precious metals in which, within seven calendar days from the payment in good funds of any portion of the purchase price, the quantity of precious metals purchased by the payment is delivered (whether in specifically segregated or fungible bulk form) into the possession of a depository (other than the seller) which is either (i) a financial institution, (ii) a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission, (iii) a storage facility licensed or regulated by the United States or any agency thereof, or (iv) a depository designated by the director, and the depository (or other person which itself qualifies as a depository as aforesaid) issues and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser;

(c) A commodity contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject thereto, or any by-products thereof; or

(d) A commodity contract under which the offeree or the purchaser is a person referred to in RCW 21.30.030, a person registered with the federal securities and exchange commission as a broker-dealer, an insurance company, an investment company as defined in the federal investment company act of 1940, or an employee pension and profit sharing or benefit plan (other than a self-employed individual retirement plan, or individual retirement account).

(2) The director may issue rules or orders prescribing the terms and conditions of all transactions and contracts covered by this chapter which are not within the exclusive jurisdiction of the commodity futures trading commission as granted by the commodity exchange act, exempting any person or transaction from any provision of this chapter conditionally or unconditionally and otherwise implementing this chapter for the protection of purchasers and sellers of commodities. [1987 c 243 § 4; 1986 c 14 § 4.]

21.30.050 Commodity merchants—Place for trading commodity contract or option—Requirements. (1) No person may engage in a trade or business or otherwise act as a commodity merchant unless the person (a) is registered or temporarily licensed with the commodity futures trading commission for each activity constituting the person as a commodity merchant and the registration or temporary license has not expired, been suspended, or been revoked; or (b) is exempt from such registration by virtue of the commodity exchange act or a CFTC rule.

(2) No board of trade may trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the commodity futures trading commission unless the board of trade has been so designated for the commodity contract or commodity option and the designation has not been vacated, suspended, or revoked. [1986 c 14 § 5.]

21.30.060 Prohibited practices. No person may directly or indirectly, in or in connection with the purchase or sale of, the offer to sell, the offer to enter into, or the entry into of, any commodity contract or commodity option subject to RCW 21.30.020, 21.30.030, 21.30.040(1)(b), or 21.30.040(1)(d):

(1) Cheat or defraud, or attempt to cheat or defraud, any other person or employ any device, scheme, or artifice to defraud any other person;

(2) Make any false report, enter any false record, or make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

(3) Engage in any transaction, act, practice, or course of business, including, without limitation, any form of advertising or solicitation, that operates or would operate as a fraud or deceit upon any person; or

(4) Misappropriate or convert the funds, security, or property of any other person. [1986 c 14 § 6.]

21.30.070 Responsibility for acts or omissions—Liability—Burden of proof. (1) The act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of the person's employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person.

(2) Every person who directly or indirectly controls another person liable under any provision of this chapter, every partner, officer, or director of such other person, every person occupying a similar status or performing similar functions, every employee of such other person who materially aids in the violation is also liable jointly and severally with and to the same extent as such other person, unless the person who is also liable by virtue of this provision sustains the burden of proof that he or she did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. [1986 c 14 § 7.]

21.30.080 Offers to sell or buy in this state—Application of RCW 21.30.020, 21.30.050, and 21.30.060.

(1) RCW 21.30.020, 21.30.050, and 21.30.060 apply to persons who sell or offer to sell when an offer to sell is made in this state or an offer to buy is made and accepted in this state.

(2) RCW 21.30.020, 21.30.050, and 21.30.060 apply to persons who buy or offer to buy when an offer to buy is made in this state or an offer to sell is made and accepted in this state.

(3) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received at the place to which it is directed, or at any post office in this state in the case of a mailed offer.

(4) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state, or whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at any post office in this state in the case of a mailed acceptance. [1986 c 14 § 8.]

21.30.090 When publications or electronic communications not deemed offers to sell or buy in this state.

(1) For the purpose of RCW 21.30.080, an offer to sell or to buy is not made in this state when the publisher circulates or there is circulated on his behalf in this state in any bona fide newspaper or other publication of general, regular, and paid circulation, which is not published in this state, an offer to sell or to buy that is reasonably calculated to solicit only persons outside this state and not to solicit persons in this state.

(2) For the purpose of RCW 21.30.080, an offer to sell or to buy is not made in this state when a radio or television program or other electronic communication originating outside this state is received in this state and the offer to sell or to buy is reasonably calculated to solicit only persons outside this state and not to solicit persons in this state. [1986 c 14 § 9.]

21.30.100 Investigations—Statements—Publication of information. The director in the director's discretion:

(1) May make such public or private investigations, within or without the state, as the director finds necessary or appropriate to determine whether any person has violated, or is about to violate, any provision of this chapter or any rule or order of the director or to aid in enforcement of this chapter;

(2) May require or permit any person to file a statement in writing, under oath or otherwise as the director may determine; and

(3) May publish information concerning any violation of this chapter or any rule or order under this chapter. [1986 c 14 § 10.]

21.30.110 Investigations—Evidence—Subpoenas—Court orders of compliance. (1) For purposes of any investigation or proceeding under this chapter, the director or any officer or employee designated by the director, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director finds to be relevant or material to the inquiry.

(2) If a person does not give testimony or produce the documents required by the director or a designated employee pursuant to a lawfully issued administrative subpoena, the director or designated employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony. The request for an order of compliance may be addressed to either: (a) The superior court of Thurston county or the superior court where service may be obtained on the person refusing to testify or produce, if the person is within this state; or (b) the appropriate court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside the state. [1986 c 14 § 11.]

21.30.120 Violations—Director's authority—Court actions—Penalties. (1) If the director believes, whether or not based upon an investigation conducted under RCW 21.30.100 or 21.30.110, that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or any rule or order hereunder, the director may:

(a) Issue a cease and desist order;

(b) Initiate any of the actions specified in subsection (2) of this section;

(c) Issue an order imposing a civil penalty in an amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings; or

(d) Take disciplinary action against a licensed person as specified in RCW 21.30.350.

(2) The director may institute any of the following actions in the appropriate courts of the state, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:

(a) A declaratory judgment;

(b) An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or any rule or order of the director;

(c) An action for disgorgement; or

(d) An action for appointment of a receiver or conservator for the defendant or the defendant's assets.

(3) In any action under subsection (2) of this section if the director prevails, the director shall be entitled to costs and to reasonable attorneys' fees to be fixed by the court. [1986 c 14 § 12.]

21.30.130 Violations—Court-ordered remedies—Penalties—Bond by director not required. (1)(a) Upon a proper showing by the director that a person has violated, or is about to violate, this chapter or any rule or order of the department, the superior court may grant appropriate legal or equitable remedies.

(b) Upon showing of violation of this chapter or a rule or order of the director or administrator, the court, in addition to legal and equitable remedies otherwise available, including temporary restraining orders, permanent or temporary prohibitory or mandatory injunctions, and writs of prohibition or mandamus, may grant the following special remedies:

- (i) Imposition of a civil penalty in an amount which may not exceed ten thousand dollars for any single violation or one hundred thousand dollars for multiple violations in a single proceeding or a series of related proceedings;
- (ii) Disgorgement;
- (iii) Declaratory judgment;
- (iv) Restitution to investors wishing restitution; and
- (v) Appointment of a receiver or conservator for the defendant or the defendant's assets.

(c) Appropriate remedies when the defendant is shown only about to violate this chapter or a rule or order of the department shall be limited to:

- (i) A temporary restraining order;
 - (ii) A temporary or permanent injunction; or
 - (iii) A writ of prohibition or mandamus.
- (2) The court shall not require the director to post a bond in any official action under this chapter. [1986 c 14 § 13.]

21.30.140 Wilful violations—Penalty—Limitation on actions. A person who wilfully violates this chapter, or who wilfully violates a rule or order under this chapter, shall upon conviction be fined not more than twenty thousand dollars or imprisoned not more than ten years, or both. However, no person may be imprisoned for the violation of a rule or order if the person proves that he or she had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation. [1986 c 14 § 14.]

21.30.150 No liability under chapter for act in good faith. No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order, or form adopted by the director, notwithstanding that the rule, order, or form may later be amended, or rescinded, or be determined by judicial or other authority to be invalid for any reason. [1986 c 14 § 15.]

21.30.160 Unlawful use or disclosure of information. Neither the director nor any employee of the director shall use any information which is filed with or obtained by the department which is not public information for personal gain or benefit, nor shall the director nor any employee of the director conduct any securities or commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate the information. [1986 c 14 § 17.]

21.30.170 Information—Availability to public—Exceptions. (1) All information collected, assembled, or maintained by the director under this chapter is public information and is available for the examination of the

public as provided by chapter 42.17 RCW except the following:

- (a) Information obtained in private investigations pursuant to RCW 21.30.100 or 21.30.110;
 - (b) Information exempt from public disclosure under chapter 42.17 RCW; and
 - (c) Information obtained from federal or state agencies which may not be disclosed under federal or state law.
- (2) The director in the director's discretion may disclose any information made confidential under subsection (1)(a) of this section to persons identified in RCW 21.30.180.
- (3) No provision of this chapter either creates or derogates from any privilege which exists at common law, by statute, or otherwise when any documentary or other evidence is sought under subpoena directed to the director or any employee of the director. [1986 c 14 § 18.]

21.30.180 Cooperation with other agencies or organizations. (1) To encourage uniform application and interpretation of this chapter and securities and commodities regulation and enforcement in general, the director and the employees of the director may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrators of another jurisdiction, Canadian provinces, or territories or such other agencies administering this chapter or similar statutes, the commodity futures trading commission, the federal securities and exchange commission, any self-regulatory organization established under the commodity exchange act or the securities exchange act of 1934, any national or international organization of commodities or securities officials or agencies, and any governmental law enforcement agency.

(2) The cooperation authorized by subsection (1) of this section shall include, but need not be limited to, the following:

- (a) Making joint examinations or investigations;
- (b) Holding joint administrative hearings;
- (c) Filing and prosecuting joint litigation;
- (d) Sharing and exchanging information and documents;
- (e) Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes and releases; and
- (f) Issuing and enforcing subpoenas at the request of the agency administering similar statutes in another jurisdiction, the securities agency of another jurisdiction, the commodity futures trading commission or the federal securities and exchange commission if the information sought would also be subject to lawful subpoena for conduct occurring in this state. [1986 c 14 § 19.]

21.30.190 Consent for service of process—Service, how made. (1) Every applicant for registration under this chapter or person filing a claim of exemption under RCW 21.30.030(7) shall file with the administrator in such form as the administrator by rule prescribes, an irrevocable consent appointing the administrator or successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or successor executor or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent.

Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless (a) the plaintiff, who may be the administrator in a suit, action, or proceeding instituted by the administrator, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at the last address on file with the administrator, and (b) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(2) If a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order of the director, the engaging in the conduct shall constitute the appointment of the administrator as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor, or personal representative, which arises out of that conduct and which is brought under this chapter or any rule or order of the director with the same force and validity as if served personally. [1987 c 243 § 5; 1986 c 14 § 20.]

21.30.200 Administrative proceedings—Summary order—Notice—Hearing—Final order. (1) The director shall commence an administrative proceeding under this chapter by entering either a statement of charges or a summary order. The statement of charges or summary order may be entered without notice, without opportunity for hearing, and need not be supported by findings of fact or conclusions of law, but must be in writing.

(2) Upon entry of the statement of charges or summary order, the director shall promptly inform all interested parties that they have twenty business days from receipt of notice of the statement of charges or the summary order to file a written request for a hearing on the matter with the director and that the hearing will be scheduled to commence within thirty business days after receipt of the written request.

(3) If no hearing is requested within the twenty-day period and none is ordered by the director, the statement of charges or summary order will automatically become a final order.

(4) If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(5) No final order or order after hearing may be returned without:

- (a) Appropriate notice to all interested persons;
- (b) Opportunity for hearing by all interested persons; and
- (c) Entry of written findings of fact and conclusions of law.

(6) Every hearing in an administrative proceeding under this chapter shall be public unless the director grants a request joined in by all the respondents that the hearing be conducted privately. [1986 c 14 § 21.]

21.30.210 Application of chapter 34.05 RCW, the administrative procedure act. Chapter 34.05 RCW applies to an administrative proceeding carried out by the director

under this chapter unless otherwise provided in this chapter. [1986 c 14 § 22.]

21.30.220 Pleading exemptions or exceptions—Burden of proof. It shall not be necessary to negate any of the exemptions, or exceptions from a definition, of this chapter in any complaint, information, or indictment, or any writ or proceeding brought under this chapter; and the burden of proof of any such exemption or exception from a definition shall be on the party claiming the same. [1986 c 14 § 23.]

21.30.230 Application for licensing. An applicant for licensing as a commodity broker-dealer or commodity sales representative shall file with the administrator or the designee of the administrator an application for licensing together with a consent to service of process pursuant to RCW 21.30.190. The application for licensing must contain the information that the administrator determines, by rule, is necessary or appropriate to facilitate the administration of this chapter. [1986 c 14 § 24.]

21.30.240 Fees. (1) An applicant for licensing shall pay a registration fee as follows:

(a) For a commodity broker-dealer, two hundred dollars; and for each branch office, one hundred dollars; and

(b) For a commodity sales representative, fifty dollars.

(2) Except in any year in which a licensing fee is paid, an applicant shall pay an annual fee as follows:

(a) For a commodity broker-dealer, one hundred dollars; and for each branch office in this state, fifty dollars; and

(b) For a commodity sales representative, thirty-five dollars.

(3) For purposes of this section, a branch office means each office of a commodity broker-dealer in this state, other than the principal office in this state of the commodity broker-dealer, from which three or more commodity sales representatives transact business.

(4) If an application is denied or withdrawn or the license is terminated by revocation, cancellation, or withdrawal, the administrator shall retain the fee paid. [1986 c 14 § 25.]

21.30.250 Examinations—Waiver. (1) The administrator may, by rule or order, impose an examination requirement upon:

(a) An applicant applying for licensing under this chapter; and

(b) Any class of applicants.

(2) Any examination required may be administered by the administrator or a designee of the administrator. Examinations may be oral, written, or both and may differ for each class of applicants.

(3) The administrator may, by order, waive any examination requirement imposed pursuant to subsection (1) of this section as to any applicant if the administrator determines that the examination is not necessary in the public interest and for the protection of investors. [1986 c 14 § 26.]

21.30.260 Expiration of licenses—Authority under commodity sales representative license—Notification of

changes. (1) The license of a commodity broker-dealer or commodity sales representative expires on December 31 of the year for which issued or at such other time as the administrator may by rule prescribe.

(2) The license of a commodity sales representative is only effective with respect to transactions effected as an employee or representative on behalf of the commodity broker-dealer or issuer for whom the commodity sales representative is licensed.

(3) When a commodity sales representative begins or terminates association with a commodity broker-dealer or issuer, or begins or terminates activities which make that person a commodity sales representative, the commodity sales representative and the former commodity broker-dealer or issuer on whose behalf the commodity sales representative was acting shall notify promptly the administrator or the administrator's designee. [1986 c 14 § 27.]

21.30.270 Multiple licenses, when permitted. No person may at any one time act as a commodity sales representative for more than one commodity broker-dealer or one issuer, except (1) where the commodity broker-dealers for whom the commodity sales representative will act are affiliated by direct or indirect common control, a commodity sales representative may represent each of those organizations or (2) where the administrator, by rule or order, authorizes multiple licenses as consistent with the public interest and protection of investors. [1986 c 14 § 28.]

21.30.280 Classification of licenses—Limitations and conditions of licenses. If the administrator determines, by rule, that one or more classifications of licenses as a commodity broker-dealer or commodity sales representative which are subject to limitations and conditions on the nature of the activities which may be conducted by those persons are consistent with the public interest and the protection of investors, the administrator may authorize the licensing of persons subject to specific limitations and conditions. [1986 c 14 § 29.]

21.30.290 Annual report and fee. For so long as a commodity broker-dealer or commodity sales representative is licensed under this chapter, it shall file an annual report, together with the annual fee specified in RCW 21.30.240(2), with the administrator or the administrator's designee at a time and including that information that the administrator determines, by rule or order, is necessary or appropriate. [1986 c 14 § 30.]

21.30.300 Minimum net capital and fidelity bond requirements. (1)(a) The administrator may, by rule, require a licensed commodity broker-dealer to maintain: (i) Minimum net capital; and (ii) a prescribed ratio between net capital and aggregate indebtedness. The minimum net capital and net capital-to-aggregate indebtedness ratio may vary with type or class of commodity broker-dealer.

(b) If a licensed commodity broker-dealer believes, or has reasonable cause to believe, that any requirement imposed on it under this subsection is not being met, it shall promptly notify the administrator of its current financial condition.

(2) The administrator may, by rule, require the furnishing of fidelity bonds from commodity broker-dealers. [1986 c 14 § 31.]

21.30.310 Financial and other reports. A licensed commodity broker-dealer shall file financial and other reports that the administrator determines, by rule, are necessary or appropriate. [1986 c 14 § 32.]

21.30.320 Records. (1) A licensed commodity broker-dealer or commodity sales representative shall make and maintain records that the administrator determines, by rule, are necessary or appropriate.

(2) Required records may be maintained in computer or microform format or any other form of data storage provided that the records are readily accessible to the administrator.

(3) Required records must be preserved for five years unless the administrator, by rule, specifies either a longer or shorter period for a particular type or class of records. [1986 c 14 § 33.]

21.30.330 Correcting amendments of information in application or financial and other reports—Exception. If the information contained in any document filed with the administrator or the administrator's designee pursuant to RCW 21.30.230 or 21.30.310, except for those documents which the administrator, by rule or order, may exclude from this requirement, is or becomes inaccurate or incomplete in any material respect, the licensed person shall promptly file a correcting amendment, unless notification of the correction has been given under RCW 21.30.260(3). [1986 c 14 § 34.]

21.30.340 Examination of records—Copies—Fees. (1) The administrator, without prior notice, may examine the records and require copies of the records which a licensed commodity broker-dealer or commodity sales representative is required to make and maintain under RCW 21.30.320, within or without this state, in a manner reasonable under the circumstances. Commodity broker-dealers and commodity sales representatives must make their records available to the administrator in a readable form.

(2) The administrator may copy records or require a licensed person to copy records and provide the copies to the administrator in a manner reasonable under the circumstances.

(3) The administrator may impose reasonable fees for conducting an examination pursuant to this section. [1986 c 14 § 35.]

21.30.350 Denial, suspension, revocation, or limitation of license—Grounds. (1) The administrator may, by order, deny, suspend, or revoke any license or an exemption granted under RCW 21.30.030(7), limit the activities which an applicant or licensed person may perform in this state, conserve any applicant or licensed person, or bar any applicant or licensed person from association with a licensed commodity broker-dealer, if the administrator finds that (a) the order is in the public interest and (b) that the applicant or licensed person or, in the case of a commodity broker-dealer any partner, officer, or director, any person occupying a similar status or performing similar functions, or any

person directly or indirectly controlling the commodity broker-dealer:

(i) Has filed an application for licensing with the administrator or the designee of the administrator which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(ii)(A) Has violated or failed to comply with a provision of this chapter, a predecessor act, or a rule or order under this chapter or a predecessor act, (B) is the subject of an adjudication or determination within the last five years by a securities agency or administrator or court of competent jurisdiction that the person has wilfully violated the federal securities act of 1933, the securities exchange act of 1934, the investment advisers act of 1940, the investment company act of 1940, or the commodity exchange act, or the securities law of any other state (but only if the acts constituting the violation of that state's law would constitute a violation of this chapter had the acts taken place in this state);

(iii) Has, within the last ten years, pled guilty or nolo contendere to, or been convicted of any crime indicating a lack of fitness to engage in the investment commodities business;

(iv) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in, or continuing, any conduct or practice indicating a lack of fitness to engage in the investment commodities business;

(v) Is the subject of an order of the administrator denying, suspending, or revoking the person's license as a commodity or securities broker-dealer, securities salesperson or commodity sales representative, or investment adviser or investment adviser salesperson;

(vi) Is the subject of any of the following orders which are currently effective and which were issued within the last five years:

(A) An order by a securities agency or administrator of another state, Canadian province or territory, or the federal securities and exchange commission, entered after notice and opportunity for hearing, denying, suspending, or revoking the person's license as a commodities or securities broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms;

(B) A suspension or expulsion from membership in or association with a self-regulatory organization registered under the securities exchange act of 1934 or the commodity exchange act;

(C) A United States postal service fraud order;

(D) A cease and desist order entered after notice and opportunity for hearing by the administrator or the securities agency or administrator of any other state, Canadian province or territory, the securities and exchange commission, or the commodity futures trading commission;

(E) An order entered by the commodity futures trading commission denying, suspending, or revoking registration under the commodity exchange act;

(vii) Has engaged in any unethical or dishonest conduct or practice in the investment commodities or securities business;

(viii) Is insolvent, either in the sense that liabilities exceed assets, or in the sense that obligations cannot be met as they mature;

(ix) Is not qualified on the basis of such factors as training, experience, and knowledge of the investment commodities business;

(x) Has failed reasonably to supervise sales representatives or employees; or

(xi) Has failed to pay the proper filing fee within thirty days after being notified by the administrator of the deficiency. However, the administrator shall vacate any order under (xi) of this subsection when the deficiency has been corrected.

An order entered under this subsection shall be governed by subsection (2) of this section and RCW 21.30.200 and 21.30.210.

The administrator shall not institute a suspension or revocation proceeding on the basis of a fact or transaction disclosed in the license application unless the proceeding is instituted within the next ninety days following issuance of the license.

(2) If the public interest or the protection of investors so requires, the administrator may, by order, summarily suspend a license or postpone the effective date of a license. Upon the entry of the order, the administrator shall promptly notify the applicant or licensed person, as well as the commodity broker-dealer with whom the person is or will be associated if the applicant or licensed person is a commodity sales representative, that an order has been entered and of the reasons therefore and that within twenty days after the receipt of a written request the matter will be set down for hearing. The provisions of RCW 21.30.200 and 21.30.210 apply with respect to all subsequent proceedings.

(3) If the administrator finds that any applicant or licensed person is no longer in existence or has ceased to do business as a commodity broker-dealer or commodity sales representative or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the administrator may, by order, cancel the application or license. [1987 c 243 § 6; 1986 c 14 § 36.]

21.30.360 Violations—Prosecuting attorney may bring criminal proceedings. The director may refer such evidence as may be available concerning violations of this chapter or of any rule or order under this chapter to the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, institute the appropriate criminal proceedings under this chapter. [1986 c 14 § 37.]

21.30.370 Penalties in chapter nonexclusive. Nothing in this chapter limits the power of the state to punish a person for conduct which constitutes a crime by statute or at common law. [1986 c 14 § 38.]

21.30.380 Administration of chapter under director of financial institutions. The administration of this chapter shall be under the director of the department of financial institutions. [1994 c 92 § 6; 1986 c 14 § 39.]

21.30.390 Administrator—Appointment—Delegation of duties—Term. The director shall appoint a competent person to administer this chapter, who shall be designated the administrator. The director shall delegate to the administrator such powers, subject to the authority of the director, as may be necessary to carry out this chapter. The administrator shall hold office at the pleasure of the director. [1986 c 14 § 16.]

21.30.400 Director's powers and duties—Rules, forms, and orders—Fees. In addition to specific authority granted elsewhere in this chapter, the director may make, amend, and rescind rules, forms, and orders as are necessary to carry out this chapter. Such rules or forms shall include but need not be limited to rules defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with this chapter. The director may classify commodities, commodity contracts, and commodity options, persons, and matters within the director's jurisdiction. No rule or form may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of the investors and consistent with the purposes intended by the policy and provisions of this chapter. The director may, by rule, establish a schedule of reasonable fees to carry out the purposes of this chapter, such fees to cover the estimated costs of enforcing this chapter. [1986 c 14 § 40.]

21.30.800 Securities laws not affected. Nothing in this chapter shall impair, derogate from, or otherwise affect the authority or powers of the administrator under the securities act of Washington, chapter 21.20 RCW, or the application of any provision thereof to any person or transaction subject thereto. [1986 c 14 § 41.]

21.30.810 Construction and purpose. This chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodities and to maximize coordination with federal and other states' law and the administration and enforcement thereof. [1986 c 14 § 42.]

21.30.900 Severability—1986 c 14. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 14 § 43.]

21.30.901 Effective date—1986 c 14. This act shall take effect on October 1, 1986. [1986 c 14 § 46.]

Chapter 21.35

UNIFORM TRANSFER ON DEATH SECURITY REGISTRATION ACT

Sections

21.35.005	Definitions.
21.35.010	Security registered in beneficiary form—Ownership.
21.35.015	Registering a security in beneficiary form—Authorization.
21.35.020	Registering a security in beneficiary form—Designation of beneficiary.

21.35.025	Registering a security in beneficiary form—Words of designation.
21.35.030	Designation of a TOD or POD beneficiary—Effect on ownership—Cancellation or change.
21.35.035	Death of owner or owners—Ownership passes to beneficiaries.
21.35.040	Registering entity—Protection.
21.35.045	Transfer on death—Contract—Rights of creditors.
21.35.050	Registering entity—Terms and conditions—Forms authorized.
21.35.900	Short title—Statutory construction.
21.35.901	Application.

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

(1) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner, referred to as a "beneficiary."

(2) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

(3) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(4) "Person" means an individual, a corporation, an organization, or other legal entity.

(5) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(6) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(7) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) "Registering entity" means a person who originates or transfers a security title by registration, and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer, and includes a certificated security, an uncertificated security, and a security account.

(10) "Security account" means (a) a reinvestment account associated with a security; a securities account with a broker; a cash balance in a brokerage account; or cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or (b) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States. [1993 c 287 § 1.]

21.35.010 Security registered in beneficiary form—Ownership. Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form shall hold the security as joint tenants with right of survivorship either as separate property or as community property, and not as tenants in common. [1993 c 287 § 2.]

21.35.015 Registering a security in beneficiary form—Authorization. A registering entity may register a security in beneficiary form if the form is authorized by this chapter or a substantially identical statute of another state if the state is: (1) The state of organization of the issuer or registering entity, (2) the location of the registering entity's principal office, (3) the location of the office of its transfer agent or its office making the registration, or (4) the location of the owner's listed address at the time of registration. A registration governed by the law of a jurisdiction in which this or substantially identical legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law. [1993 c 287 § 3.]

21.35.020 Registering a security in beneficiary form—Designation of beneficiary. A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of a sole owner or at the death of the last to die of multiple owners. [1993 c 287 § 4.]

21.35.025 Registering a security in beneficiary form—Words of designation. Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD," or by the words "pay on death" or the abbreviation "POD," after the name of the registered owner or owners and before the name of a beneficiary. [1993 c 287 § 5.]

21.35.030 Designation of a TOD or POD beneficiary—Effect on ownership—Cancellation or change. The designation of a TOD or POD beneficiary on a registration in beneficiary form has no effect on ownership of the security until the owner's death, or on community property rights and obligations of owners. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners, without the consent of the beneficiary. [1993 c 287 § 6.]

21.35.035 Death of owner or owners—Ownership passes to beneficiaries. On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until

division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners. [1993 c 287 § 7.]

21.35.040 Registering entity—Protection. (1) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this chapter.

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this chapter.

(3) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of a security in accordance with RCW 21.35.035 and does so in good faith reliance (a) on the registration, (b) on this chapter, and (c) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this chapter do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this chapter.

(4) The protection provided by this chapter to a registering entity does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds. [1993 c 287 § 8.]

21.35.045 Transfer on death—Contract—Rights of creditors. (1) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this chapter and is not testamentary.

(2) This chapter does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state. [1993 c 287 § 9.]

21.35.050 Registering entity—Terms and conditions—Forms authorized. (1) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (a) for registrations in beneficiary form, and (b) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, and designating beneficiaries. Other rules for providing proofs and assurances needed

to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form may be contained in a registering entity's terms and conditions.

(2) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(a) Sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.

(b) Multiple owners-sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr.

(c) Multiple owners-multiple beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. Peter Q. Brown. [1993 c 287 § 10.]

21.35.900 Short title—Statutory construction. (1)

This chapter shall be known as and may be cited as the uniform TOD security registration act.

(2) This chapter shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of this chapter among states enacting it.

(3) Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement the provisions of this chapter. [1993 c 287 § 11.]

21.35.901 Application. This chapter applies to registrations of securities in beneficiary form made before or after July 25, 1993, by decedents dying on or after July 25, 1993. [1993 c 287 § 12.]

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Title 22

WAREHOUSING AND DEPOSITS

Chapters

- 22.09** Agricultural commodities.
- 22.16** Warehouses and elevators—Eminent domain.
- 22.28** Safe deposit companies.
- 22.32** General penalties.

Chapter 22.09

AGRICULTURAL COMMODITIES

Sections

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- 22.09.020 Department authority—Rules.
- 22.09.030 Warehouse license or licenses required.
- 22.09.035 Grain dealer license required, exception.
- 22.09.040 Application for warehouse license.
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- 22.09.050 Warehouse license fees, penalties.
- 22.09.055 Grain dealer—Exempt grain dealers—License fees, penalties.
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- 22.09.310 Warehouse receipts—Dealing in unauthorized receipts prohibited—Penalty.
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22.09.941	Severability—1979 ex.s. c 238.

Commodity transactions: Chapter 21.30 RCW.

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

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly authorized representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, association, cooperative, two or more persons having a joint or common interest, or any unit or agency of local, state, or federal government.

(4) "Agricultural commodities," or "commodities," means: (a) Grains for which inspection standards have been established under the United States grain standards act; (b) pulses and similar commodities for which inspection standards have been established under the agricultural marketing act of 1946; and (c) other similar agricultural products for which inspection standards have been established or which have been otherwise designated by the department by rule for inspection services or the warehousing requirements of this chapter.

(5) "Warehouse," also referred to as a public warehouse, means any elevator, mill, subterminal grain warehouse, terminal warehouse, country warehouse, or other structure or enclosure located in this state that is used or useable for the storage of agricultural products, and in which commodities are received from the public for storage, handling, conditioning, or shipment for compensation. The term does not include any warehouse storing or handling fresh fruits and/or vegetables, any warehouse used exclusively for cold storage,

or any warehouse that conditions yearly less than three hundred tons of an agricultural commodity for compensation.

(6) "Terminal warehouse" means any warehouse designated as a terminal by the department, and located at an inspection point where inspection facilities are maintained by the department and where commodities are ordinarily received and shipped by common carrier.

(7) "Subterminal warehouse" means any warehouse that performs an intermediate function in which agricultural commodities are customarily received from dealers rather than producers and where the commodities are accumulated before shipment to a terminal warehouse.

(8) "Station" means two or more warehouses between which commodities are commonly transferred in the ordinary course of business and that are (a) immediately adjacent to each other, or (b) located within the corporate limits of any city or town and subject to the same transportation tariff zone, or (c) at any railroad siding or switching area and subject to the same transportation tariff zone, or (d) at one location in the open country off rail, or (e) in any area that can be reasonably audited by the department as a station under this chapter and that has been established as such by the director by rule adopted under chapter 34.05 RCW, or (f) within twenty miles of each other but separated by the border between Washington and Idaho or Oregon when the books and records for the station are maintained at the warehouse located in Washington.

(9) "Inspection point" means a city, town, or other place wherein the department maintains inspection and weighing facilities.

(10) "Warehouseman" means any person owning, operating, or controlling a warehouse in the state of Washington.

(11) "Depositor" means (a) any person who deposits a commodity with a Washington state licensed warehouseman for storage, handling, conditioning, or shipment, or (b) any person who is the owner or legal holder of a warehouse receipt, outstanding scale weight ticket, or other evidence of the deposit of a commodity with a Washington state licensed warehouseman or (c) any producer whose agricultural commodity has been sold to a grain dealer through the dealer's place of business located in the state of Washington, or any Washington producer whose agricultural commodity has been sold to or is under the control of a grain dealer, whose place of business is located outside the state of Washington.

(12) "Historical depositor" means any person who in the normal course of business operations has consistently made deposits in the same warehouse of commodities produced on the same land. In addition the purchaser, lessee, and/or inheritor of such land from the original historical depositor with reference to the land shall be considered a historical depositor with regard to the commodities produced on the land.

(13) "Grain dealer" means any person who, through his place of business located in the state of Washington, solicits, contracts for, or obtains from a producer, title, possession, or control of any agricultural commodity for purposes of resale, or any person who solicits, contracts for, or obtains from a Washington producer, title, possession, or control of any agricultural commodity for purposes of resale.

(14) "Producer" means any person who is the owner, tenant, or operator of land who has an interest in and is entitled to receive all or any part of the proceeds from the sale of a commodity produced on that land.

(15) "Warehouse receipt" means a negotiable or nonnegotiable warehouse receipt as provided for in Article 7 of Title 62A RCW.

(16) "Scale weight ticket" means a load slip or other evidence of deposit, serially numbered, not including warehouse receipts as defined in subsection (15) of this section, given a depositor on request upon initial delivery of the commodity to the warehouse and showing the warehouse's name and state number, type of commodity, weight thereof, name of depositor, and the date delivered.

(17) "Put through" means agricultural commodities that are deposited in a warehouse for receiving, handling, conditioning, or shipping, and on which the depositor has concluded satisfactory arrangements with the warehouseman for the immediate or impending shipment of the commodity.

(18) "Conditioning" means, but is not limited to, the drying or cleaning of agricultural commodities.

(19) "Deferred price contract" means a contract for the sale of commodities that conveys the title and all rights of ownership to the commodities represented by the contract to the buyer, but allows the seller to set the price of the commodities at a later date based on an agreed upon relationship to a future month's price or some other mutually agreeable method of price determination. Deferred price contracts include but are not limited to those contracts commonly referred to as delayed price, price later contracts, or open price contracts.

(20) "Shortage" means that a warehouseman does not have in his possession sufficient commodities at each of his stations to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by him for the station.

(21) "Failure" means:

(a) An inability to financially satisfy claimants in accordance with this chapter and the time limits provided for in it;

(b) A public declaration of insolvency;

(c) A revocation of license and the leaving of an outstanding indebtedness to a depositor;

(d) A failure to redeliver any commodity to a depositor or to pay depositors for commodities purchased by a licensee in the ordinary course of business and where a bona fide dispute does not exist between the licensee and the depositor;

(e) A failure to make application for license renewal within sixty days after the annual license renewal date; or

(f) A denial of the application for a license renewal.

(22) "Original inspection" means an initial, official inspection of a grain or commodity.

(23) "Reinspection" means an official review of the results of an original inspection service by an inspection office that performed that original inspection service. A reinspection may be performed either on the basis of the official file sample or a new sample obtained by the same means as the original if the lot remains intact.

(24) "Appeal inspection" means, for commodities covered by federal standards, a review of original inspection or reinspection results by an authorized United States

department of agriculture inspector. For commodities covered under state standards, an appeal inspection means a review of original or reinspection results by a supervising inspector. An appeal inspection may be performed either on the basis of the official file sample or a new sample obtained by the same means as the original if the lot remains intact.

(25) "Exempt grain dealer" means a grain dealer who purchases less than one hundred thousand dollars of covered commodities annually from producers, and operates under the provisions of RCW 22.09.060. [1994 c 46 § 3; 1989 c 354 § 44; 1988 c 254 § 11; 1987 c 393 § 19; 1983 c 305 § 16.]

Effective date—1994 c 46: See note following RCW 15.58.070.

Severability—1989 c 354: See note following RCW 15.36.012.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.020 Department authority—Rules. The department shall administer and carry out the provisions of this chapter and rules adopted hereunder, and it has the power and authority to:

(1) Supervise the receiving, handling, conditioning, weighing, storage, and shipping of all commodities;

(2) Supervise the inspection and grading of commodities;

(3) Approve or disapprove the facilities, including scales, of all warehouses;

(4) Approve or disapprove all rates and charges for the handling, storage, and shipment of all commodities;

(5) Investigate all complaints of fraud in the operation of any warehouse;

(6) Examine, inspect, and audit, during ordinary business hours, any warehouse licensed under this chapter, including all commodities therein and examine, inspect, audit, or record all books, documents, and records;

(7) Examine, inspect, and audit during ordinary business hours, all books, documents, and records, and examine, inspect, audit, or record records of any grain dealer licensed hereunder at the grain dealer's principal office or headquarters;

(8) Inspect at reasonable times any warehouse or storage facility where commodities are received, handled, conditioned, stored, or shipped, including all commodities stored therein and all books, documents, and records in order to determine whether or not such facility should be licensed pursuant to this chapter;

(9) Inspect at reasonable times any grain dealer's books, documents, and records in order to determine whether or not the grain dealer should be licensed under this chapter;

(10) Administer oaths and issue subpoenas to compel the attendance of witnesses, and/or the production of books, documents, and records anywhere in the state pursuant to a hearing relative to the purpose and provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided in chapter 2.40 RCW;

(11) Adopt rules establishing inspection standards and procedures for grains and commodities;

(12) Adopt rules regarding the identification of commodities by the use of confetti or other similar means so that such commodities may be readily identified if stolen or removed in violation of the provisions of this chapter from a warehouse or if otherwise unlawfully transported;

(13) Adopt all the necessary rules for carrying out the purpose and provisions of this chapter. The adoption of rules under the provisions of this chapter shall be subject to the provisions of chapter 34.05 RCW, the Administrative Procedure Act. When adopting rules in respect to the provisions of this chapter, the director shall hold a public hearing and shall to the best of his ability consult with persons and organizations or interests who will be affected thereby, and any final rule adopted as a result of the hearing shall be designed to promote the provisions of this chapter and shall be reasonable and necessary and based upon needs and conditions of the industry, and shall be for the purpose of promoting the well-being of the industry to be regulated and the general welfare of the people of the state. [1989 c 354 § 45; 1983 c 305 § 17; 1963 c 124 § 2.]

Severability—1989 c 354: See note following RCW 15.36.012.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.030 Warehouse license or licenses required.

It shall be unlawful for any person to operate a warehouse in the state of Washington without first having obtained an annual license from the department, but this chapter shall not apply to warehouses that are federally licensed under the provisions of 7 USC 241 et seq. for the handling and storage of agricultural commodities. A separate license shall be required for each warehouse that a person intends to operate, but any person operating two or more warehouses that constitute a station may license the warehouses under one state license. All the assets of a given station that is licensed under one state license are subject to all the liabilities of that station and for the purposes of this chapter shall be treated as a single warehouse, requiring all the stocks and obligations of the warehouses at a given station to be treated as a unit for all purposes including, but not limited to, issuance of warehouse receipts and receipt and delivery of commodities for handling, conditioning, storage, or shipment. [1983 c 305 § 18; 1975 1st ex.s. c 7 § 20; 1963 c 124 § 3.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.035 Grain dealer license required, exception.

It is unlawful for any person to operate as a grain dealer in the state of Washington without first having obtained an annual license from the department. This chapter does not apply to a grain dealer that is licensed for dealing in agricultural commodities under federal law. [1983 c 305 § 19.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.040 Application for warehouse license.

Application for a license to operate a warehouse under the provisions of this chapter shall be on a form prescribed by the department and shall include:

(1) The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation, or other entity;

(2) The full name of each member of the firm or partnership, or the names of the officers of the company, society, cooperative association, or corporation;

(3) The principal business address of the applicant in the state and elsewhere;

(4) The name or names of the person or persons authorized to receive and accept service of summons and legal notices of all kinds for the applicant;

(5) Whether the applicant has also applied for or has been issued a grain dealer license under the provisions of this chapter;

(6) The location of each warehouse the applicant intends to operate and the location of the headquarters or main office of the applicant;

(7) The bushel storage capacity of each such warehouse to be licensed;

(8) The schedule of fees to be charged at each warehouse for the handling, conditioning, storage, and shipment of all commodities during the licensing period;

(9) A financial statement to determine the net worth of the applicant to determine whether or not the applicant meets the minimum net worth requirements established by the director pursuant to chapter 34.05 RCW. All financial statement information required by this subsection shall be confidential information not subject to public disclosure;

(10) Whether the application is for a terminal, subterminal, or country warehouse license;

(11) Whether the applicant has previously been denied a grain dealer or warehouseman license or whether the applicant has had either license suspended or revoked by the department;

(12) Any other reasonable information the department finds necessary to carry out the purpose and provisions of this chapter. [1987 c 393 § 17; 1983 c 305 § 20; 1979 ex.s. c 238 § 13; 1975 1st ex.s. c 7 § 21; 1963 c 124 § 4.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.045 Application for grain dealer license.

Application for a license to operate as a grain dealer under the provisions of this chapter shall be on a form prescribed by the department and shall include:

(1) The full name of the person applying for the license and whether the applicant is an individual, partnership, association, corporation, or other entity;

(2) The full name of each member of the firm or partnership, or the names of the officers of the company, society, cooperative association, or corporation;

(3) The principal business address of the applicant in the state and elsewhere;

(4) The name or names of the person or persons in this state authorized to receive and accept service of summons and legal notices of all kinds for the applicant;

(5) Whether the applicant has also applied for or has been issued a warehouse license under this chapter;

(6) The location of each business location from which the applicant intends to operate as a grain dealer in the state of Washington whether or not the business location is physically within the state of Washington, and the location of the headquarters or main office of the application;

(7) A financial statement to determine the net worth of the applicant to determine whether or not the applicant meets the minimum net worth requirements established by the director under chapter 34.05 RCW. However, if the applicant is a subsidiary of a larger company, corporation, society, or cooperative association, both the parent company and the subsidiary company must submit a financial state-

ment to determine whether or not the applicant meets the minimum net worth requirements established by the director under chapter 34.05 RCW. All financial statement information required by this subsection shall be confidential information not subject to public disclosure;

(8) Whether the applicant has previously been denied a grain dealer or warehouseman license or whether the applicant has had either license suspended or revoked by the department;

(9) Any other reasonable information the department finds necessary to carry out the purpose and provisions of this chapter. [1987 c 393 § 18; 1983 c 305 § 21.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.050 Warehouse license fees, penalties. Any application for a license to operate a warehouse shall be accompanied by a license fee of twelve hundred dollars for a terminal warehouse, nine hundred dollars for a subterminal warehouse, and three hundred and fifty dollars for a country warehouse. If a licensee operates more than one warehouse under one state license as provided for in RCW 22.09.030, the license fee shall be computed by multiplying the number of physically separated warehouses within the station by the applicable terminal, subterminal, or country warehouse license fee.

If an application for renewal of a warehouse license or licenses is not received by the department prior to the renewal date or dates established by the director by rule, a penalty of fifty dollars for the first week and one hundred dollars for each week thereafter shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license may be issued. This penalty does not apply if the applicant furnishes an affidavit certifying that he has not acted as a warehouseman subsequent to the expiration of his or her prior license. [1994 c 46 § 4; 1991 c 109 § 25; 1986 c 203 § 13; 1983 c 305 § 22; 1979 ex.s. c 238 § 14; 1963 c 124 § 5.]

Effective date—1994 c 46: See note following RCW 15.58.070.

Severability—1986 c 203: See note following RCW 15.04.100.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.055 Grain dealer—Exempt grain dealers—License fees, penalties. An application for a license to operate as a grain dealer shall be accompanied by a license fee of six hundred dollars. The license fee for exempt grain dealers shall be one hundred fifty dollars.

If an application for renewal of a grain dealer or exempt grain dealer license is not received by the department before the renewal date or dates established by the director by rule, a penalty of fifty dollars for the first week and one hundred dollars for each week thereafter shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license may be issued. This penalty does not apply if the applicant furnishes an affidavit certifying that he has not acted as a grain dealer or exempt grain dealer after the expiration of his or her prior license. [1994 c 46 § 5; 1991 c 109 § 26; 1988 c 95 § 1; 1986 c 203 § 14; 1983 c 305 § 23.]

Effective date—1994 c 46: See note following RCW 15.58.070.

Severability—1986 c 203: See note following RCW 15.04.100.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.060 Bond or certificate of deposit and insurance prerequisite to license—Exemption. Except as provided in RCW 22.09.405(2), no warehouse or grain dealer license may be issued to an applicant before a bond, certificate of deposit, or other security is given to the department as provided in RCW 22.09.090, or in RCW 22.09.095. No warehouse license may be issued to an applicant before a certificate of insurance as provided in RCW 22.09.110 has been filed with the department. Grain dealers may be exempted by rule from the bonding requirement if the grain dealer does not do more than one hundred thousand dollars in business annually and makes payments solely in coin or currency of the United States at the time of obtaining possession or control of grain. However, a cashier's check, certified check, or bankdraft may be considered as cash for purposes of this section. [1988 c 95 § 2; 1987 c 509 § 1; 1983 c 305 § 24; 1975 1st ex.s. c 7 § 22; 1963 c 124 § 6.]

Severability—1987 c 509: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 509 § 22.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.070 Warehouse licenses—Issuance—Posting—Duration. The department shall issue a warehouse license to an applicant upon its determination that the applicant has facilities adequate for handling and storage of commodities and, if applicable, conditioning, and that the application is in the proper form and upon approval of the matters contained on the application and upon a showing that the applicant has complied with the provisions of this chapter and rules adopted hereunder. The licensee shall immediately upon receipt of the license post it in a conspicuous place in the office of the licensed warehouse or if a station license, in the main office at the station. The license automatically expires on the date set by rule by the director unless it has been revoked, canceled, or suspended by the department before that date. Fees shall be prorated where necessary to accommodate the staggering of renewal dates of a license or licenses. [1991 c 109 § 27; 1983 c 305 § 25; 1963 c 124 § 7.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.075 Grain dealer licenses—Issuance—Posting—Duration. The department shall issue a grain dealer license to an applicant upon its determination that the application is in its proper form and upon approval of the matters contained on the application and upon a showing that the applicant has complied with the provisions of this chapter and rules adopted hereunder. The licensee shall immediately upon receipt of the license post it in a conspicuous place in its principal place of business. The license expires automatically on a date set by rule by the director unless it has been revoked, canceled, or suspended by the department before that date. Fees shall be prorated where necessary in order to accommodate staggered renewal of a license or licenses. [1991 c 109 § 28; 1983 c 305 § 26.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.080 Licenses—Denial—Suspension—Revocation. The department is authorized to deny, suspend, or revoke a license after a hearing in any case in which it is determined that there has been a violation or refusal to comply with the requirements of this chapter, rules adopted hereunder, or the provisions of Article 7 of Title 62A RCW as enacted or hereafter amended. All hearings for the denial, suspension, or revocation of a license shall be subject to chapter 34.05 RCW (Administrative Procedure Act) as enacted or hereafter amended. [1979 ex.s. c 238 § 15; 1963 c 124 § 8.]

22.09.090 Bond requisites—Certificate of deposit or other security—Additional security—Suspension of license for failure to maintain. (1) An applicant for a warehouse or grain dealer license pursuant to the provisions of this chapter shall give a bond to the state of Washington executed by the applicant as the principal and by a corporate surety licensed to do business in this state as surety.

(2) The bond required under this section for the issuance of a warehouse license shall be in the sum of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars. The department shall, after holding a public hearing, determine the amount that will be required for the warehouse bond which shall be computed at a rate of not less than fifteen cents nor more than thirty cents per bushel multiplied by the number of bushels of licensed commodity storage capacity of the warehouses of the applicant furnishing the bond. The applicant for a warehouse license may give a single bond meeting the requirements of this chapter, and all warehouses operated by the warehouseman are deemed to be one warehouse for the purpose of the amount of the bond required under this subsection. Any change in the capacity of a warehouse or addition of any new warehouse involving a change in bond liability under this chapter shall be immediately reported to the department.

(3) The bond required under this section for the issuance of a grain dealer license shall be in the sum of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars. The department shall, after holding a public hearing, determine the amount that will be required for the dealer bond which shall be computed at a rate not less than six percent nor more than twelve percent of the sales of agricultural commodities purchased by the dealer from producers during the dealer's last completed fiscal year or in the case of a grain dealer who has been engaged in business as a grain dealer less than one year, the estimated aggregate dollar amount to be paid by the dealer to producers for agricultural commodities to be purchased by the dealer during the dealer's first fiscal year.

(4) An applicant making application for both a warehouse license and a grain dealer license may satisfy the bonding requirements set forth in subsections (2) and (3) of this section by giving to the state of Washington a single bond for the issuance of both licenses, which bond shall be in the sum of not less than fifty thousand dollars nor more than seven hundred fifty thousand dollars. The department shall, after holding a public hearing, determine the amount of the bond which shall be computed at a rate of not less than fifteen cents nor more than thirty cents per bushel multiplied by the number of bushels of licensed commodity

storage capacity of the warehouses of the applicant furnishing the bond, or at the rate of not less than six percent nor more than twelve percent of the gross sales of agricultural commodities of the applicant whichever is greater.

(5) The bonds required under this chapter shall be approved by the department and shall be conditioned upon the faithful performance by the licensee of the duties imposed upon him by this chapter. If a person has applied for warehouse licenses to operate two or more warehouses in this state, the assets applicable to all warehouses, but not the deposits except in case of a station, are subject to the liabilities of each. The total and aggregate liability of the surety for all claims upon the bond is limited to the face amount of the bond.

(6) Any person required to submit a bond to the department under this chapter has the option to give the department a certificate of deposit or other security acceptable to the department payable to the director as trustee, in lieu of a bond or a portion thereof. The principal amount of the certificate or other security shall be the same as that required for a surety bond under this chapter or may be in an amount which, when added to the bond, will satisfy the licensee's requirements for a surety bond under this chapter, and the interest thereon shall be made payable to the purchaser of the certificate or other security. The certificate of deposit or other security shall remain on deposit until it is released, canceled, or discharged as provided for by rule of the department. The provisions of this chapter that apply to a bond required under this chapter apply to each certificate of deposit or other security given in lieu of such a bond.

(7) The department may, when it has reason to believe that a grain dealer does not have the ability to pay producers for grain purchased, or when it determines that the grain dealer does not have a sufficient net worth to outstanding financial obligations ratio, or when it believes there may be claims made against the bond in excess of the face amount of the bond, require a grain dealer to post an additional bond in a dollar amount deemed appropriate by the department or may require an additional certificate of deposit or other security. The additional bonding or other security may exceed the maximum amount of the bond otherwise required under this chapter. Failure to post the additional bond, certificate of deposit, or other security constitutes grounds for suspension or revocation of a license issued under this chapter.

(8) Notwithstanding any other provisions of this chapter, the license of a warehouseman or grain dealer shall automatically be suspended in accordance with RCW 22.09.100 for failure at any time to have or to maintain a bond, certificate of deposit, or other security or combination thereof in the amount and type required by this chapter. The department shall remove the suspension or issue a license as the case may be, when the required bond, certificate of deposit, or other security has been obtained. [1987 c 509 § 2; 1983 c 305 § 27; 1975 1st ex.s. c 7 § 23; 1969 ex.s. c 132 § 2; 1963 c 124 § 9.]

Severability—1987 c 509: See note following RCW 22.09.060.

Severability—1983 c 305: See note following RCW 20.01.010.

Grain indemnity fund program: See RCW 22.09.405 through 22.09.471.

22.09.095 Single bond by multiple applicants. (1)

Two or more applicants for a warehouse or grain dealer license may provide a single bond to the state of Washington, executed by a corporate surety licensed to do business in this state and designating each of the applicants as a principal on said bond.

(2) The department shall promulgate rules establishing the amount of the bond required under this section. In no event shall that amount be less than ten percent of the aggregate amount of each of the bonds that would be required of the applicants under RCW 22.09.090 or less than the amount that would be required under RCW 22.09.090 for the applicant having the highest bond requirement under that section. [1987 c 509 § 3.]

Severability—1987 c 509: See note following RCW 22.09.060.

Grain indemnity fund program: See RCW 22.09.405 through 22.09.471.

22.09.100 Bonds—Duration—Release of surety—Cancellation by surety. (1) Every bond filed with and approved by the department shall without the necessity of periodic renewal remain in force and effect until such time as the warehouseman or grain dealer license of each principal on the bond is revoked or otherwise canceled.

(2) The surety on a bond, as provided in this chapter, shall be released and discharged from all liability to the state, as to a principal whose license is revoked or canceled, which liability accrues after the expiration of thirty days from the effective date of the revocation or cancellation of the license. The surety on a bond under this chapter shall be released and discharged from all liability to the state accruing on the bond after the expiration of ninety days from the date upon which the surety lodges with the department a written request to be released and discharged. Nothing in this section shall operate to relieve, release, or discharge the surety from any liability which accrues before the expiration of the respective thirty or ninety-day period. In the event of a cancellation by the surety, the surety shall simultaneously send the notification of cancellation in writing to any other governmental agency requesting it. Upon receiving any such request, the department shall promptly notify the principal or principals who furnished the bond, and unless the principal or principals file a new bond on or before the expiration of the respective thirty or ninety-day period, the department shall forthwith cancel the license of the principal or principals whose bond has been canceled. [1987 c 509 § 4; 1983 c 305 § 28; 1963 c 124 § 10.]

Severability—1987 c 509: See note following RCW 22.09.060.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.110 Casualty insurance required—Certificate to be filed. All commodities in storage in a warehouse shall be kept fully insured for the current market value of the commodity for the license period against loss by fire, lightning, internal explosion, windstorm, cyclone, and tornado. Evidence of the insurance coverage in the form of a certificate of insurance approved by the department shall be filed by the warehouseman with the department at the time of making application for an annual license to operate a warehouse as required by this chapter. The department shall not issue a license until the certificate of insurance is received. [1983 c 305 § 29; 1963 c 124 § 11.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.120 Insurance—Cancellation procedure—Suspension of license. (1) Upon the existence of an effective policy of insurance as required in RCW 22.09.110, the insurance company involved shall be required to give thirty days' advance notice to the department by registered mail or certified mail return receipt requested of any cancellation of the policy. In the event of any cancellation, the department, without hearing, shall immediately suspend the license of such person, and the suspension shall not be removed until satisfactory evidence of the existence of an effective policy of insurance, conditioned as above set out, has been submitted to the department. [1963 c 124 § 12.]

22.09.130 Rights and duties of warehousemen—Duty to serve—Receipts—Special binning—Unsuitable commodities—Put through commodities. (1) Every warehouseman shall receive for handling, conditioning, storage, or shipment, so far as the capacity and facilities of his warehouse will permit, all commodities included in the provisions of this chapter, in suitable condition for storage, tendered him in the usual course of business from historical depositors and shall issue therefor a warehouse receipt or receipts in a form prescribed by the department as provided in this chapter or a scale weight ticket. Warehousemen may accept agricultural commodities from new depositors who qualify to the extent of the capacity of that warehouse. The deposit for handling, conditioning, storage, or shipment of the commodity must be credited to the depositor in the books of the warehouseman as soon as possible, but in no event later than seven days from the date of the deposit. If the commodity has been graded a warehouse receipt shall be issued within ten days after demand by the owner.

(2) If requested by the depositor, each lot of his commodity shall be kept in a special pile or special bin, if available, but in the case of a bulk commodity, if the lot or any portion of it does not equal the capacity of any available bin, the depositor may exercise his option to require the commodity to be specially binned only on agreement to pay charges based on the capacity of the available bin most nearly approximating the required capacity.

(3) A warehouseman may refuse to accept for storage, commodities that are wet, damaged, insect-infested, or in other ways unsuitable for storage.

(4) Terminal and subterminal warehousemen shall receive put through agricultural commodities to the extent satisfactory transportation arrangements can be made, but may not be required to receive agricultural commodities for storage. [1983 c 305 § 30; 1981 c 296 § 38; 1979 ex.s. c 238 § 16; 1963 c 124 § 13.]

Severability—1983 c 305: See note following RCW 20.01.010.

Severability—1981 c 296: See note following RCW 15.04.020.

22.09.140 Rights and duties of licensees—Partial withdrawal—Adjustment or substitution of receipt—Liability to third parties. (1) When partial withdrawal of his commodity is made by a depositor, the warehouseman shall make appropriate notation thereof on the depositor's nonnegotiable receipt or on other records, or, if the warehouseman has issued a negotiable receipt to the depositor, he

shall claim, cancel, and replace it with a negotiable receipt showing the amount of such depositor's commodity remaining in the warehouse, and for his failure to claim and cancel, upon delivery to the owner of a commodity stored in his warehouse, a negotiable receipt issued by him, the negotiation of which would transfer the right to possession of such commodity, a warehouseman shall be liable to anyone who purchases such receipt for value and in good faith, for failure to deliver to him all the commodity specified in the receipt, whether such purchaser acquired title to the negotiable receipt before or after delivery of any part of the commodity by the warehouseman. [1963 c 124 § 14.]

22.09.150 Rights and duties of warehousemen—Delivery of stored commodities—Damages. (1) The duty of the warehouseman to deliver the commodities in storage is governed by the provisions of this chapter and the requirements of Article 7 of Title 62A RCW. Upon the return of the receipt to the proper warehouseman, properly endorsed, and upon payment or tender of all advances and legal charges, the warehouseman shall deliver commodities of the grade and quantity named upon the receipt to the holder of the receipt, except as provided by Article 7 of Title 62A RCW.

(2) A warehouseman's duty to deliver any commodity is fulfilled if delivery is made pursuant to the contract with the depositor or if no contract exists, then to the several owners in the order of demand as rapidly as it can be done by ordinary diligence. Where delivery is made within forty-eight hours excluding Saturdays, Sundays, and legal holidays after facilities for receiving the commodity are provided, the delivery is deemed to comply with this subsection.

(3) No warehouseman may fail to deliver a commodity as provided in this section, and delivery shall be made at the warehouse or station where the commodity was received unless the warehouseman and depositor otherwise agree in writing.

(4) In addition to being subject to penalties provided in this chapter for a violation of this section, if a warehouseman unreasonably fails to deliver commodities within the time as provided in this section, the person entitled to delivery of the commodity may maintain an action against the warehouseman for any damages resulting from the warehouseman's unreasonable failure to so deliver. In any such action the person entitled to delivery of the commodity has the option to seek recovery of his actual damages or liquidated damages of one-half of one percent of the value for each day's delay after the forty-eight hour period. [1983 c 305 § 31; 1979 ex.s. c 238 § 17; 1963 c 124 § 15.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.160 Rights and duties of licensees—Disposition of hazardous commodities. (1) If a warehouseman discovers that as a result of a quality or condition of a certain commodity placed in his warehouse, including identity preserved commodities as provided for in RCW 22.09.130(2), of which he had no notice at the time of deposit, such commodity is a hazard to other commodities or to persons or to the warehouse he may notify the depositor that it will be removed. If the depositor does not accept delivery of such commodity upon removal the warehouse-

man may sell the commodity at public or private sale without advertisement but with reasonable notification of the sale to all persons known to claim an interest in the commodity. If the warehouseman after a reasonable effort is unable to sell the commodity, he may dispose of it in any other lawful manner and shall incur no liability by reason of such disposition.

(2) At any time prior to sale or disposition as authorized in this section, the warehouseman shall deliver the commodity to any person entitled to it, upon proper demand and payment of charges.

(3) From the proceeds of sale or other disposition of the commodity the warehouseman may satisfy his charges for which otherwise he would have a lien, and shall hold the balance thereof for delivery on the demand of any person to whom he would have been required to deliver the commodity. [1963 c 124 § 16.]

22.09.170 Rights and duties of warehousemen—Special disposition of commodities under written order. If the owner of the commodity or his authorized agent gives or furnishes to a licensed warehouseman a written instruction or order, and if the order is properly made a part of the warehouseman's records and is available for departmental inspection, then the warehouseman:

(1) May receive the commodity for the purpose of processing or conditioning;

(2) May receive the commodity for the purpose of shipping by the warehouseman for the account of the depositor;

(3) May accept an agricultural commodity delivered as seed and handle it pursuant to the terms of a contract with the depositor and the contract shall be considered written instructions pursuant to this section. [1983 c 305 § 32; 1963 c 124 § 17.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.175 Presumptions regarding commodities—Approval of contracts. (1) A commodity deposited with a warehouseman without a written agreement for sale of the commodity to the warehouseman shall be handled and considered to be a commodity in storage.

(2) A presumption is hereby created that in all written agreements for the sale of commodities, the intent of the parties is that title and ownership to the commodities shall pass on the date of payment therefor. This presumption may only be rebutted by a clear statement to the contrary in the agreement.

(3) Any warehouseman or grain dealer entering into a deferred price contract with a depositor shall first have the form of the contract approved by the director. The director shall adopt rules setting forth the standards for approval of the contracts. [1983 c 305 § 33.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.180 Rights and duties of licensees—Records, contents—Itemized charges. (1) The licensee shall maintain complete records at all times with respect to all agricultural commodities handled, stored, shipped, or merchandised by him, including commodities owned by him. The department shall adopt rules specifying the minimum

record-keeping requirements necessary to comply with this section.

(2) The licensee shall maintain an itemized statement of any charges paid by the depositor. [1983 c 305 § 34; 1975 1st ex.s. c 7 § 24; 1963 c 124 § 18.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.190 Rights and duties of warehousemen—Rebates, preferences, etc., prohibited. No warehouseman subject to the provisions of this chapter may:

(1) Directly or indirectly, by any special charge, rebate, drawback, or other device, demand, collect, or receive from any person a greater or lesser compensation for any service rendered or to be rendered in the handling, conditioning, storage, or shipment of any commodity than he demands, collects, or receives from any other person for doing for him a like and contemporaneous service in the handling, conditioning, storage, or shipment of any commodity under substantially similar circumstances or conditions;

(2) Make or give any undue or unreasonable preference or advantage to any person in any respect whatsoever;

(3) Subject any particular person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [1983 c 305 § 35; 1963 c 124 § 19.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.195 Rights and duties of warehousemen—RCW 22.09.190 inapplicable to contracts with governmental agencies. RCW 22.09.190 does not apply to contracts entered into with a governmental agency, state or federal, for the handling, conditioning, storage, or shipping of agricultural commodities. [1983 c 305 § 36; 1979 ex.s. c 238 § 24.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.200 Rights and duties of licensees—Reports to department. Each licensee shall report information to the department at such times and as may be reasonably required by the department for the necessary enforcement and supervision of a sound, reasonable, and efficient commodity inspection program for the protection of depositors of commodities and for persons or agencies who deal in commodities. [1983 c 305 § 37; 1963 c 124 § 20.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.220 Rights and duties of licensees—Premises, construction and maintenance. A warehouse or station shall be constructed and maintained in a manner adequate to carry out the provisions of this chapter. [1963 c 124 § 22.]

22.09.230 Rights and duties of warehouse licensees—Signs—Use of "Washington Bonded Warehouse." Every warehouse licensee shall post at or near the main entrance to each of his warehouses a sign as prescribed by the department which shall include the words "Washington Bonded Warehouse." It is unlawful to display such sign or any sign of similar appearance or bearing the same words, or words of similar import, when the warehouse is not licensed and bonded under this chapter. [1983 c 305 § 39; 1963 c 124 § 23.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.240 Rights and duties of warehousemen—Schedule of rates—Posting—Revision. Every warehouseman shall annually, during the first week in July, publish by posting in a conspicuous place in each of his warehouses the schedule of handling, conditioning, and storage rates filed with the department for the ensuing license year. The schedule shall be kept posted, and the rates shall not be changed during such year except after thirty days' written notice to the director and proper posting of the changes on the licensee's premises. [1991 c 109 § 29; 1983 c 305 § 40; 1963 c 124 § 24.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.250 Rights and duties of warehousemen—Unlawful practices. It is unlawful for a warehouseman to:

(1) Issue a warehouse receipt for any commodity that he does not have in his warehouse at the time the receipt is issued;

(2) Issue warehouse receipts in excess of the amount of the commodities held in the licensee's warehouse to cover the receipt;

(3) Remove, deliver, direct, assist, or permit any person to remove, or deliver any commodity from any warehouse for which warehouse receipts have been issued and are outstanding without receiving and canceling the warehouse receipt issued therefor;

(4) Sell, encumber, ship, transfer, or in any manner remove or permit to be shipped, transferred, or removed from a warehouse any commodity received by him for deposit, handling, conditioning, or shipment, for which scale weight tickets have been issued without the written approval of the holder of the scale weight ticket and such transfer shall be shown on the individual depositor's account and the inventory records of the warehouseman;

(5) Remove, deliver, direct, assist, or permit any person to deliver, or remove any commodities from any warehouse, whereby the amount of any fairly representative grade or class of any commodity in the warehouses of the licensee is reduced below the amount for which warehouse receipts or scale weight tickets for the particular commodity are outstanding;

(6) Issue a warehouse receipt showing a grade or description different from the grade or description of the commodity delivered;

(7) Issue a warehouse receipt or scale weight ticket that exceeds the amount of the actual quantity of commodities delivered for storage;

(8) Fail to deliver commodities pursuant to RCW 22.09.150 upon demand of the depositor;

(9) Knowingly accept for storage any commodity destined for human consumption that has been contaminated with an agricultural pesticide or filth rendering it unfit for human consumption, if the commodities are commingled with any uncontaminated commodity;

(10) Terminate storage of a commodity in his warehouse without giving thirty days' written notice to the depositor. [1983 c 305 § 41; 1963 c 124 § 25.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.260 Deposit of commodities unfit for human consumption—Notice. No depositor may knowingly deliver for handling, conditioning, storage, or shipment any commodity treated with an agricultural pesticide or contaminated with filth rendering it unfit for human consumption without first notifying the warehouseman. [1983 c 305 § 42; 1963 c 124 § 26.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.290 Warehouse receipts—Required terms. (1) Every warehouse receipt issued for commodities covered by this chapter shall embody within its written or printed terms:

(a) The grade of the commodities as described by the official standards of this state, unless the identity of the commodity is in fact preserved in a special pile or special bin, and an identifying mark of such pile or bin shall appear on the face of the receipt and on the pile or bin. A commodity in a special pile or bin shall not be removed or relocated without canceling the outstanding receipt and issuing a new receipt showing the change;

(b) Such other terms and conditions as required by Article 7 of Title 62A RCW: PROVIDED, That nothing contained therein requires a receipt issued for wheat to specifically state the variety of wheat by name;

(c) A clause reserving for the warehouseman the optional right to terminate storage upon thirty days' written notice to the depositor and collect outstanding charges against any lot of commodities after June 30th following the date of the receipt.

(2) Warehouse receipts issued under the United States Warehouse Act (7 USCA § 241 et seq.) are deemed to fulfill the requirements of this chapter so far as it pertains to the issuance of warehouse receipts. [1989 c 354 § 46; 1983 c 305 § 43; 1979 ex.s. c 238 § 19; 1963 c 124 § 29.]

Severability—1989 c 354: See note following RCW 15.36.012.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.300 Warehouse receipts—Forms, numbering, printing, bond—Compliance with Article 7 of Title 62A RCW—Confiscation. (1) All warehouse receipts issued under this chapter shall be upon forms prescribed by the department and supplied only to licensed warehousemen at cost of printing, packing, and shipping, as determined by the department. They shall contain the state number of such license and shall be numbered serially for each state number and the original negotiable receipts shall bear the state seal. Requests for such receipts shall be on forms furnished by the department and shall be accompanied by payment to cover cost: PROVIDED, That the department by order may allow a warehouseman to have his individual warehouse receipts printed, after the form of the receipt is approved as in compliance with this chapter, and the warehouseman's printer shall supply an affidavit stating the amount of receipts printed, numbers thereof: PROVIDED FURTHER, That the warehouseman must supply a bond in an amount fixed by the department and not to exceed five thousand dollars to cover any loss resulting from the unlawful use of any such receipts.

(2) All warehouse receipts shall comply with the provisions of Article 7 of Title 62A RCW as enacted or hereafter amended, except as to the variety of wheat as set

forth in RCW 22.09.290(1)(b) herein, and with the provisions of this chapter where not inconsistent or in conflict with Article 7 of Title 62A RCW. All receipts remaining unused shall be confiscated by the department if the license required herein is not promptly renewed or is suspended, revoked, or canceled. [1979 ex.s. c 238 § 20; 1963 c 124 § 30.]

22.09.310 Warehouse receipts—Dealing in unauthorized receipts prohibited—Penalty. Any person, or any agent or servant of that person, or any officer of a corporation who prints, binds, or delivers warehouse receipt forms, except on an order or requisition signed by the director, or who uses such forms knowing that they were not so printed, bound, or delivered is guilty of a class C felony and is punishable as provided in chapter 9A.20 RCW. [1983 c 305 § 44; 1963 c 124 § 31.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.320 Warehouse receipts—Lost or destroyed receipts. In case any warehouse receipt issued by a licensee shall be lost or destroyed, the owner thereof shall be entitled to a duplicate receipt from the licensee upon executing and delivering to the warehouseman issuing such receipt, a bond in double the value of the commodity covered by such lost receipt, with good and sufficient surety to indemnify the warehouseman against any loss sustained by reason of the issuance of such duplicate receipt, and such duplicate receipt shall state that it is issued in lieu of the former receipt, giving the number and date thereof. [1963 c 124 § 32.]

22.09.330 Scale weight tickets not precluded. Nothing in this chapter may be construed to prevent the issuance of scale weight tickets showing when and what quantities of commodities were received and the condition thereof upon delivery. [1983 c 305 § 45; 1963 c 124 § 33.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.340 Examination of receipts and commodities—Request—Fee—Access to bins—Records and accounts—Out-of-state offices. (1) Upon the request of any person or persons having an interest in a commodity stored in any public warehouse and upon payment of fifty dollars in advance by the person or persons, the department may cause the warehouse to be inspected and shall check the outstanding negotiable and nonnegotiable warehouse receipts, and scale weight tickets that have not been superseded by negotiable or nonnegotiable warehouse receipts, with the commodities on hand and shall report the amount of receipts and scale weight tickets outstanding and the amount of storage, if any. If the cost of the examination is more than fifty dollars, the person or persons having an interest in the commodity stored in the warehouse and requesting the examination, shall pay the additional cost to the department, unless a shortage is found to exist.

(2) A warehouse shall be maintained in a manner that will provide a reasonable means of ingress and egress to the various storage bins and compartments by those persons authorized to make inspections, and an adequate facility to complete the inspections shall be provided.

(3) The property, books, records, accounts, papers, and proceedings of every such warehouseman shall at all reasonable times be subject to inspection by the department. The warehouseman shall maintain adequate records and systems for the filing and accounting of warehouse receipts, canceled warehouse receipts, scale weight tickets, other documents, and transactions necessary or common to the warehouse industry. Canceled warehouse receipts, copies of scale weight tickets, and other copies of documents evidencing ownership or ownership liability shall be retained by the warehouseman for a period of at least three years from the date of deposit.

(4) Any warehouseman whose principal office or headquarters is located outside the state of Washington shall make available, if requested, during ordinary business hours, at any of their warehouses licensed in the state of Washington, all books, documents, and records for inspection.

(5) Any grain dealer whose principal office or headquarters is located outside the state of Washington shall make available, if requested, all books, documents, and records for inspection during ordinary business hours at any facility located in the state of Washington, or if no facility in the state of Washington, then at a Washington state department of agriculture office or other mutually acceptable place. [1983 c 305 § 46; 1963 c 124 § 34.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.345 Inspections—Notice, when issued—Failure to comply, penalty—Court order—Costs, expenses, attorneys' fees. (1) The department may give written notice to the warehouseman or grain dealer to submit to inspection, and/or furnish required reports, documents, or other requested information, under such conditions and at such time as the department may deem necessary whenever a warehouseman or grain dealer fails to:

(a) Submit his books, papers, or property to lawful inspection or audit;

(b) Submit required reports or documents to the department by their due date; or

(c) Furnish the department with requested information, including but not limited to correction notices.

(2) If the warehouseman or grain dealer fails to comply with the terms of the notice within twenty-four hours from the date of its issuance, or within such further time as the department may allow, the department shall levy a fine of fifty dollars per day from the final date for compliance allowed by this section or the department. In those cases where the failure to comply continues for more than thirty days or where the director determines the failure to comply creates a threat of loss to depositors, the department may, in lieu of levying further fines petition the superior court of the county where the licensee's principal place of business in Washington is located, as shown by the license application, for an order:

(a) Authorizing the department to seize and take possession of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouseman's or grain dealer's business, and the books, papers, records, and property that pertain specifically, exclusively, and directly to that business; and

(b) Enjoining the warehouseman or grain dealer from interfering with the department in the discharge of its duties as required by this chapter.

(3) All necessary costs and expenses, including attorneys' fees, incurred by the department in carrying out the provisions of this section may be recovered at the same time and as part of the action filed under this section. [1987 c 393 § 20; 1983 c 305 § 47.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.350 Remedies of department on discovery of shortage. (1) Whenever it appears that there is evidence after any investigation that a warehouseman has a shortage, the department may levy a fine of one hundred dollars per day until the warehouseman covers the shortage.

(2) In any case where the director determines the shortage creates a substantial or continuing threat of loss to the depositors of the warehouseman, the department may, in lieu of levying a fine or further fines, give notice to the warehouseman to comply with all or any of the following requirements:

(a) Cover the shortage;

(b) Give additional bond as requested by the department;

(c) Submit to such inspection as the department may deem necessary;

(d) Cease accepting further commodities from depositors or selling, encumbering, transporting, or otherwise changing possession, custody, or control of commodities owned by the warehouseman until there is no longer a shortage.

(3) If the warehouseman fails to comply with the terms of the notice provided for in subsection (2) of this section within twenty-four hours from the date of its issuance, or within such further time as the department may allow, the department may petition the superior court of the county where the licensee's principal place of business in Washington is located as shown by the license application, for an order:

(a) Authorizing the department to seize and take possession of all or a portion of special piles and special bins of commodities and all or a portion of commingled commodities in the warehouse or warehouses owned, operated, or controlled by the warehouseman, and of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouseman's warehouse business, and the books, papers, records, and property that pertain specifically, exclusively, and directly to that business; and

(b) Enjoining the warehouseman from interfering with the department in the discharge of its duties as required by this section. [1983 c 305 § 48; 1963 c 124 § 35.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.361 Seizure of commodities or warehouseman's records—Department duties—Warehouseman's remedies—Expenses and attorneys' fees. (1) Whenever the department, pursuant to court order, seizes and takes possession of all or a portion of special piles and special bins of commodities, all or a portion of commingled commodities in a warehouse owned, operated, or controlled by a warehouseman, or books, papers, and

property of any kind used in connection with the conduct of a warehouseman's warehouse business, the department shall:

(a) Give written notice of its action to the surety on the bond of the warehouseman and may notify the holders of record, as shown by the warehouseman's records, of all warehouse receipts or scale weight tickets issued for commodities, to present their warehouse receipt or other evidence of deposits for inspection, or to account for the same. The department may thereupon cause an audit to be made of the affairs of the warehouse, especially with respect to the commodities in which there is an apparent shortage, to determine the amount of the shortage and compute the shortage as to each depositor as shown by the warehouseman's records, if practicable. The department shall notify the warehouseman and the surety on his bond of the approximate amount of the shortage and notify each depositor thereby affected by sending notice to the depositor's last known address as shown by the records of the warehouseman.

(b) Retain possession of the commodities in the warehouse or warehouses, and of the books, papers, and property of the warehouseman, until the warehouseman or the surety on the bond has satisfied the claims of all holders of warehouse receipts or other evidence of deposits, or, in case the shortage exceeds the amount of the bond, the surety on the bond has satisfied the claims pro rata.

(2) At any time within ten days after the department takes possession of any commodities or the books, papers, and property of any warehouse, the warehouseman may serve notice upon the department to appear in the superior court of the county in which the warehouse is located, at a time to be fixed by the court, which shall not be less than five nor more than fifteen days from the date of the service of the notice, and show cause why such commodities, books, papers, and property should not be restored to his possession.

(3) All necessary expenses and attorneys' fees incurred by the department in carrying out the provisions of this section may be recovered in the same action or in a separate civil action brought by the department in the superior court.

(4) As a part of the expenses so incurred, the department is authorized to include the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out the provisions of this section. [1983 c 305 § 49.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.371 Depositor's lien. (1) When a depositor stores a commodity with a warehouseman or sells a commodity to a grain dealer, the depositor has a first priority statutory lien on the commodity or the proceeds therefrom or on commodities owned by the warehouseman or grain dealer if the depositor has written evidence of ownership disclosing a storage obligation or written evidence of sale. The lien arises at the time the title is transferred from the depositor to the warehouseman or grain dealer, or if the commodity is under a storage obligation, the lien arises at the commencement of the storage obligation. The lien terminates when the liability of the warehouseman or grain dealer to the depositor terminates or if the depositor sells his commodity to the warehouseman or grain dealer, then thirty days after the date title passes. If, however, the depositor is tendered payment

by check or draft, then the lien shall not terminate until forty days after the date title passes.

(2) The lien created under this section shall be preferred to any lien or security interest in favor of any creditor of the warehouseman or grain dealer, regardless of whether the creditor's lien or security interest attached to the commodity or proceeds before or after the date on which the depositor's lien attached under subsection (1) of this section.

(3) A depositor who claims a lien under subsection (1) of this section need not file any notice of the lien in order to perfect the lien.

(4) The lien created by subsection (1) of this section is discharged, except as to the proceeds therefrom and except as to commodities owned by the warehouseman or grain dealer, upon sale of the commodity by the warehouseman or grain dealer to a buyer in the ordinary course of business. [1987 c 393 § 21; 1983 c 305 § 50.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.381 Depositors' claims, processing by department. In the event of a failure of a grain dealer or warehouseman, the department may process the claims of depositors possessing written evidence of ownership disclosing a storage obligation or written evidence of a sale of commodities in the following manner:

(1) The department shall give notice and provide a reasonable time to depositors possessing written evidence of ownership disclosing a storage obligation or written evidence of sale of commodities to file their claims with the department.

(2) The department may investigate each claim and determine whether the claimant's commodities are under a storage obligation or whether a sale of the commodities has occurred. The department may, in writing, notify each claimant and the failed grain dealer or warehouseman of the department's determination as to the status and amount of each claimant's claim. A claimant, failed warehouseman, or grain dealer may request a hearing on the department's determination within twenty days of receipt of written notification, and a hearing shall be held in accordance with chapter 34.05 RCW.

(3) The department may inspect and audit the failed warehouseman to determine whether the warehouseman has in his possession sufficient quantities of commodities to cover his storage obligations. In the event of a shortage, the department shall determine each depositor's pro rata share of available commodities and the deficiency shall be considered as a claim of the depositor. Each type of commodity shall be treated separately for [the] purpose of determining shortages.

(4) The department shall determine the amount, if any, due each claimant by the surety and make demand upon the bond in the manner set forth in this chapter. [1983 c 305 § 51.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.391 Depositor's lien—Liquidation procedure. Upon the failure of a grain dealer or warehouseman, the statutory lien created in RCW 22.09.371 shall be liquidated by the department to satisfy the claims of depositors in the following manner:

(1) The department shall take possession of all commodities in the warehouse, including those owned by the warehouseman or grain dealer, and those that are under warehouse receipts or any written evidence of ownership that discloses a storage obligation by a failed warehouseman, including but not limited to scale weight tickets, settlement sheets, and ledger cards. These commodities shall be distributed or sold and the proceeds distributed to satisfy the outstanding warehouse receipts or other written evidences of ownership. If a shortage exists, the department shall distribute the commodities or the proceeds from the sale of the commodities on a prorated basis to the depositors. To the extent the commodities or the proceeds from their sale are inadequate to satisfy the claims of depositors with evidence of storage obligations, the depositors have a first priority lien against any proceeds received from commodities sold while under a storage obligation or against any commodities owned by the failed warehouseman or grain dealer.

(2) Depositors possessing written evidence of the sale of a commodity to the failed warehouseman or grain dealer, including but not limited to scale weight tickets, settlement sheets, deferred price contracts, or similar commodity delivery contracts, who have completed delivery and passed title during a thirty-day period immediately before the failure of the failed warehouseman or grain dealer have a second priority lien against the commodity, the proceeds of the sale, or warehouse-owned or grain dealer-owned commodities. If the commodity, commodity proceeds, or warehouse-owned or grain dealer-owned commodities are insufficient to wholly satisfy the claim of depositors possessing written evidence of the sale of the commodity to the failed warehouseman or grain dealer, each depositor shall receive a pro rata share thereof.

(3) Upon the satisfaction of the claims of depositors qualifying for first or second priority treatment, all other depositors possessing written evidence of the sale of the commodity to the failed warehouseman or grain dealer have a third priority lien against the commodity, the proceeds of the sale, or warehouse-owned or grain dealer-owned commodities. If the commodities, commodity proceeds, or warehouse-owned or grain dealer-owned commodities are insufficient to wholly satisfy these claims, each depositor shall receive a pro rata share thereof.

(4) The director of agriculture may represent depositors whom, under RCW 22.09.381, the director has determined have claims against the failed warehouseman or failed grain dealer in any action brought to enjoin or otherwise contest the distributions made by the director under this section. [1987 c 393 § 22; 1983 c 305 § 52.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.405 Grain indemnity fund program—Activation—In lieu of other security. (1) The provisions of this section and RCW 22.09.416 through 22.09.471 constitute the grain indemnity fund program. RCW 22.09.416 through 22.09.471 shall take effect on a date specified by the director but within ninety days after receipt by the director of a petition seeking implementation of the grain indemnity fund program provided for in this chapter and a determination by the director, following a public hearing on said petition, that a grain indemnity fund program

is in the interest of the agricultural industry of this state. The petition shall be signed by licensees of at least thirty-three percent of the grain warehouses and thirty-three percent of the grain dealers. At least sixty days in advance, the director shall notify each licensed warehouse and grain dealer of the effective date of the grain indemnity fund program provisions.

(2) The grain indemnity fund program, if activated by the director, shall be in lieu of the bonding and security provisions of RCW 22.09.090 and 22.09.095. [1987 c 509 § 7.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.411 Grain indemnity fund program—Fund established—Contents, deposits, disbursements, use. (1) There is hereby established a fund to be known as the grain indemnity fund. The grain indemnity fund shall consist of assessments remitted by licensees pursuant to the provisions of RCW 22.09.416 through 22.09.426.

(2) All assessments shall be paid to the department and shall be deposited in the grain indemnity fund. The state treasurer shall be the custodian of the grain indemnity fund. Disbursements shall be on authorization of the director. No appropriation is required for disbursements from this fund.

(3) The grain indemnity fund shall be used exclusively for purposes of paying claimants pursuant to this chapter, and paying necessary expenses of administering the grain indemnity fund, provided however, that moneys equivalent to one-half of the interest earned by the fund for deposit to the general fund may be paid to the department to defray costs of administering the warehouse audit program. The state of Washington shall not be liable for any claims presented against the fund. [1991 sp.s. c 13 § 67; 1987 c 509 § 8.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.416 Grain indemnity fund program—Assessments. (1) Every licensed warehouse and grain dealer and every applicant for any such license shall pay assessments to the department for deposit in the grain indemnity fund according to the provisions of RCW 22.09.405 through 22.09.471 and rules promulgated by the department to implement this chapter.

(2) The rate of the assessments shall be established by rule, provided however, that no single assessment against a licensed warehouse or grain dealer or applicant for any such license shall exceed five percent of the bond amount that would otherwise have been required of such grain dealer, warehouseman, or license applicant under RCW 22.09.090. [1987 c 509 § 9.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.421 Grain indemnity fund program—Initial assessment—Effect on preceding security—New applicants for warehouse or grain dealer licenses. (1) The department shall establish the initial assessment within sixty days of the activation of the grain indemnity fund program pursuant to RCW 22.09.405. Immediately upon promulgation of the rule, the department shall issue notice to each

licensed warehouse and grain dealer of the assessment owed. The initial assessment and assessments issued thereafter shall be paid within thirty days of the date posted on the assessment notice.

(2) The surety bond or other security posted by a licensed warehouse or grain dealer in effect immediately preceding the effective date of the grain indemnity fund program, shall remain in full force and effect and shall not be released until thirty days after the initial assessment is paid. A certificate of deposit or other security in effect immediately preceding the effective date of the grain indemnity fund program shall remain on deposit until the initial assessment is paid and until such certificate of deposit or other security is released by the department following a prompt determination that no outstanding claims are pending against the security.

(3) Each new applicant for a warehouse or grain dealer license shall pay the assessment imposed pursuant to RCW 22.09.416 at the time of application. No license to operate as a grain dealer or grain warehouse or both shall be issued until such assessment is paid.

Notwithstanding the provisions of RCW 22.09.416(2), new applicants shall pay annual assessments into the grain indemnity fund for an equivalent number of years as those participating at the inception of the grain indemnity fund program and who continue to participate in the grain indemnity fund program. [1987 c 509 § 10.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.426 Grain indemnity fund program—Annual assessments—Limitations. The assessments imposed pursuant to RCW 22.09.416 shall be imposed annually, under rules promulgated by the department, until such time as the grain indemnity fund balance, less any outstanding claims, reaches three million dollars. For any year in which the grain indemnity fund balance, less any outstanding claims, exceeds three million dollars on the annual assessment date, no assessment shall be imposed by the department, except as provided in RCW 22.09.421(3) or 22.09.431. [1987 c 509 § 11.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.431 Grain indemnity fund program—Additional security. The department may, when it has reason to believe that a licensee does not have the ability to pay producers for grain purchased, or when it determines that the licensee does not have a sufficient net worth to outstanding financial obligations ratio, require from the licensee the payment of an additional assessment or, at the department's option, the posting of a bond or other additional security in an amount to be prescribed by rule. The additional assessment or other security may exceed the maximum amount set forth in RCW 22.09.416. Failure of the licensee to timely pay the additional assessment or post the additional bond or other security constitutes grounds for suspension or revocation of a license issued under this chapter. [1987 c 509 § 12.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.436 Grain indemnity fund program—Advisory committee. (1) There is hereby created a grain

indemnity fund advisory committee consisting of six members to be appointed by the director. The director shall make appointments to the committee no later than seven days following the date this section becomes effective pursuant to RCW 22.09.405. Of the initial appointments, three shall be for two-year terms and three shall be for three-year terms. Thereafter, appointments shall be for three-year terms, each term ending on the same day of the same month as did the term preceding it. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of the predecessor's term.

(2) The committee shall be composed of two producers primarily engaged in the production of agricultural commodities, two licensed grain dealers, and two licensed grain warehousemen.

(3) The committee shall meet at such places and times as it shall determine and as often as necessary to discharge the duties imposed upon it. Each committee member shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel and subsistence expense under RCW 43.03.050 and 43.03.060. The expenses of the committee and its operation shall be paid from the grain indemnity fund.

(4) The committee shall have the power and duty to advise the director concerning assessments, administration of the grain indemnity fund, and payment of claims from the fund. [1987 c 509 § 13.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.441 Grain indemnity fund program—Processing of claims. In the event a grain dealer or warehouse fails, as defined in RCW 22.09.011(21), or otherwise fails to comply with the provisions of this chapter or rules promulgated hereunder, the department shall process the claims of depositors producing written evidence of ownership disclosing a storage obligation or written evidence of a sale of commodities for damages caused by the failure, in the following manner:

(1) The department shall give notice and provide a reasonable time, not to exceed thirty days, to depositors possessing written evidence of ownership disclosing a storage obligation or written evidence of sale of commodities to file their written verified claims with the department.

(2) The department may investigate each claim and determine whether the claimant's commodities are under a storage obligation or whether a sale of commodities has occurred. The department shall notify each claimant, the grain warehouseman or grain dealer, and the committee of the department's determination as to the validity and amount of each claimant's claim. A claimant, warehouseman, or grain dealer may request a hearing on the department's determination within twenty days of receipt of written notification and a hearing shall be held by the department pursuant to chapter 34.05 RCW. Upon determining the amount and validity of the claim, the director shall pay the claim from the grain indemnity fund.

(3) The department may inspect and audit a failed warehouseman, as defined by RCW 22.09.011(21) to determine whether the warehouseman has in his possession, sufficient quantities of commodities to cover his storage

obligations. In the event of a shortage, the department shall determine each depositor's pro rata share of available commodities and the deficiency shall be considered as a claim of the depositor. Each type of commodity shall be treated separately for the purpose of determining shortages. [1987 c 509 § 14.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.446 Grain indemnity fund program—Failure to file claim in time. If a depositor or creditor, after notification, refuses or neglects to file in the office of the director his verified claim against a warehouseman or grain dealer as requested by the director within thirty days from the date of the request, the director shall thereupon be relieved of responsibility for taking action with respect to such claim later asserted and no such claim shall be paid from the grain indemnity fund. [1987 c 509 § 15.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.451 Grain indemnity fund program—Payment limitations. Subject to the provisions of RCW 22.09.456 and 22.09.461 and to a maximum payment of seven hundred fifty thousand dollars on all claims against a single licensee, approved claims against a licensed warehouseman or licensed grain dealer shall be paid from the grain indemnity fund in the following amounts:

(1) Approved claims against a licensed warehouseman shall be paid in full;

(2) Approved claims against a licensed grain dealer for payments due within thirty days of transfer of title shall be paid in full for the first twenty-five thousand dollars of the claim. The amount of such a claim in excess of twenty-five thousand dollars shall be paid to the extent of eighty percent;

(3) Approved claims against a licensed grain dealer for payments due between thirty and ninety days of transfer of title shall be paid to the extent of eighty percent;

(4) Approved claims against a licensed grain dealer for payments due after ninety days from transfer of title shall be paid to the extent of seventy-five percent;

(5) In the event that approved claims against a single licensee exceed seven hundred fifty thousand dollars, recovery on those claims shall be prorated. [1987 c 509 § 16.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.456 Grain indemnity fund program—Additional payment limitations. In addition to the payment limitations imposed by RCW 22.09.451, payment of any claim approved before the grain indemnity fund first reaches a balance of one million two hundred fifty thousand dollars, shall be limited to the following amounts:

(1) For claims against a licensed grain warehouse, payment shall not exceed the lesser of seven hundred fifty thousand dollars or an amount equal to the licensee's total bushels of licensed storage space multiplied by the rate of eighteen cents.

(2) For claims against a licensed grain dealer, payment shall not exceed the lesser of seven hundred fifty thousand dollars or an amount equal to six percent of the gross purchases of the licensee during the licensee's immediately preceding fiscal year.

(3) The unpaid balance of any claim subject to this section shall be paid when the grain indemnity fund first reaches a balance of one million two hundred fifty thousand dollars, provided that the total paid on the claim shall not exceed the limits specified in RCW 22.09.451. [1987 c 509 § 17.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.461 Grain indemnity fund program—Payment of claims—Restrictions, priority. The requirement that the state of Washington pay claims under this chapter only exists so long as the grain indemnity fund contains sufficient money to pay the claims. Under no circumstances whatsoever may any funds (other than assessment amounts and other money obtained under this chapter) be used to pay claims. In the event that the amount in the grain indemnity fund is insufficient to pay all approved claims in the amount provided for under RCW 22.09.451 or 22.09.456, the claims shall be paid in the order in which they were filed with the department, until such time as sufficient moneys are available in the grain indemnity fund to pay all of the claims. [1987 c 509 § 18.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.466 Grain indemnity fund program—Debt and obligation of grain dealer or warehouseman—Recovery by director. Amounts paid from the grain indemnity fund in satisfaction of any approved claim shall constitute a debt and obligation of the grain dealer or warehouseman against whom the claim was made. On behalf of the grain indemnity fund, the director may bring suit, file a claim, or intervene in any legal proceeding to recover from the grain dealer or warehouseman the amount of the payment made from the grain indemnity fund, together with costs and attorneys' fees incurred. In instances where the superior court is the appropriate forum for a recovery action, the director may elect to institute the action in the superior court of Thurston county. [1987 c 509 § 19.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.471 Grain indemnity fund program—Proceedings against licensee. The department may deny, suspend, or revoke the license of any grain dealer or warehouseman who fails to timely pay assessments to the grain indemnity fund or against whom a claim has been made, approved, and paid from the grain indemnity fund. Proceedings for the denial, suspension, or revocation shall be subject to the provisions of chapter 34.05 RCW. [1987 c 509 § 20.]

Severability—1987 c 509: See note following RCW 22.09.060.

22.09.520 Deposits as bailments. Whenever any commodity shall be delivered to a warehouse under this chapter, and the scale ticket or warehouse receipt issued therefor provides for the return of a like amount of like kind, grade, and class to the holder thereof, such delivery shall be a bailment and not a sale of the commodity so delivered. In no case shall such commodities be liable to seizure upon process of any court in an action against such bailee, except action by the legal holder of the warehouse receipt to enforce the terms thereof. Such commodities, in the event

of failure or insolvency of such bailee, shall be applied exclusively to the redemption of such outstanding warehouse receipts and scale weight tickets covering commodities so stored with such bailee. The commodities on hand in any warehouse or warehouses with a particular license, as provided in RCW 22.09.030, shall be applied to the redemption and satisfaction of warehouse receipts and scale weight tickets which were issued pursuant to the particular license. Commodities in special piles or special bins shall be applied exclusively against the warehouse receipts or scale weight tickets issued therefor. [1987 c 393 § 23; 1963 c 124 § 52.]

22.09.570 Action on bond by director—Authorized—Grounds. The director may bring action upon the bond of a warehouseman or grain dealer against both principal against whom a claim has been made and the surety in any court of competent jurisdiction to recover the damages caused by any failure to comply with the provisions of this chapter or the rules adopted hereunder. Recovery for damages against a warehouseman or grain dealer on a bond furnished under RCW 22.09.095 shall be limited to the bond amount that would be required for that warehouseman or grain dealer under RCW 22.09.090. [1987 c 509 § 5; 1983 c 305 § 56; 1975 1st ex.s. c 7 § 29.]

Severability—1987 c 509: See note following RCW 22.09.060.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.580 Action on bond by director—Failure of depositor creditor to file claim upon request—Effect. If a depositor creditor after notification fails, refuses, or neglects to file in the office of the director his verified claim against a warehouseman or grain dealer bond as requested by the director within thirty days from the date of the request, the director shall thereupon be relieved of further duty or action under this chapter on behalf of the depositor creditor. [1983 c 305 § 57; 1975 1st ex.s. c 7 § 30.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.590 Action on bond by director—Records as to depositor creditors missing or information incomplete—Effect. Where by reason of the absence of records or other circumstances making it impossible or unreasonable for the director to ascertain the names and addresses of all the depositor creditors, the director after exerting due diligence and making reasonable inquiry to secure that information from all reasonable and available sources, may make demand on a warehouseman's or grain dealer's bond on the basis of information then in his possession, and thereafter shall not be liable or responsible for claims or the handling of claims that may subsequently appear or be discovered. [1983 c 305 § 58; 1975 1st ex.s. c 7 § 31.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.600 Action on bond by director—Powers of director. Upon ascertaining all claims and statements in the manner set forth in this chapter, the director may then make demand upon the warehouseman's or grain dealer's bond on behalf of those claimants whose claims and statements have been filed, and has the power to settle or compromise the claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and

discharge of the bond involved. [1983 c 305 § 59; 1975 1st ex.s. c 7 § 32.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.610 Action on bond by director—When authorized—New bond, when required—Penalty for failure to file. Upon the refusal of the surety company to pay the demand, the director may thereupon bring an action on the warehouseman's or grain dealer's bond in behalf of the depositor creditors. Upon any action being commenced on the bond, the director may require the filing of a new bond, and immediately upon the recovery in any action on the bond, a new bond shall be filed. The failure to file the new bond or otherwise satisfy the security requirements of this chapter within ten days in either case constitutes grounds for the suspension or revocation of the license of any principal on the bond. [1987 c 509 § 6; 1983 c 305 § 60; 1975 1st ex.s. c 7 § 33.]

Severability—1987 c 509: See note following RCW 22.09.060.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.615 Action by depositor upon licensee's bond. (1) If no action is commenced under RCW 22.09.570 within thirty days after written demand to the department, any depositor injured by the failure of a licensee to comply with the condition of his bond has a right of action upon the licensee's bond for the recovery of his damages. The depositor shall give the department immediate written notice of the commencement of any such action.

(2) Recovery under the bond shall be prorated when the claims exceed the liability under the bond.

(3) Whenever the claimed shortage exceeds the amount of the bond, it is not necessary for any depositor suing on the bond to join other depositors in the suit, and the burden of establishing proration is on the surety as a matter of defense. [1983 c 305 § 53; 1963 c 124 § 37. Formerly RCW 22.09.370.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.620 Payment for agricultural commodities purchased—Time requirements. Every warehouseman or grain dealer must pay for agricultural commodities purchased by him at the time and in the manner specified in the contract with the depositor, but if no time is set by the contract, then within thirty days after taking possession for purpose of sale or taking title of the agricultural product. [1983 c 305 § 62; 1975 1st ex.s. c 7 § 34.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.630 Payment violations—Recovery by department—Charges to depositors. When a violation has occurred which results in improper payment or nonpayment and a claim is made to the department and the payment is secured through the actions of the department the following charges will be made to the depositor for the action of the department in the matter:

(1) When reported within thirty days from time of default, no charge.

(2) When reported thirty days to one hundred eighty days from time of default, five percent.

(3) When reported after one hundred eighty days from time of default, ten percent. [1975 1st ex.s. c 7 § 35.]

22.09.640 Publication and distribution of list of licensed warehouses. Notwithstanding the provisions of chapter 42.17 RCW, the department shall publish annually and distribute to interested parties, a list of licensed warehouses showing the location, county, capacity, and bond coverage for each company. [1979 ex.s. c 238 § 25.]

22.09.650 Remedies of department as to stations. When a station is licensed pursuant to this chapter, the department may assert any and all the remedies provided for in this chapter, including but not limited to those remedies provided for in RCW 22.09.350. Furthermore, if inspection of that portion of the station located in the contiguous state is refused by the licensee, the department may give notice to the licensee to submit to such inspection as the department may deem necessary.

If the station refuses to comply with the terms of the notice within twenty-four hours, the director may summarily suspend the station's license pending a hearing in compliance with chapter 34.05 RCW. [1983 c 305 § 63; 1979 ex.s. c 238 § 26.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.660 Emergency storage situation—Forwarding to other warehouses. Upon determining that an emergency storage situation appears to exist, the director may authorize the warehouseman to forward grain that is covered by negotiable receipts to other licensed warehouses for storage without canceling and reissuing the negotiable receipts for not more than thirty days pursuant to conditions established by rule. [1983 c 305 § 64.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.710 Designation of inspection points and terminal warehouses. The department may designate a warehouse located at an inspection point as a terminal warehouse. The department shall, by rule, designate inspection points which shall be provided with state/federal inspection and weighing services commencing July 1, 1979. The revenue from inspection and weighing shall equal the cost of providing such services. Where the department after hearing determines that such cities are no longer necessary as inspection points it may by rule change such designated inspection points by removing one or more locations. [1979 ex.s. c 238 § 21; 1963 c 124 § 38. Formerly RCW 22.09.380.]

22.09.720 Grades and standards of commodities—Regulations. The grades and standards established by the United States department of agriculture as of September 30, 1988, for all commodities included within the provisions of this chapter are hereby adopted as the grades and standards for such commodities in this state: PROVIDED, That the department is hereby authorized to adopt by regulation any new or future amendments to such federal grades and standards. The department is also authorized to issue regulations whether or not in accordance with the federal

government and to prescribe therein grades and standards which it may deem suitable for inspection of commodities in the state of Washington. In adopting any new or amendatory regulations the department shall give appropriate consideration, among other relevant factors, to the following:

- (1) The usefulness of uniform federal and state grades;
- (2) The common classifications given such commodities within the industry;
- (3) The utility of various grades;
- (4) The kind and type of grades requested by those dealing with the particular type of commodity; and
- (5) The condition of the commodity with regard to its wholesomeness and purity. [1989 c 354 § 47; 1963 c 124 § 39. Formerly RCW 22.09.390.]

Severability—1989 c 354: See note following RCW 15.36.012.

22.09.730 Inspection or grading of commodities—Methods. Inspection or grading of a lot, partial lot, or sample of a commodity tendered for inspection or grading under this chapter shall consist of taking and examining a representative sample thereof and making such tests as are necessary to determine its grade, condition, or other qualitative measurement. Commodities tendered for inspection must be offered and made accessible for sampling at inspection points during customary business hours.

(1) No inspector shall issue a certificate of grade, grading factors, condition, or other qualitative measurement for any commodity unless the inspection or grading thereof be based upon a correct and representative sample of the commodity and the inspection is made under conditions which permit the determination of its true grade or quality, except as provided in subsections (2) and (3) of this section. No sample shall be deemed to be representative unless it is of the size and procured in accordance with the uniform methods prescribed by the department.

(2) An inspection may be made of a submitted sample of a commodity, provided that the certificate issued in such case clearly shows that the inspection or grading covers only the submitted sample of such commodity and not the lot from which it is purportedly drawn.

(3) When commodities are tendered for inspection in such a manner as to make the drawing of a representative sample impossible, a qualified inspection may be made. In such case, the certificate shall clearly show the condition preventing proper sampling such as heavily loaded car, truck, barge, or other container, or other condition. [1989 c 354 § 48; 1963 c 124 § 40. Formerly RCW 22.09.400.]

Severability—1989 c 354: See note following RCW 15.36.012.

22.09.740 Inspection or grading of commodities—File samples, retention. From all commodities inspected, samples may be drawn, which samples, unless returned by agreement to the applicant, shall become the property of the state and subject to disposition by the department. Upon request the department may transmit a portion of such samples to interested parties upon payment of a reasonable fee set by regulation. Official state file samples shall be retained for periods prescribed by state or federal regulation. [1989 c 354 § 49; 1963 c 124 § 41. Formerly RCW 22.09.410.]

Severability—1989 c 354: See note following RCW 15.36.012.

22.09.750 Inspection or grading of commodities—Powers and duties of inspectors at terminal warehouses—Recordkeeping. The department's inspectors shall, at terminal warehouses, have exclusive control of the weighing, inspecting, and grading of the commodities that are included within the provisions of this chapter: PROVIDED, That official supervision of weighing under the United States grain standards act shall be deemed in compliance with this section. The action and the certificates of the inspectors in the discharge of their duties, as to all commodities inspected or weighed by them, shall be accepted as prima facie evidence of the correctness of the above activity. Suitable books and records shall be maintained in which shall be entered a record of each inspection activity and the fees assessed and collected. These books and records shall be available for inspection by any party of interest during customary business hours. The records shall be maintained for periods set by regulation. [1989 c 354 § 50; 1983 c 305 § 54; 1963 c 124 § 42. Formerly RCW 22.09.420.]

Severability—1989 c 354: See note following RCW 15.36.012.

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.760 Inspection or grading of commodities—No inspection if commodity is to be loaded into defective container. No inspection shall be made of any commodity which is to be loaded into a vessel, vehicle, or other container, if it appears that the hold, compartment, or other enclosure into which the commodity is to be loaded is in such condition as to contaminate the commodity or lower the grade. [1963 c 124 § 43. Formerly RCW 22.09.430.]

22.09.770 Inspection or grading of commodities—Unlawful practices—Penalty. Any department employee who shall, directly or indirectly, accept any money or other consideration for any neglect of duty or any improper performance of duty as such department employee; or any person who shall knowingly cause or attempt to cause the issuance of a false or incorrect grade or weight certificate under this chapter by deceptive loading, handling, or sampling of commodities or by submitting commodities for inspection knowing that it has been so loaded, handled, or sampled, or by any other means; shall be deemed guilty of a misdemeanor. [1963 c 124 § 44. Formerly RCW 22.09.440.]

22.09.780 Inspection or grading of commodities. (1) In case any owner, consignee, or shipper of any commodity included under the provisions of this chapter, or his agent or broker, or any warehouseman shall be aggrieved at the grading of such commodity, the person may request a reinspection or appeal inspection within three business days from the date of certificate. The reinspection or appeal may be based in the official file sample or upon a new sample drawn from the lot of the grain or commodity if the lot remains intact and available for sampling. The reinspection or appeal inspection shall be of the same factors and scope as the original inspection.

(2) For commodities inspected under federal standards, the reinspection and appeal inspection procedure provided in the applicable federal regulations shall apply. For commodities inspected under state standards, the department shall

provide a minimum of a reinspection and appeal inspection service. The reinspection shall consist of a full review of all relevant information and a reexamination of the commodity to determine the correctness of the grade assigned or other determination. The reinspection shall be performed by an authorized inspector of the department other than the inspector who performed the original inspection unless no other inspector is available. An appeal inspection shall be performed by a supervisory inspector.

(3) If the grading of any commodity for which federal standards have been fixed and the same adopted as official state standards has not been the subject of a hearing, in accordance with subsection (2) of this section, any interested party who is aggrieved with the grading of such commodity, may, with the approval of the secretary of the United States department of agriculture, appeal to the federal grain supervisor of the supervision district in which the state of Washington may be located. Such federal grain supervisor shall confer with the department inspectors and any other interested party and shall make such tests as he may deem necessary to determine the correct grade of the commodity in question. Such federal grade certificate shall be prima facie evidence of the correct grade of the commodity in any court in the state of Washington. [1989 c 354 § 51; 1963 c 124 § 45. Formerly RCW 22.09.450.]

Severability—1989 c 354: See note following RCW 15.36.012.

22.09.790 Inspection or grading of commodities—Fees and charges. (1) The department shall fix the fees for inspection, grading, and weighing of the commodities included under the provisions of this chapter, which fees shall be sufficient to cover the cost of such service. The fees for inspection, weighing, and grading of such commodities shall be a lien upon the commodity so weighed, graded, or inspected which the department may require to be paid by the carrier or agent transporting the same and treated by it as an advanced charge, except when the bill of lading contains the notation "not for terminal weight and grade," and the commodity is not unloaded at a terminal warehouse.

(2) The department is authorized to make any tests relating to grade or quality of commodities covered by this chapter. The department may inspect and approve facilities and vessels to be used in transporting such commodities and provide any other necessary services. It may fix and charge a reasonable fee to be collected from the person or his agent requesting such service.

(3) The department shall so adjust the fees to be collected under this chapter as to meet the expenses necessary to carry out the provisions hereof, and may prescribe a different scale of fees for different localities. The department may also prescribe a reasonable charge for service performed at places other than terminal warehouses in addition to the regular fees when necessary to avoid rendering the services at a loss to the state. [1963 c 124 § 46. Formerly RCW 22.09.460.]

22.09.800 Inspection or grading of commodities—Scales and weighing. If any terminal warehouse at inspection points is provided with proper scales and weighing facilities, the department may weigh the commodity upon the scales so provided. The department at least once each year

shall cause to be examined, tested, and corrected, all scales used in weighing commodities in any of the cities designated as inspection points in this chapter or such places as may be hereinafter designated, and after such scale is tested, if found to be correct and in good condition, to seal the weights with a seal provided for that purpose and issue to the owner or proprietor a certificate authorizing the use of such scales for weighing commodities for the ensuing year, unless sooner revoked by the department. If such scales be found to be inaccurate or unfit for use, the department shall notify the party operating or using them, and the party thus notified shall, at his own expense, thoroughly repair the same before attempting to use them and until thus repaired or modified to the satisfaction of the department the certificate of such party shall be suspended or revoked at the discretion of the department. The party receiving such certificate shall pay to the department a reasonable fee for such inspection and certificate to be fixed by the department. It shall be the duty of the department to see that the provisions of this section are strictly enforced. [1963 c 124 § 47. Formerly RCW 22.09.470.]

22.09.810 Inspection or grading of commodities—Inspection of commodities shipped to or from places other than inspection points. In case any commodity under the provisions of this chapter is sold for delivery on Washington grade to be shipped to or from places not provided with state inspection under this chapter, the buyer, seller, or persons making delivery may have it inspected by notifying the department or its inspectors, whose duty it shall be to have such commodity inspected, and after it is inspected, to issue to the buyer, seller, or person delivering it, without undue delay, a certificate showing the grade of such commodity. The person or persons, or his agent, calling for such inspection shall pay for such inspection a reasonable fee to be fixed by the department. [1963 c 124 § 48. Formerly RCW 22.09.480.]

22.09.820 Inspection or grading of commodities—Unloading commodity without inspection or weighing. When commodities are shipped to points where inspection is provided and the bill of lading does not contain the notation "not for terminal weight and grade" and the commodity is unloaded by or on account of the consignee or his assignee without being inspected or weighed by a duly authorized inspector under the provisions of this chapter, the shipper's weight and grade shall be conclusive and final and shall be the weight and grade upon which settlement shall be made with the seller, and the consignee or his assignee, by whom such commodities are so unlawfully unloaded shall be liable to the seller thereof for liquidated damages in an amount equal to ten percent of the sale price of such commodities computed on the basis of the shipper's weight and grade. [1963 c 124 § 49. Formerly RCW 22.09.490.]

22.09.830 Grain inspection revolving fund—Hop inspection fund—Grain warehouse audit account. (1) All moneys collected as fees for weighing, grading, and inspecting commodities and all other fees collected under the provisions of this chapter, except as provided in subsections (2) and (3) of this section, shall be deposited in the grain

inspection revolving fund, which is hereby established. The state treasurer is the custodian of the revolving fund. Disbursements from the revolving fund shall be on authorization of the director of the department of agriculture. The revolving fund is subject to the allotment procedure provided in chapter 43.88 RCW, but no appropriation is required for disbursements from the fund. The fund shall be used for all expenses directly incurred by the grain inspection program in carrying out the provisions of this chapter and for departmental administrative expenses during the 1993-95 biennium. The department may use so much of such fund not exceeding five percent thereof as the director of agriculture may determine necessary for research and promotional work, including rate studies, relating to wheat and wheat products.

(2) All fees collected for the inspection, grading, and testing of hops shall be deposited into the hop inspection fund, which is hereby established, and shall be retained by the department for the purpose of inspecting, grading, and testing hops. Any moneys in any fund retained by the department on July 1, 1963, and derived from hop inspection and grading shall be deposited to this hop inspection fund. For the purposes of research which would contribute to the development of superior hop varieties and to improve hop production and harvest practices, the department may expend up to twenty percent of the moneys deposited in the hop inspection fund during the fiscal year ending June 30th immediately preceding the year in which such expenditures are to be made. No expenditures shall be made under the provisions of this subsection when the hop inspection fund is, or the director may reasonably anticipate that it will be, reduced below twenty thousand dollars as the result of such expenditure or other necessary expenditures made to carry out the inspection, grading, and testing of hops.

(3) All moneys collected by the grain warehouse audit program, including grain warehouse license fees pursuant to RCW 22.09.050 and 22.09.055, shall be deposited by the director into the grain warehouse audit account, hereby created within the agricultural local fund established in RCW 43.23.230. Moneys collected shall be used to support the grain warehouse audit program. [1994 sp.s. c 6 § 901; 1994 c 46 § 6; 1989 c 354 § 52; 1981 c 297 § 25; 1963 c 124 § 50. Formerly RCW 22.09.500.]

Reviser's note: This section was amended by 1994 c 46 § 6 and by 1994 sp.s. c 6 § 901, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—1994 sp.s. c 6: See notes following RCW 28A.310.020.

Effective date—1994 c 46: See note following RCW 15.58.070.

Severability—1989 c 354: See note following RCW 15.36.012.

Severability—1981 c 297: See note following RCW 15.36.201.

22.09.840 Fumigated conveyances to be labeled. It shall be unlawful to ship commodities in closed conveyances which have been fumigated without labeling such railroad car, vehicle, or other conveyance to show that it has been fumigated. The label shall show the type of fumigant used and the date of application. [1963 c 124 § 53. Formerly RCW 22.09.530.]

22.09.850 Railroads to provide side tracks and track scales—Weighing of cars. Any railroad delivering commodities covered by this chapter in cars at designated inspection points shall provide convenient and suitable side tracks at such places as the department may approve. All cars billed for inspection shall be placed on such side tracks and the department shall be notified by the railroad in accordance with department regulations. Such railroad company shall provide suitable track scales for weighing cars of commodities upon the request of interested persons. Upon request, the department may weigh, or supervise the weighing of all cars of commodities received over the line of such railroad. Such weighing shall be conditioned upon the weighing of such cars after unloading to determine the actual weight of commodities delivered. [1963 c 124 § 28. Formerly RCW 22.09.280.]

22.09.860 Police protection of terminal yards and tracks. All railroad companies and warehousemen operating in the cities provided for inspection by this chapter shall furnish ample and sufficient police protection to all their several terminal yards and terminal tracks to securely protect all cars containing commodities while the same are in their possession. They shall prohibit and restrain all unauthorized persons, whether under the guise of sweepers, or under any other pretext whatever, from entering or loitering in or about their railroad yards or tracks and from entering any car of commodities under their control, or removing commodities therefrom, and shall employ and detail such number of watchmen as may be necessary for the purpose of carrying out the provisions of this section. [1963 c 124 § 27. Formerly RCW 22.09.270.]

22.09.870 Injunctions. The director may bring an action in the name of the state to temporarily and/or permanently enjoin the violation of any provision of this chapter or any rule adopted pursuant to this chapter in the superior court in the county in which such violation occurs notwithstanding the existence of any other remedy at law. [1963 c 124 § 54. Formerly RCW 22.09.540.]

22.09.880 Cooperation with governmental agencies and private associations. The director may cooperate with and enter into agreements with governmental agencies of this state, other states, agencies of the federal government, and private associations in order to carry out the purpose and provisions of this chapter and the United States Warehouse Act (7 USCA § 241 et seq.) and the United States Grain Standards Act, as amended (7 USCA § 71, et seq.). Notwithstanding any other provision of this chapter such agreements may also relate to a joint program for licensing, bonding, and inspecting stations. Such a program should be designed to avoid duplication of effort on the part of the licensing authority and requirements for operation, and promote more efficient enforcement of the provisions of this chapter and comparable provisions of the law of the states of Idaho or Oregon. [1983 c 305 § 55; 1979 ex.s. c 238 § 22; 1963 c 124 § 55. Formerly RCW 22.09.550.]

Severability—1983 c 305: See note following RCW 20.01.010.

22.09.890 General penalty. A violation of any provision or section of this chapter, where no other penalty is provided for, and the violation of any rule or regulation adopted hereunder shall constitute a misdemeanor. [1963 c 124 § 58. Formerly RCW 22.09.560.]

22.09.895 Civil penalty. Every person who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the director, in an amount of not more than one thousand dollars for every such violation. Each and every violation shall be a separate and distinct offense. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this chapter and may be subject to the penalty provided for in this section. [1987 c 393 § 24.]

22.09.900 Continuation of rules adopted pursuant to repealed chapter. The repeal of chapter 22.08 RCW and the enactment of this chapter shall not be deemed to have repealed any rules adopted under the provisions of chapter 22.08 RCW and in effect immediately prior to such repeal and not inconsistent with the provisions of this chapter. For the purpose of this chapter it shall be deemed that such rules have been adopted under the provisions of this chapter pursuant to the provisions of chapter 34.05 RCW concerning the adoption of rules. [1963 c 124 § 56.]

22.09.910 Savings—1963 c 124. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1963. [1963 c 124 § 57.]

22.09.920 Construction as to Article 7 of Title 62A RCW. Nothing in this chapter, with the exception of RCW 22.09.290(1)(b), shall be deemed to repeal, amend, or modify Article 7 of Title 62A RCW. [1979 ex.s. c 238 § 23; 1963 c 124 § 59.]

22.09.930 Effective date—1963 c 124. The effective date of this chapter shall be July 1, 1963. [1963 c 124 § 60.]

22.09.940 Severability—1963 c 124. If any section, sentence, clause, or part of this chapter is for any reason held to be unconstitutional, such decision shall not affect the remaining portions of this chapter. The legislature hereby declares that it would have passed this chapter and each section, sentence, clause, and part thereof despite the fact that one or more sections, clauses, sentences, or parts thereof be declared unconstitutional. [1963 c 124 § 61.]

22.09.941 Severability—1979 ex.s. c 238. See note following RCW 15.44.010.

Chapter 22.16

WAREHOUSES AND ELEVATORS—EMINENT DOMAIN

Sections

- 22.16.010 Right of eminent domain extended.
 22.16.020 Right of entry.
 22.16.030 Extent of appropriation.
 22.16.040 Limitations on right—Finding of public necessity.

Reviser's note: The term "director of the department of agriculture" has been substituted for "public service commission" in this chapter since the powers and duties of the commission devolved upon the director of agriculture by virtue of 1921 c 7 § 90, 1921 c 137 §§ 1, 2, 1921 c 145 § 8, and 1937 c 90 § 10.

22.16.010 Right of eminent domain extended. The right of eminent domain is hereby extended to corporations incorporated or that may hereafter be incorporated under the laws of this state, or of any other state or territory and qualified to transact business in this state for the purpose of acquiring, owning or operating public warehouses or elevators for storing and handling grain, produce and other agricultural commodities which may desire to secure warehouse or elevator sites or rights of way for roadways leading to and from the same or for wharves or boat landings on navigable waters and all other purposes incident to and connected with the business conducted by such warehouse or elevator. [1919 c 98 § 1; RRS § 11566.]

22.16.020 Right of entry. Every corporation incorporated or that may hereafter be incorporated under the laws of this state or of any other state or territory, and qualified to transact business in this state for the purpose of acquiring, owning or operating public warehouses or elevators for storing and handling grain, produce and other agricultural commodities which may desire to erect and operate any such public warehouse or elevator, or to erect and operate tramways or cable tramways for the purpose of carrying, conveying or transporting such grain, produce or commodities to or from such warehouse or elevator or to acquire rights of way for roadways to and from such warehouse or elevator or to acquire boat landing or wharving facilities in connection with such warehouse or elevator shall have the right to enter upon any lands proposed to be used for any such purpose for the purpose of examining, locating and surveying the lines and boundaries thereof, doing no unnecessary damage thereby. [1919 c 98 § 2; RRS § 11567.]

22.16.030 Extent of appropriation. Every such corporation shall have the right to appropriate real estate and other property for any or all of the said purposes and under the same procedure as now is or may be hereafter provided by law, in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain. [1919 c 98 § 3; RRS § 11568.]

22.16.040 Limitations on right—Finding of public necessity. The right hereby granted shall not be exercised within the limits of any regularly organized port district, nor against the right of way of any railroad company within the yard limits thereof, nor unless and until the director of the department of agriculture after a full hearing shall have

determined that existing facilities are inadequate and that a public necessity exists for the construction of additional facilities and shall specify what additional facilities are necessary and shall have further determined that the facilities contemplated to be established will be a public benefit. Such hearing shall be initiated and conducted in accordance with the statutes, rules and regulations relating to public hearings before the director. [1919 c 98 § 4; RRS § 11569.]

Chapter 22.28

SAFE DEPOSIT COMPANIES

Sections

- 22.28.010 Definitions.
 22.28.020 Safe deposit company a warehouseman.
 22.28.030 Exercise of due care required.
 22.28.040 Procedure when rent is unpaid.
 22.28.060 Destruction of paper contents—Other remedies available.

Disposition of unclaimed property in safe deposit box: RCW 63.29.160.

Financial institutions as bailee: RCW 30.08.140, 32.08.140, 33.12.010.

Trust receipts: Articles 62A.1, 62A.9 RCW.

22.28.010 Definitions. The term safe deposit company as used in RCW 22.28.010 through 22.28.060 shall be construed to extend to and include all banks, trust companies and other corporations organized under the laws of the state of Washington or of the United States of America, and doing business in the state of Washington; which are empowered by law to let vaults, safes or other receptacles upon the premises occupied by such bank, trust company or corporation. [1923 c 186 § 1; RRS § 3382.]

22.28.020 Safe deposit company a warehouseman. Whenever any safe deposit company shall take or receive as bailee for hire and for safekeeping or storage any jewelry, plate, money, specie, bullion, stocks, bonds, mortgages, securities, or valuable paper of any kind, or other valuable personal property, and shall have issued a receipt therefor, it shall be deemed to be a warehouseman as to such property and the provisions of Article 7 of the Uniform Commercial Code, Title 62A RCW, shall apply to such deposit, or to the proceeds thereof, to the same extent and with the same effect, and be enforceable in the same manner as is now provided with reference to warehousemen in said act. [1983 c 3 § 26; 1923 c 186 § 2; RRS § 3383.]

22.28.030 Exercise of due care required. Whenever any safe deposit company shall let or lease any vault, safe, box or other receptacle for the keeping or storage of personal property such safe deposit company shall be bound to exercise due care to prevent the opening of such vault, safe, box or receptacle by any person other than the lessee thereof, or his or her duly authorized agent, and said parties may provide in writing the terms, conditions and liabilities in said lease. [1923 c 186 § 3; RRS § 3384.]

22.28.040 Procedure when rent is unpaid. If the amount due for the rental of any safe or box in the vaults of any safe deposit company shall not have been paid for one year, it may, at the expiration thereof, send to the person in whose name such safe or box stands on its books a notice in

writing in securely closed, postpaid and certified mail, return receipt requested, directed to such person at his post office address, as recorded upon the books of the safe deposit company, notifying such person that if the amount due for the rental of such safe or box is not paid within thirty days from date, the safe deposit company will then cause such safe or box to be opened, and the contents thereof to be inventoried, sealed, and placed in one of its general safes or boxes.

Upon the expiration of thirty days from the date of mailing such notice, and the failure of the person in whose name the safe or box stands on the books of the company to pay the amount due for the rental thereof to the date of notice, the corporation may, in the presence of two officers of the corporation, cause such safe or box to be opened, and the contents thereof, if any, to be removed, inventoried and sealed in a package, upon which the officers shall distinctly mark the name of the person in whose name the safe or box stood on the books of the company, and the date of removal of the property, and when such package has been so marked for identification by the officers, it shall be placed in one of the general safes or boxes of the company at a rental not to exceed the original rental of the safe or box which was opened, and shall remain in such general safe or box for a period of not less than one year, unless sooner removed by the owner thereof, and two officers of the corporation shall thereupon file with the company a certificate which shall fully set out the date of the opening of such safe or box, the name of the person in whose name it stood and a reasonable description of the contents, if any.

A copy of such certificate shall within ten days thereafter be mailed to the person in whose name the safe or box so opened stood on the books of the company, at his last known post office address, in securely closed, postpaid and certified mail, return receipt requested, together with a notice that the contents will be kept, at the expense of such person, in a general safe or box in the vaults of the company, for a period of not less than one year. At any time after the mailing of such certificate and notice, and before the expiration of one year, such person may require the delivery of the contents of the safe as shown by said certificate, upon the payment of all rentals due at the time of opening of the safe or box, the cost of opening the box, and the payment of all further charges accrued during the period the contents remained in the general safe or box of the company.

The company may sell all the property or articles of value set out in said certificate, at public auction, provided a notice of the time and place of sale has been published once within ten days prior to the sale in a newspaper published in the county where the contents of the safe or box [is] located and where the holder chooses to conduct the sale. If the holder chooses not to sell the contents at public sale, the contents shall be delivered to the department of revenue as unclaimed property.

From the proceeds of the sale, the company shall deduct amounts which shall then be due for rental up to the time of opening the safe, the cost of opening thereof, and the further cost of safekeeping all of its contents for the period since the safe or box was opened, plus any additional charges accruing to the time of sale, including advertising and cost of sale. The balance, if any, of such proceeds, together with any unsold property, shall be deposited by the company within

thirty days after the receipt of the same, with the department of revenue as unclaimed property. The company shall file with such deposit a certificate stating the name and last known place of residence of the owner of the property sold, the articles sold, the price obtained therefor, and showing that the notices herein required were duly mailed and that the sale was advertised as required herein. [1983 c 289 § 1; 1923 c 186 § 4; RRS § 3385. Formerly RCW 22.08.050, 22.28.040.]

22.28.060 Destruction of paper contents—Other remedies available. Whenever the contents of any such safe or box, so opened, shall consist either wholly or in part, of documents or letters or other papers of a private nature, such documents, letters, or papers shall not be sold, but shall be deposited with the department of revenue as unclaimed property unless sooner claimed by the owner. The department may hold or destroy documents or letters or other papers, and the holder shall not be held liable to any person or persons whatsoever for the destruction of papers or other contents which the department declines to accept.

The provision of this section shall not preclude any other remedy by action or otherwise now existing for the enforcement of the claims of a corporation against the person in whose name such safe or box stood, nor bar the right of a safe deposit company to recover so much of the debt due it as shall not be paid by the proceeds of the sale of the property deposited with it. The sale or disposition of property in accordance with this chapter shall discharge the holder of all liability to the owner for such sale or disposition, irrespective of whether a better price could have been obtained by a sale at a different time or in a different method from that selected by the holder. [1983 c 289 § 2; 1923 c 186 § 5; RRS § 3386. Formerly RCW 22.28.060, 22.28.070.]

Chapter 22.32

GENERAL PENALTIES

Sections

- 22.32.010 Warehouseman or carrier refusing to issue receipt.
- 22.32.020 Fictitious bill of lading and receipt.
- 22.32.030 Fraudulent tampering with or mixing goods.
- 22.32.040 Issuance of second receipt not marked "duplicate."
- 22.32.050 Delivery of goods without taking up receipt.

Crimes relating to corporations: Chapter 9.24 RCW.

Warehouse receipts, bills of lading, and other documents of title—Uniform commercial code: Article 62A.7 RCW.

22.32.010 Warehouseman or carrier refusing to issue receipt. Every person or corporation, and every officer, agent and employee thereof, receiving any goods, wares or merchandise, for sale or on commission, for storage, carriage or forwarding, who, having an opportunity to inspect the same, shall fail or refuse to deliver to the owner thereof a receipt duly signed, bearing the date of issuance, describing the goods, wares or merchandise received and the quantity, quality and condition thereof, and specifying the terms and conditions upon which they are received, shall be guilty of a misdemeanor. [1909 c 249 § 391; RRS § 2643.]

22.32.020 Fictitious bill of lading and receipt.

Every person or corporation engaged wholly or in part in the business of a common carrier or warehouseman, and every officer, agent or employee thereof, who shall issue any bill of lading, receipt or other voucher by which it shall appear that any goods, wares or merchandise have been received by such carrier or warehouseman, unless the same have been so received and shall be at the time actually under his control, or who shall issue any bill of lading, receipt or voucher containing any false statement concerning any material matter, shall be guilty of a gross misdemeanor. But no person shall be convicted under this section for the reason that the contents of any barrel, box, case, cask or other closed vessel or package mentioned in the bill of lading, receipt or voucher did not correspond with the description thereof in such instrument, if such description corresponds substantially with the mark on the outside of such barrel, box, case, cask, vessel or package, unless it appears that the defendant knew that such marks were untrue. [1909 c 249 § 392; RRS § 2644. Prior: 1891 c 69 § 7; Code 1881 § 836; 1873 p 193 § 62; 1854 p 85 § 56.]

22.32.030 Fraudulent tampering with or mixing goods. Every person mentioned in RCW 22.32.020, who shall fraudulently mix or tamper with any goods, wares or merchandise under his control, shall be guilty of a gross misdemeanor. [1909 c 249 § 393; RRS § 2645.]

Reviser's note: Caption for 1909 c 249 § 393 reads as follows: "SEC. 393. WAREHOUSEMAN FRAUDULENTLY MIXING GOODS."

22.32.040 Issuance of second receipt not marked "duplicate." Every person mentioned in RCW 22.32.020, who shall issue any second or duplicate receipt or voucher of the kind specified in said section, while a former receipt or voucher for the goods, wares or merchandise specified in such second receipt is outstanding and uncanceled, without writing across the face of the same the word "Duplicate," in a plain and legible manner, shall be guilty of a misdemeanor. [1909 c 249 § 394; RRS § 2646.]

Reviser's note: Caption for 1909 c 249 § 394 reads as follows: "SEC. 394. DUPLICATE RECEIPT."

22.32.050 Delivery of goods without taking up receipt. Each person mentioned in RCW 22.32.020 who shall deliver to another any goods, wares or merchandise for which a bill of lading, receipt or voucher has been issued, unless such bill of lading, receipt or voucher is surrendered and canceled or a lawful and sufficient bond or undertaking is given therefor at the time of such delivery, or unless, in case of a partial delivery, a memorandum thereof is endorsed upon such bill of lading, receipt or voucher, shall be guilty of a misdemeanor. [1909 c 249 § 395; RRS § 2647.]

Reviser's note: Caption for 1909 c 249 § 395 reads as follows: "SEC. 395. BILL OF LADING OR RECEIPT MUST BE CANCELED ON REDELIVERY OF PROPERTY."

Title 23

CORPORATIONS AND ASSOCIATIONS (PROFIT)

(Business Corporation Act: See Title 23B RCW)

Chapters	
23.72	Miscellaneous—Preferences by insolvent corporations.
23.78	Employee cooperative corporations.
23.86	Cooperative associations.
23.90	Massachusetts trusts.
<i>Reviser's note: See Title 23B RCW for the Washington Business Corporation Act.</i>	
<i>Acknowledgment form, corporations: RCW 64.08.070.</i>	
<i>Acquisition of corporate stock by another corporation to lessen competition declared unlawful—Exceptions—Judicial order to divest: RCW 19.86.060.</i>	
<i>Actions by and against public corporations: RCW 4.08.110, 4.08.120.</i>	
<i>Constitutional provisions, generally: State Constitution Art. 12.</i>	
<i>Consumer loan act: Chapter 31.04 RCW.</i>	
<i>Corporations for educational, social, religious, fraternal, etc., purposes: Title 24 RCW.</i>	
<i>Crimes relating to corporations: Chapter 9.24 RCW.</i>	
<i>Criminal procedure: RCW 10.01.070 through 10.01.100.</i>	
<i>Dentistry, practice or solicitation prohibited: RCW 18.32.675.</i>	
<i>Doing business without license, gross misdemeanor: RCW 9.24.040.</i>	
<i>Eminent domain by corporations: Chapter 8.20 RCW.</i>	
<i>Legal services, advertising of, penalty: RCW 30.04.260.</i>	
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23.72.010	Definitions.
23.72.020	Action to recover—Limitation.
23.72.030	Preference voidable, when—Recovery.
23.72.040	Mutual debts and credits.
23.72.050	Attorney's fees—Reexamination.
23.72.060	Setoffs and counterclaims.

23.72.010 Definitions. Words and terms used in this chapter shall be defined as follows:

(1) "Receiver" means any receiver, trustee, common law assignee, or other liquidating officer of an insolvent corporation;

(2) "Date of application" means the date of filing with the clerk of the court of the petition or other application for the appointment of a receiver, pursuant to which application such appointment is made; or in case the appointment of a receiver is lawfully made without court proceedings, it means the date on which the receiver is designated, elected or otherwise authorized to act as such;

(3) "Preference" means a judgment procured or suffered against itself by an insolvent corporation or a transfer of any of the property of such corporation, the effect of the enforcement of which judgment or transfer at the time it was procured, suffered, or made, would be to enable any one of the creditors of such corporation to obtain a greater percentage of his debt than any other creditor of the same class;

(4) "Insolvent" means, for the purposes of this chapter, a condition whereby the aggregate of a corporation's property, exclusive of any property which it may have conveyed, transferred, concealed, removed or permitted to be concealed or removed, with intent to defraud, hinder, or delay its creditors, shall not at a fair valuation be sufficient in amount to pay its debts. [1959 c 219 § 1; 1941 c 103 § 1; Rem. Supp. 1941 § 5831-4. Formerly RCW 23.48.010.]

23.72.020 Action to recover—Limitation. If not otherwise limited by law, actions in the courts of this state by a receiver to recover preferences may be commenced at any time within but not after six months, from the date of application for the appointment of such receiver. [1941 c 103 § 2; Rem. Supp. 1941 § 5831-5. Formerly RCW 23.48.020.]

23.72.030 Preference voidable, when—Recovery. Any preference made or suffered within four months before the date of application for the appointment of a receiver may be avoided and the property or its value recovered by such receiver, if the person receiving the preference or to be benefited thereby or his agent acting therein shall then have reasonable cause to believe that the debtor corporation is insolvent. No preference made or suffered prior to such four months' period may be recovered, and all provisions of law or of the trust fund doctrine permitting recovery of any preference made beyond such four months' period are hereby specifically superseded. [1959 c 219 § 2; 1941 c 103 § 3; Rem. Supp. 1941 § 5831-6. Formerly RCW 23.48.030.]

23.72.040 Mutual debts and credits. In any action by a receiver against a creditor to avoid and recover a preference such creditor may set off against the amount of such preference an amount equal to any credit or credits given by such creditor to the corporation within four months prior to the date of application for the appointment of the receiver when such credit or credits were given in good faith without security of any kind for property which became a part of the assets of the corporation. [1941 c 103 § 4; Rem. Supp. 1941 § 5831-7. Formerly RCW 23.48.040.]

23.72.050 Attorney's fees—Reexamination. If a corporation shall directly or indirectly in contemplation of the appointment of a receiver of such corporation pay money or transfer property to an attorney or counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be reexamined by the court on petition of the receiver of such corporation or any creditor and shall be held valid only to the extent of a reasonable amount to be determined by the court and any excess may be recovered by the receiver for the benefit of the creditors of such corporation. [1941 c 103 § 5; Rem. Supp. 1941 § 5831-8. Formerly RCW 23.48.050.]

23.72.060 Setoffs and counterclaims. (1) In all cases of mutual debts or mutual credits between the corporation and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid: PROVIDED, That as against voidable preferences the only offsets shall be the credits specified in RCW 23.72.050.

(2) A setoff or counterclaim shall not be allowed in favor of any debtor of the corporation which (1) is not provable against the corporation, or (2) was purchased by or transferred to him after the appointment of a receiver for such corporation, or within four months before the date of application for the appointment of such receiver, with a view to such use and with knowledge or notice that such corporation was insolvent. [1941 c 103 § 6; Rem. Supp. 1941 § 5831-9. Formerly RCW 23.48.060 and 23.48.070.]

Chapter 23.78

EMPLOYEE COOPERATIVE CORPORATIONS

Sections

- 23.78.010 Definitions.
- 23.78.020 Election by corporation to be governed as an employee cooperative—Laws governing.
- 23.78.030 Revocation of election.
- 23.78.040 Corporate name.
- 23.78.050 Members—Membership shares.
- 23.78.060 Right to vote—Power to amend or repeal bylaws—Right to amend articles of incorporation.
- 23.78.070 Net earnings or losses—Apportionment, distribution, and payment.
- 23.78.080 Internal capital accounts authorized—Redemptions—Assignment of portion of retained net earnings and net losses to collective reserve account authorized.
- 23.78.090 Internal capital account cooperatives.
- 23.78.100 Provision for conversion of shares and accounts—Limitations upon merger.
- 23.78.900 Short title.
- 23.78.902 Severability—1987 c 457.

Employee ownership programs through the department of community, trade, and economic development: RCW 43.63A.230.

23.78.010 Definitions. For the purposes of this chapter, the terms defined in this section have the meanings given:

(1) "Employee cooperative" means a corporation that has elected to be governed by the provisions of this chapter.

(2) "Member" means a natural person who has been accepted for membership in, and owns a membership share issued by an employee cooperative.

(3) "Patronage" means the amount of work performed as a member of an employee cooperative, measured in accordance with the articles of incorporation and bylaws.

(4) "Written notice of allocation" means a written instrument which discloses to a member the stated dollar amount of the member's patronage allocation, and the terms for payment of that amount by the employee cooperative. [1987 c 457 § 2.]

23.78.020 Election by corporation to be governed as an employee cooperative—Laws governing. Any corporation organized under the laws of this state may elect to be governed as an employee cooperative under the provisions of this chapter, by so stating in its articles of incorporation,

or articles of amendment filed in accordance with Title 23B RCW.

A corporation so electing shall be governed by all provisions of Title 23B RCW, except RCW 23B.07.050, 23B.13.020, and chapter 23B.11 RCW, and except as otherwise provided in this chapter. [1991 c 72 § 9; 1987 c 457 § 3.]

23.78.030 Revocation of election. An employee cooperative may revoke its election under this chapter by a vote of two-thirds of the members and through articles of amendment filed with the secretary of state in accordance with RCW 23B.01.200 and 23B.10.060. [1991 c 72 § 10; 1987 c 457 § 4.]

23.78.040 Corporate name. An employee cooperative may include the word "cooperative" or "co-op" in its corporate name. [1987 c 457 § 5.]

23.78.050 Members—Membership shares. (1) The articles of incorporation or the bylaws shall establish qualifications and the method of acceptance and termination of members. No person may be accepted as a member unless employed by the employee cooperative on a full-time or part-time basis.

(2) An employee cooperative shall issue a class of voting stock designated as "membership shares." Each member shall own only one membership share, and only members may own these shares.

(3) Membership shares shall be issued for a fee as determined from time to time by the directors. RCW 23B.06.040 and 23B.06.200 do not apply to such membership shares.

Members of an employee cooperative shall have all the rights and responsibilities of stockholders of a corporation organized under Title 23B RCW, except as otherwise provided in this chapter. [1991 c 72 § 11; 1987 c 457 § 6.]

23.78.060 Right to vote—Power to amend or repeal bylaws—Right to amend articles of incorporation. (1) No capital stock other than membership shares shall be given voting power in an employee cooperative, except as otherwise provided in this chapter, or in the articles of incorporation.

(2) The power to amend or repeal bylaws of an employee cooperative shall be in the members only.

(3) Except as otherwise permitted by RCW 23B.10.040, no capital stock other than membership shares shall be permitted to vote on any amendment to the articles of incorporation. [1991 c 72 § 12; 1987 c 457 § 7.]

23.78.070 Net earnings or losses—Apportionment, distribution, and payment. (1) The net earnings or losses of an employee cooperative shall be apportioned and distributed at the times and in the manner as the articles of incorporation or bylaws shall specify. Net earnings declared as patronage allocations with respect to a period of time, and paid or credited to members, shall be apportioned among the members in accordance with the ratio which each member's patronage during the period involved bears to total patronage by all members during that period.

(2) The apportionment, distribution, and payment of net earnings required by subsection (1) of this section may be in cash, credits, written notices of allocation, or capital stock issued by the employee cooperative. [1987 c 457 § 8.]

23.78.080 Internal capital accounts authorized—Redemptions—Assignment of portion of retained net earnings and net losses to collective reserve account authorized. (1) Any employee cooperative may establish through its articles of incorporation or bylaws a system of internal capital accounts to reflect the book value and to determine the redemption price of membership shares, capital stock, and written notices of allocation.

(2) The articles of incorporation or bylaws of an employee cooperative may permit the periodic redemption of written notices of allocation and capital stock, and must provide for recall and redemption of the membership share upon termination of membership in the cooperative. No redemption shall be made if redemption would result in a violation of RCW 23B.06.400.

(3) The articles of incorporation or bylaws may provide for the employee cooperative to pay or credit interest on the balance in each member's internal capital account.

(4) The articles of incorporation or bylaws may authorize assignment of a portion of retained net earnings and net losses to a collective reserve account. Earnings assigned to the collective reserve account may be used for any and all corporate purposes as determined by the board of directors. [1991 c 72 § 13; 1987 c 457 § 9.]

23.78.090 Internal capital account cooperatives. (1) An internal capital account cooperative is an employee cooperative whose entire net book value is reflected in internal capital accounts, one for each member, and a collective reserve account, and in which no persons other than members own capital stock. In an internal capital account cooperative, each member shall have one and only one vote in any matter requiring voting by stockholders.

(2) An internal capital account cooperative shall credit the paid-in membership fee and additional paid-in capital of a member to the member's internal capital account, and shall also record the apportionment of retained net earnings or net losses to the members in accordance with patronage by appropriately crediting or debiting the internal capital accounts of members. The collective reserve account in an internal capital account cooperative shall reflect any paid-in capital, net losses, and retained net earnings not allocated to individual members.

(3) In an internal capital account cooperative, the balances in all the individual internal capital accounts and collective reserve account, if any, shall be adjusted at the end of each accounting period so that the sum of the balances is equal to the net book value of the employee cooperative. [1987 c 457 § 10.]

23.78.100 Provision for conversion of shares and accounts—Limitations upon merger. (1) When any employee cooperative revokes its election in accordance with RCW 23.78.030, the articles of amendment shall provide for conversion of membership shares and internal capital

accounts or their conversion to securities or other property in a manner consistent with Title 23B RCW.

(2) An employee cooperative that has not revoked its election under this chapter may not merge with another corporation other than an employee cooperative. Two or more employee cooperatives may merge in accordance with RCW 23B.01.200, 23B.07.050, and chapter 23B.11 RCW. [1991 c 72 § 14; 1987 c 457 § 11.]

23.78.900 Short title. This chapter may be cited as the employee cooperative corporations act. [1987 c 457 § 1.]

23.78.902 Severability—1987 c 457. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 457 § 16.]

Chapter 23.86

COOPERATIVE ASSOCIATIONS

Sections

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

(1) "Association" means any corporation subject to this chapter.

(2) "Member" or "members" includes a member or members of an association subject to this chapter without capital stock and a shareholder or shareholders of voting common stock in an association subject to this chapter with capital stock.

(3) "Articles of incorporation" means the original or restated articles of incorporation, articles of consolidation, or articles of association and all amendments including articles of merger. Corporations incorporated under this chapter with articles of association shall not be required to amend the title or references to the term "articles of association."

(4) "Director," "directors," or "board of directors" includes "trustee," "trustees," or "board of trustees" respectively. Corporations incorporated under this chapter with references in their articles of association or bylaws to "trustee," "trustees," or "board of trustees" shall not be required to amend the references.

(5) "Agricultural association" means an association that engages in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, or the manufacturing or marketing of the byproducts thereof; or in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies, or in the financing of these activities. In the application of the definition of agricultural association, "agricultural products" includes horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and farm products. [1994 c 206 § 1; 1989 c 307 § 3.]

Legislative finding—1989 c 307: "The legislature finds that since 1921 there have existed in the laws of this state two separate incorporation statutes expressly designed for corporations intending to operate as nonprofit cooperatives. The existence of two cooperative incorporation statutes has been the source of confusion, disparity of treatment, and legal and administrative ambiguities, and the rationale for having two cooperative incorporation statutes is no longer valid. These cooperative incorporation statutes have not been updated with the regularity of this state's business incorporation statutes and, as a result, are deficient in certain respects." [1989 c 307 § 1.]

23.86.010 Cooperative associations—Who may organize. Any number of persons may associate themselves together as a cooperative association, society, company or exchange, with or without capital stock, for the transaction of any lawful business on the cooperative plan. For the purposes of this chapter the words "association," "company," "exchange," "society" or "union" shall be construed the same. [1989 c 307 § 4; 1913 c 19 § 1; RRS § 3904. Formerly RCW 23.56.010.] [1954 SLC-RO-7]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Severability—1913 c 19: "If any section or part of a section of this act shall for any cause be held unconstitutional such fact shall not affect the remainder of this act." [1913 c 19 § 20.] This applies to RCW 23.86.010 through 23.86.190.

23.86.020 Business authorized. An association created under this chapter, being for mutual welfare, the words "lawful business" shall extend to every kind of lawful effort for business, agricultural, dairy, mercantile, mining, manufacturing or mechanical business, on the cooperative plan. [1913 c 19 § 7; RRS § 3910. Formerly RCW 23.56.020.]

23.86.030 Association name—Immunity from liability of association board members and officers. (1) The name of any association subject to this chapter may contain the word "corporation," "incorporated," or "limited" or an abbreviation of any such word.

(2) No corporation or association organized or doing business in this state shall be entitled to use the term "cooperative" as a part of its corporate or other business name or title, unless it: (a) Is subject to the provisions of this chapter, chapter 23.78, or 31.12 RCW; (b) is subject to the provisions of chapter 24.06 RCW and operating on a cooperative basis; (c) is, on July 23, 1989, an organization lawfully using the term "cooperative" as part of its corporate or other business name or title; or (d) is a nonprofit corporation or association the voting members of which are corporations or associations operating on a cooperative basis. Any corporation or association violating the provisions of this section may be enjoined from doing business under such name at the instance of any member or any association subject to this chapter.

(3) A member of the board of directors or an officer of any association subject to this chapter shall have the same immunity from liability as is granted in RCW 4.24.264. [1989 c 307 § 5; 1987 c 212 § 706; 1913 c 19 § 17; RRS § 3920. Formerly RCW 23.56.030.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.035 Powers. Each association subject to this chapter shall have the following powers:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in the articles of incorporation.

(2) To sue and be sued, complain, and defend in its corporate name.

(3) To have and use a corporate seal.

(4) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and deal in and with real or personal property or any interest therein, wherever situated.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or any part of its property and assets.

(6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, use, and deal in and with shares or other interest in, or obligations of, other

domestic or foreign corporations, associations, partnerships or individuals, or direct or indirect obligations of the United States or any other government, state, territory, governmental district or municipality, or any instrumentality thereof.

(7) To make contracts and incur liabilities, borrow money at rates of interest the association may determine, issue notes, bonds, certificates of indebtedness, and other obligations, receive funds from members and pay interest thereon, issue capital stock and certificates representing equity interests in assets, allocate earnings and losses at the times and in the manner the articles of incorporation or bylaws or other contract specify, create book credits, capital funds, and reserves, and secure obligations by mortgage or pledge of any of its property, franchises, and income.

(8) To lend money for corporate purposes, invest and reinvest funds, and take and hold real and personal property as security for the payment of funds loaned or invested.

(9) To conduct business, carry on operations, have offices, and exercise the powers granted by this chapter, within or without this state.

(10) To elect or appoint officers and agents of the corporation, define their duties, and fix their compensation.

(11) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the association.

(12) To make donations for the public welfare or for charitable, scientific, or educational purposes, and in time of war to make donations in aid of war activities.

(13) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, and other incentive plans for any or all of its directors, officers, and employees.

(14) To be a partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise.

(15) To cease corporate activities and surrender its corporate franchise.

(16) To have and exercise all powers necessary or convenient to effect its purposes. [1989 c 307 § 6.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.050 Articles—Contents. Every association formed under this chapter after July 23, 1989, shall prepare articles of incorporation in writing, which shall set forth:

(1) The name of the association.

(2) The purpose for which it was formed which may include the transaction of any lawful business for which associations may be incorporated under this chapter. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) Its principal place of business.

(4) The term for which it is to exist which may be perpetual or for a stated number of years.

(5) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rules by which the property rights and interests of all members shall be determined and fixed. The association may admit new members who shall be entitled to share in the property of the association with old members in accordance with the general rules.

(6) If the association is to have capital stock:

(a) The aggregate number of shares which the association shall have authority to issue; if shares are to consist of one class only, the par value of each share, or a statement that all shares are without par value; or, if shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each class or that shares are to be without par value;

(b) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect to the shares of each class;

(c) If the association is to issue the shares of any preferred or special class in series, the designation of each series and a statement of the variations in the relative rights and preferences between series fixed in the articles of incorporation, and a statement of any authority vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences between series; and

(d) Any provision limiting or denying to members the preemptive right to acquire additional shares of the association.

(7) Provisions for distribution of assets on dissolution or final liquidation.

(8) Whether a dissenting member shall be limited to a return of less than the fair value of the member's equity interest in the association. A dissenting member may not be limited to a return of less than the consideration paid to or retained by the association for the equity interest unless the fair value is less than the consideration paid to or retained by the association.

(9) The address of its initial registered office, including street and number, and the name of its initial registered agent at the address.

(10) The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors.

(11) The name and address of each incorporator.

(12) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the association, including provisions regarding:

(a) Eliminating or limiting the personal liability of a director to the association or its members for monetary damages for conduct as a director: **PROVIDED**, That such provision shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision may eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective; and

(b) Any provision which under this chapter is required or permitted to be set forth in the bylaws.

Associations organized under this chapter before July 23, 1989, or under *chapter 24.32 RCW shall not be required to amend their articles of association or articles of incorporation to conform to this section unless the associa-

tion is otherwise amending the articles of association or articles of incorporation.

The information specified in subsections (9) through (11) of this section may be deleted when filing amendments. [1989 c 307 § 7; 1987 c 212 § 704; 1982 c 35 § 171; 1961 c 34 § 1; 1913 c 19 § 2; RRS § 3905. Formerly RCW 23.56.050.]

***Reviser's note:** Chapter 24.32 RCW was repealed by 1989 c 307.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

23.86.055 Articles—Filing. (1) Duplicate originals of the articles of incorporation signed by the incorporators shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, the secretary of state shall, when all required fees have been paid:

(a) Endorse each original with the word "filed" and the effective date of the filing.

(b) File one original in his or her office.

(c) Issue a certificate of incorporation with one original attached.

(2) The certificate of incorporation, with an original of the articles of incorporation affixed by the secretary of state, shall be returned to the incorporators or their representatives and shall be retained by the association.

(3) Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall, except as against the state in a proceeding to cancel or revoke the certificate of incorporation, be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter. [1989 c 307 § 8.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.070 Filing fees. For filing articles of incorporation of an association organized under this chapter or filing application for a certificate of authority by a foreign corporation, there shall be paid to the secretary of state the sum of twenty-five dollars. Fees for filing an amendment to articles of incorporation shall be established by the secretary of state by rule. For filing other documents with the secretary of state and issuing certificates, fees shall be as prescribed in RCW 23B.01.220. Associations subject to this chapter shall not be subject to any corporation license fees excepting the fees hereinabove enumerated. [1993 c 269 § 1; 1991 c 72 § 15; 1989 c 307 § 9; 1982 c 35 § 173; 1959 c 263 § 2; 1953 c 214 § 1; 1925 ex.s. c 99 § 1; 1913 c 19 § 4; RRS § 3907. Formerly RCW 23.56.070.]

Effective date—1993 c 269: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 269 § 17.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

23.86.075 Fees for services by secretary of state.
See RCW 43.07.120.

23.86.080 Directors—Election and appointment. (1) Associations shall be managed by a board of not less than three directors (which may be referred to as "trustees"). The directors shall be elected by and from the members of the association at such time, in such manner, and for such term of office as the bylaws may prescribe, and shall hold office during the term for which they were elected and until their successors are elected and qualified.

(2) Except as provided in RCW 23.86.087, any vacancy occurring in the board of directors, and any directorship to be filled by reason of an increase in the number of directors, may be filled by the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner. A director elected or appointed to fill a vacancy shall be elected or appointed for the unexpired term of the predecessor in office. [1989 c 307 § 10; 1913 c 19 § 5; RRS § 3908. Formerly RCW 23.56.080.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.085 Election of officers. The directors shall elect a president and one or more vice-presidents, who need not be directors. If the president and vice-presidents are not members of the board of directors, the directors shall elect from their number a chairman of the board of directors and one or more vice-chairmen. They shall also elect a secretary and treasurer, who need not be directors, and they may combine the two offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered an officer but a function of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer, except that the funds shall be deposited only as authorized by the board of directors. [1989 c 307 § 11.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.087 Removal of officers or directors. Any member may bring charges against an officer or director by filing charges in writing with the secretary of the association, together with a petition signed by ten percent of the members requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members voting, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges prior to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses. The person or persons bringing the charges shall have the same opportunity. If the bylaws provide for election of directors by districts, the petition for removal of a director must be signed by the number of members residing in the district from which the officer or director was elected as the articles of incorporation or bylaws specify and, in the absence of such specification, the petition must be signed by

ten percent of the members residing in the district. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of the district voting, the association may remove the officer or director and fill the vacancy. [1989 c 307 § 12.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.090 Amendments to articles. The articles of incorporation may be amended by a majority vote of the members voting thereon, at any regular meeting or at any special meeting called for that purpose, after notice of the proposed amendment has been given to all members entitled to vote thereon, in the manner provided by the bylaws: PROVIDED, That if the total vote upon the proposed amendment shall be less than twenty-five percent of the total membership of the association, the amendment shall not be approved. At the meeting, members may vote upon the proposed amendment in person, or by written proxy, or by mailed ballot. The power to amend shall include the power to extend the period of its duration for a further definite time or perpetually, and also include the power to increase or diminish the amount of capital stock and the number of shares: PROVIDED, The amount of the capital stock shall not be diminished below the amount of the paid-up capital stock at the time such amendment is adopted. After the adoption of an amendment to its articles of incorporation, the association shall cause a copy of such amendment adopted to be recorded in the office of the secretary of state as provided in RCW 24.06.195. [1989 c 307 § 23; 1982 c 35 § 174; 1981 c 297 § 32; 1961 c 34 § 2; 1913 c 19 § 6; RRS § 3909. Formerly RCW 23.56.090.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 297: See note following RCW 15.36.201.

23.86.095 Registered office and agent. Effective January 1, 1990, every association subject to this chapter shall have and maintain a registered office and a registered agent in this state in accordance with the requirements set forth in RCW 24.06.050. [1989 c 307 § 13.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.100 Bylaws. Any association subject to this chapter may pass bylaws to govern itself in the carrying out of the provisions of this chapter which are not inconsistent with the provisions of this chapter. [1989 c 307 § 24; 1913 c 19 § 19; RRS § 3922. Formerly RCW 23.56.100.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.105 Member liability—Termination. (1) Except for debts lawfully contracted between a member and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his or her membership fee or subscription to capital stock.

(2) Membership may be terminated under provisions, rules, or regulations prescribed in the articles of incorporation or bylaws. In the absence thereof, the board of directors may prescribe such provisions, rules, and regulations. [1989 c 307 § 19.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.115 Voting. (1) The right of a member to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or bylaws. Unless so limited, enlarged, or denied, each member shall be entitled to one vote on each matter submitted to a vote of members. The bylaws may allow subscribers to vote as members if one-fifth of the subscription for the membership fee or capital stock has been paid.

(2) A member may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by mail or by proxy executed in writing by the member or by a duly authorized attorney-in-fact. No proxy shall be valid for more than eleven months from the date of its execution unless otherwise specified in the proxy. Votes by mail or by proxy shall be made by mail ballot or proxy form prepared and distributed by the association in accordance with procedures set forth in the articles of incorporation or bylaws. Persons voting by mail shall be deemed present for all purposes of quorum, count of votes, and percentage voting of total voting power.

(3) If the articles of incorporation or bylaws provide for more or less than one vote per member on any matter, every reference in this chapter to a majority or other proportion of members shall refer to such a majority or other proportion of votes entitled to be cast by members. [1989 c 307 § 21.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.125 Voting—Quorum. Except as otherwise provided in this chapter, the articles of incorporation or the bylaws may provide the number or percentage of votes that members are entitled to cast in person, by mail, or by proxy that shall constitute a quorum at meetings of members. In the absence of any provision in the articles of incorporation or bylaws, twenty-five percent of the total membership of the association shall constitute a quorum. [1989 c 307 § 22.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.135 Members right to dissent. A member of an association shall have the right to dissent from any of the following association actions:

- (1) Any plan of merger or consolidation to which the association is a party;
- (2) Any plan of conversion of the association to an ordinary business corporation; or
- (3) Any sale or exchange of all or substantially all of the property and assets of the association not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of the sale be distributed to the members in ac-

cordance with their respective interests within one year from the date of sale. [1989 c 307 § 30.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.145 Rights of dissenting members. (1) Except as provided otherwise under this chapter, the rights and procedures set forth in chapter 23B.13 RCW shall apply to a member who elects to exercise the right of dissent.

(2) The articles of incorporation of an association subject to this chapter may provide that a dissenting member shall be limited to a return of less than the fair value of the member's equity interest in the association, but a dissenting member may not be limited to a return of less than the consideration paid to or retained by the association for the equity interest unless the fair value is less than the consideration paid to or retained by the association.

(3) Any member of an agricultural association who exercises the right to dissent from an association action described in RCW 23.86.135 shall be entitled to payment of the member's equity interest on the same time schedule that would have applied if membership in the association had been terminated.

(4) Subsection (3) of this section does not apply to agricultural associations that are involved in an action under subsection (3) of this section before June 9, 1994: (a) As to the associations that were involved in the particular action; (b) for three years after June 9, 1994. [1994 c 206 § 2; 1991 c 72 § 16; 1989 c 307 § 31.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.155 Failure to appoint registered agent—Removal—Reinstatement. (1) The secretary of state shall notify all associations subject to this chapter thirty days prior to July 23, 1989, that in the event they fail to appoint a registered agent as provided in RCW 23.86.095, they shall thereupon cease to be recorded as an active corporation.

(2) If the notification provided under subsection (1) of this section from the secretary of state to any association was or has been returned unclaimed or undeliverable, the secretary of state shall proceed to remove the name of such association from the records of active corporations.

(3) Associations removed from the records of active corporations under subsection (2) of this section may be reinstated at any time within ten years of the action by the secretary of state. The association shall be reinstated to active status by filing a request for reinstatement, by appointment of a registered agent and designation of a registered office as required by this chapter, and by filing an annual report for the reinstatement year. No fees may be charged for reinstatements under this section. If, during the period of inactive status, another person or corporation has reserved or adopted a corporate name which is identical to or deceptively similar to the association's name, the association seeking reinstatement shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles of incorporation accordingly.

(4) If no action is taken to reinstate to active status as provided in subsection (3) of this section, the association shall be administratively dissolved. [1989 c 307 § 35.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.160 Apportionment of earnings. The directors may apportion the net earnings by paying dividends upon the paid-up capital stock at a rate not exceeding eight percent per annum. They may set aside reasonable reserves out of such net earnings for any association purpose. The directors may, however, distribute all or any portion of the net earnings to members in proportion to the business of each with the association and they may include nonmembers at a rate not exceeding that paid to members. The directors may distribute, on a patronage basis, such net earnings at different rates on different classes, kinds, or varieties of products handled. All dividends declared or other distributions made under this section may, in the discretion of the directors, be in the form of capital stock, capital or equity certificates, book credits, or capital funds of the association. All unclaimed dividends or distributions authorized under this chapter or funds payable on redeemed stock, equity certificates, book credits, or capital funds shall revert to the association at the discretion of the directors at any time after one year from the end of the fiscal year during which such distributions or redemptions have been declared. [1989 c 307 § 25; 1947 c 37 § 1; 1943 c 99 § 3; 1913 c 19 § 13; Rem. Supp. 1947 § 3916. Formerly RCW 23.56.160.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.170 Distribution of dividends. The profits or net earnings of such association shall be distributed to those entitled thereto at such time and in such manner not inconsistent with this chapter as its bylaws shall prescribe, which shall be as often as once a year. [1913 c 19 § 14; RRS § 3917. Formerly RCW 23.56.170.]

23.86.191 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

23.86.195 Cooperative associations organized under other statutes—Reorganization under chapter. Any cooperative association organized under any other statute may be reorganized under the provisions of this chapter by adopting and filing amendments to its articles of incorporation in accordance with the provisions of this chapter for amending articles of incorporation. The articles of incorporation as amended must conform to the requirements of this chapter, and shall state that the cooperative association accepts the benefits and will be bound by the provisions of this chapter. [1989 c 307 § 26; 1981 c 297 § 38.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Severability—1981 c 297: See note following RCW 15.36.201.

23.86.200 Definitions. For the purposes of RCW 23.86.200 through 23.86.230 a "domestic" cooperative association or "domestic" corporation is one formed under the laws of this state, and an "ordinary business" corporation is one formed or which could be formed under Title 23B RCW. [1991 c 72 § 17; 1971 ex.s. c 221 § 1.]

23.86.210 Conversion of cooperative association to domestic ordinary business corporation—Procedure. (1) A cooperative association may be converted to a domestic ordinary business corporation pursuant to the following procedures:

(a) The board of directors of the association shall, by affirmative vote of not less than two-thirds of all such directors, adopt a plan for such conversion setting forth:

(i) The reasons why such conversion is desirable and in the interests of the members of the association;

(ii) The proposed contents of articles of conversion with respect to items (ii) through (ix) of subparagraph (c) below; and

(iii) Such other information and matters as the board of directors may deem to be pertinent to the proposed plan.

(b) After adoption by the board of directors, the plan for conversion shall be submitted for approval or rejection to the members of the association at any regular meetings or at any special meetings called for that purpose, after notice of the proposed conversion has been given to all members entitled to vote thereon, in the manner provided by the bylaws. The notice of the meeting shall be accompanied by a full copy of the proposed plan for conversion or by a summary of its provisions. At the meeting members may vote upon the proposed conversion in person, or by written proxy, or by mailed ballot. The affirmative vote of two-thirds of the members voting thereon shall be required for approval of the plan of conversion. If the total vote upon the proposed conversion shall be less than twenty-five percent of the total membership of the association, the conversion shall not be approved.

(c) Upon approval by the members of the association, the articles of conversion shall be executed in duplicate by the association by one of its officers and shall set forth:

(i) The dates and vote by which the plan for conversion was adopted by the board of directors and members respectively;

(ii) The corporate name of the converted organization. The name shall comply with requirements for names of business corporations formed under Title 23B RCW, and shall not contain the term "cooperative";

(iii) The purpose or purposes for which the converted corporation is to exist;

(iv) The duration of the converted corporation, which may be perpetual or for a stated term of years;

(v) The capitalization of the converted corporation and the class or classes of shares of stock into which divided, together with the par value, if any, of such shares, in accordance with statutory requirements applicable to ordinary business corporations, and the basis upon which outstanding shares of the association are converted into shares of the converted corporation;

(vi) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the converted corporation;

(vii) The address of the converted corporation's initial registered office and its initial registered agent at such address;

(viii) The names and addresses of the persons who are to serve as directors of the converted corporation until the first annual meeting of shareholders of the converted corporation or until their successors are elected and qualify;

(ix) Any additional provisions, not inconsistent with law, provided for by the plan for conversion for the regulation of the internal affairs of the converted corporation, including any provision restricting the transfer of shares or which under Title 23B RCW is required or permitted to be set forth in bylaws.

(d) The executed duplicate originals of the articles of conversion shall be delivered to the secretary of state. If the secretary of state finds that the articles of conversion conform to law, the secretary of state shall, when all the fees have been paid as in this section prescribed:

- (i) Endorse on each of such originals the word "Filed", and the effective date of such filing;
- (ii) File one of such originals; and
- (iii) Issue a certificate of conversion to which one of such originals shall be affixed.

(e) The certificate of conversion, together with the original of the articles of conversion affixed thereto by the secretary of state, shall be returned to the converted corporation or its representative. The original affixed to the certificate of conversion shall be retained by the converted corporation.

(f) Upon filing the articles of conversion the converted corporation shall pay, and the secretary of state shall collect, the same filing and license fees as for filing articles of incorporation of a newly formed business corporation similarly capitalized.

(2) Upon filing by the secretary of state of the articles of conversion, the conversion of the cooperative association to an ordinary business corporation shall become effective; the articles of conversion shall thereafter constitute and be treated in like manner as articles of incorporation; and the converted corporation shall be subject to all laws applicable to corporations formed under Title 23B RCW, and shall not thereafter be subject to laws applying only to cooperative associations. The converted corporation shall constitute and be deemed to constitute a continuation of the corporate substance of the cooperative association and the conversion shall in no way derogate from the rights of creditors of the former association. [1991 c 72 § 18; 1989 c 307 § 27; 1982 c 35 § 175; 1981 c 297 § 34; 1971 ex.s. c 221 § 2.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 297: See note following RCW 15.36.201.

23.86.220 Merger of cooperative association with one or more cooperative associations or business corporations—Procedure. (1) A cooperative association may merge with one or more domestic cooperative associations, or with one or more domestic ordinary business corporations, in accordance with the procedures and subject to the conditions set forth or referred to in this section.

(2) If the merger is into another domestic cooperative association, the board of directors of each of the associations shall approve by vote of not less than two-thirds of all the directors, a plan of merger setting forth:

- (a) The names of the associations proposing to merge;
- (b) The name of the association which is to be the surviving association in the merger;
- (c) The terms and conditions of the proposed merger;

(d) The manner and basis of converting the shares of each merging association into shares or other securities or obligations of the surviving association;

(e) A statement of any changes in the articles of incorporation of the surviving association to be effected by such merger; and

(f) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

(3) Following approval by the boards of directors, the plan of merger shall be submitted to a vote of the members of each of the associations at any regular meeting or at any special meetings called for that purpose, after notice of the proposed merger has been given to all members entitled to vote thereon, in the manner provided in the bylaws. The notice of the meeting shall be in writing stating the purpose or purposes of the meeting and include or be accompanied by a copy or summary of the plan of merger. At the meeting members may vote upon the proposed merger in person, or by written proxy, or by mailed ballot. The affirmative vote of two-thirds of the members voting thereon, by each association, shall be required for approval of the plan of merger. If the total vote of either association upon the proposed merger shall be less than twenty-five percent of the total membership of such association, the merger shall not be approved.

(4) Upon approval by the members of the associations proposing to merge, articles of merger shall be executed in duplicate by each association by an officer of each association, and shall set forth:

- (a) The plan of merger;
- (b) As to each association, the number of members and, if there is capital stock, the number of shares outstanding; and
- (c) As to each association, the number of members who voted for and against such plan, respectively.

(5) Duplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, the secretary of state shall, when all fees have been paid as in this section prescribed:

- (a) Endorse on each of such originals the word "Filed", and the effective date of such filing;
- (b) File one of such originals; and
- (c) Issue a certificate of merger to which one of such originals shall be affixed.

(6) The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the secretary of state shall be returned to the surviving association or its representative.

(7) For filing articles of merger hereunder the secretary of state shall charge and collect the same fees as apply to filing of articles of merger of ordinary business corporations.

(8) If the plan of merger is for merger of the cooperative association into a domestic ordinary business corporation, the association shall follow the same procedures as hereinabove provided for merger of domestic cooperative associations and the ordinary business corporation shall follow the applicable procedures set forth in RCW 23B.07.050 and chapter 23B.11 RCW.

(9) At any time prior to filing of the articles of merger, the merger may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger. [1991 c 72

§ 19; 1989 c 307 § 28; 1982 c 35 § 176; 1981 c 297 § 35; 1971 ex.s. c 221 § 3.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 297: See note following RCW 15.36.201.

23.86.230 Merger of cooperative association with one or more cooperative associations or business corporations—Rights, powers, duties and liabilities of surviving entity—Articles. (1) Upon issuance of the certificate of merger by the secretary of state, the merger of the cooperative association into another cooperative association or ordinary business corporation, as the case may be, shall be effected.

(2) When merger has been effected:

(a) The several parties to the plan of merger shall be a single cooperative association or corporation, as the case may be, which shall be that cooperative association or corporation designated in the plan of merger as the survivor.

(b) The separate existence of all parties to the plan of merger, except that of the surviving cooperative association or corporation, shall cease.

(c) If the surviving entity is a cooperative association, it shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a cooperative association organized under chapter 23.86 RCW. If the surviving entity is an ordinary business corporation, it shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized or existing under Title 23B RCW.

(d) Such surviving cooperative association or corporation, as the case may be, shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, both public and private of each of the merging organizations, to the extent that such rights, privileges, immunities, and franchises are not inconsistent with the corporate nature of the surviving organization; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest of or belonging to or due to each of the organizations so merged shall be taken and deemed to be transferred to and vested in such surviving cooperative association or corporation, as the case may be, without further act or deed; and the title to any real estate, or any interest therein, vested in any such merged cooperative association shall not revert or be in any way impaired by reason of such merger.

(3) The surviving cooperative association or corporation, as the case may be, shall, after the merger is effected, be responsible and liable for all the liabilities and obligations of each of the organizations so merged; and any claim existing or action or proceeding pending by or against any of such organizations may be prosecuted as if the merger had not taken place and the surviving cooperative association or corporation may be substituted in its place. Neither the right of creditors nor any liens upon the property of any cooperative association or corporation party to the merger shall be impaired by the merger.

(4) The articles of incorporation of the surviving cooperative association or of the surviving ordinary business

corporation, as the case may be, shall be deemed to be amended to the extent, if any, that changes in such articles are stated in the plan of merger. [1991 c 72 § 20; 1989 c 307 § 29; 1971 ex.s. c 221 § 4.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.250 Dissolution. The members of any association may by the vote of two-thirds of the members voting thereon, at any regular meeting or at any special meeting called for that purpose, vote to dissolve said association after notice of the proposed dissolution has been given to all members entitled to vote thereon, in the manner provided by the bylaws, and thereupon such proceeding shall be had for the dissolution of said association as is provided by law for the dissolution of corporations organized under chapter 24.06 RCW: PROVIDED, That if the total vote upon the proposed dissolution shall be less than twenty-five percent of the total membership of the association, the dissolution shall not be approved. At the meeting, members may vote upon the proposed dissolution in person, or by written proxy, or by mailed ballot. [1981 c 297 § 36.]

Severability—1981 c 297: See note following RCW 15.36.201.

23.86.300 Application of RCW 24.06.055 and 24.06.060. The provisions of RCW 24.06.055 and 24.06.060 shall apply to every association subject to this chapter. [1989 c 307 § 14.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.310 Application of RCW 24.06.440. Effective January 1, 1990, every association subject to this chapter shall comply with the requirements set forth in RCW 24.06.440. [1989 c 307 § 15.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.320 Application of RCW 24.06.445. The provisions of RCW 24.06.445 shall apply to every association subject to this chapter. [1989 c 307 § 16.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.330 Application of RCW 23B.14.200 and 23B.14.210. The provisions of RCW 23B.14.200 and 23B.14.210 shall apply to every association subject to this chapter formed on or after July 23, 1989. [1991 c 72 § 21; 1989 c 307 § 17.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.340 Application of RCW 23B.14.220—Reinstatement. The provisions of RCW 23B.14.220 shall apply to every association subject to this chapter. An association may apply for reinstatement within three years after the effective date of dissolution. [1991 c 72 § 22; 1989 c 307 § 18.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.350 Application of RCW 24.06.100 and 24.06.105. The provisions of RCW 24.06.100 and 24.06.105 shall apply to every association subject to this chapter. [1989 c 307 § 20.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.360 Application of Title 23B RCW. The provisions of Title 23B RCW shall apply to the associations subject to this chapter, except where such provisions are in conflict with or inconsistent with the express provisions of this chapter. The terms "shareholder" or "shareholders" as used in Title 23B RCW, or in chapter 24.06 RCW as incorporated by reference herein, shall be deemed to refer to "member" or "members" as defined in this chapter. When the terms "share" or "shares" are used with reference to voting rights in Title 23B RCW, or in chapter 24.06 RCW as incorporated by reference herein, such terms shall be deemed to refer to the vote or votes entitled to be cast by a member or members. [1991 c 72 § 23; 1989 c 307 § 32.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.370 Application of RCW 24.06.340 through 24.06.435. The provisions of RCW 24.06.340 through 24.06.435 shall apply to every foreign corporation which desires to conduct affairs in this state under the authority of this chapter. [1989 c 307 § 33.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

23.86.400 Locally regulated utilities—Attachments to poles. (1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Locally regulated utility" means an electric service cooperative organized under this chapter and not subject to rate or service regulation by the utilities and transportation commission.

(c) "Nondiscriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of persons approved for attachments.

(2) All rates, terms, and conditions made, demanded or received by a locally regulated utility for attachments to its poles must be just, reasonable, nondiscriminatory and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities. [1996 c 32 § 1.]

23.86.900 Application—1989 c 307. The provisions of this chapter relating to domestic cooperative associations shall apply to:

(1) All cooperative associations organized under this chapter; and

(2) All agricultural cooperative associations organized under *chapter 24.32 RCW. All such agricultural cooperatives are deemed to have been incorporated under this chapter. [1989 c 307 § 2.]

***Reviser's note:** Chapter 24.32 RCW was repealed by 1989 c 307.

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Chapter 23.90

MASSACHUSETTS TRUSTS

Sections

23.90.010 Short title.

23.90.020 Massachusetts trust defined.

23.90.030 Form of association authorized.

23.90.040 Filing trust instrument, effect—Powers and duties of trust.

23.90.050 Fees for services by secretary of state.

23.90.060 Indemnification of agents of any corporation authorized.

23.90.900 Severability—1959 c 220.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

23.90.010 Short title. This chapter may be known and cited as the "Massachusetts Trust Act of 1959". [1959 c 220 § 1.]

23.90.020 Massachusetts trust defined. A Massachusetts trust is an unincorporated business association created at common law by an instrument under which property is held and managed by trustees for the benefit and profit of such persons as may be or may become the holders of transferable certificates evidencing beneficial interests in the trust estate, the holders of which certificates are entitled to the same limitation of personal liability extended to stockholders of private corporations. [1959 c 220 § 2.]

23.90.030 Form of association authorized. A Massachusetts trust is permitted as a recognized form of association for the conduct of business within the state of Washington. [1959 c 220 § 3.]

23.90.040 Filing trust instrument, effect—Powers and duties of trust. (1) Any Massachusetts trust desiring to do business in this state shall file with the secretary of state a verified copy of the trust instrument creating such a trust and any amendment thereto, the assumed business name, if any, and the names and addresses of its trustees.

(2) Any person dealing with such Massachusetts trust shall be bound by the terms and conditions of the trust instrument and any amendments thereto so filed.

(3) Any Massachusetts trust created under this chapter or entering this state pursuant thereto shall pay such taxes and fees as are imposed by the laws, ordinances, and resolutions of the state of Washington and any counties and municipalities thereof on domestic and foreign corporations, respectively, on an identical basis therewith. In computing

such taxes and fees, the shares of beneficial interest of such a trust shall have the character for tax purposes of shares of stock in private corporations.

(4) Any Massachusetts trust shall be subject to such applicable provisions of law, now or hereafter enacted, with respect to domestic and foreign corporations, respectively, as relate to the issuance of securities, filing of required statements or reports, service of process, general grants of power to act, right to sue and be sued, limitation of individual liability of shareholders, rights to acquire, mortgage, sell, lease, operate and otherwise to deal in real and personal property, and other applicable rights and duties existing under the common law and statutes of this state in a manner similar to those applicable to domestic and foreign corporations.

(5) The secretary of state, director of licensing, and the department of revenue of the state of Washington are each authorized and directed to prescribe binding rules and regulations applicable to said Massachusetts trusts consistent with this chapter. [1981 c 302 § 3; 1979 c 158 § 88; 1967 ex.s. c 26 § 21; 1959 c 220 § 4.]

Severability—1981 c 302: See note following RCW 19.76.100.

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

23.90.050 Fees for services by secretary of state. See RCW 43.07.120.

23.90.060 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

23.90.900 Severability—1959 c 220. Notwithstanding any other evidence of legislative intent, it is declared to be the controlling legislative intent that if any provision of this chapter, or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby. [1959 c 220 § 5.]

Title 23B

WASHINGTON BUSINESS CORPORATION ACT

Chapters

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- 23B.02** Incorporation.
- 23B.03** Powers and purposes.
- 23B.04** Name.
- 23B.05** Office and agent.
- 23B.06** Shares and distributions.
- 23B.07** Shareholders.
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- 23B.10** Amendment of articles of incorporation and bylaws.
- 23B.11** Merger and share exchange.
- 23B.12** Sale of assets.
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- 23B.19** Significant business transactions.
- 23B.900** Construction.

Acknowledgment form, corporations: RCW 64.08.070.

Acquisition of corporate stock by another corporation to lessen competition declared unlawful—Exceptions—Judicial order to divest: RCW 19.86.060.

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Seals, effect of: RCW 64.04.105.

Secretary of state, duties: Chapter 43.07 RCW.

Chapter 23B.01

GENERAL PROVISIONS

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- 23B.01.010 Short title.
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- 23B.01.210 Forms.
- 23B.01.220 Fees.
- 23B.01.230 Effective time and date of document.
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- 23B.01.580 Waiver of penalty fees.
- 23B.01.590 Public service companies entitled to deductions.

23B.01.010 Short title. This title shall be known and may be cited as the "Washington business corporation act." [1989 c 165 § 1.]

23B.01.020 Reservation of power to amend or repeal. The legislature has power to amend or repeal all or part of this title at any time and all domestic and foreign corporations subject to this title are governed by the amendment or repeal. [1989 c 165 § 2.]

23B.01.200 Filing requirements. (1) A document must satisfy the requirements of this section, and of any other section that adds to or varies from these requirements, to be entitled to filing by the secretary of state.

(2) This title must require or permit filing the document in the office of the secretary of state.

(3) The document must contain the information required by this title. It may contain other information as well.

(4) The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of state.

(5) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) Unless otherwise indicated in this title, all documents submitted for filing must be executed:

(a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and the capacity in which the person signs. The document may but need not contain: (a) The corporate seal; (b) an attestation by the secretary or an assistant secretary; or (c) an acknowledgment, verification, or proof.

(8) If the secretary of state has prescribed a mandatory form for the document under RCW 23B.01.210, the document must be in or on the prescribed form.

(9) The document must be delivered to the office of the secretary of state for filing and must be accompanied by one exact or conformed copy, the correct filing fee or charge, including license fee, penalty and service fee, and any attachments which are required for the filing. [1991 c 72 § 24; 1989 c 165 § 3.]

23B.01.210 Forms. The secretary of state may prescribe and furnish on request, forms for: (1) An application for a certificate of existence; (2) a foreign corporation's application for a certificate of authority to transact business in this state; (3) a foreign corporation's application for a certificate of withdrawal; (4) an initial report; (5) an annual report; and (6) such other forms not in conflict with this title as may be prescribed by the secretary of state. If the secretary of state so requires, use of these forms is mandatory. [1991 c 72 § 25; 1989 c 165 § 4.]

23B.01.220 Fees. (1) The secretary of state shall collect in accordance with the provisions of this title:

(a) Fees for filing documents and issuing certificates;

(b) Miscellaneous charges;

(c) License fees as provided in RCW 23B.01.500 through 23B.01.550;

(d) Penalty fees; and

(e) Other fees as the secretary of state may establish by rule adopted under chapter 34.05 RCW.

(2) The secretary of state shall collect the following fees when the documents described in this subsection are delivered for filing:

One hundred seventy-five dollars, pursuant to RCW 23B.01.520 and 23B.01.540, for:

(a) Articles of incorporation; and

(b) Application for certificate of authority.

(3) The secretary of state shall establish by rule, fees for the following:

(a) Application for reinstatement;

(b) Articles of correction;

(c) Amendment of articles of incorporation;

(d) Restatement of articles of incorporation, with or without amendment;

(e) Articles of merger or share exchange;

(f) Articles of revocation of dissolution;

(g) Application for amended certificate of authority;

(h) Application for reservation, registration, or assignment of reserved name;

(i) Corporation's statement of change of registered agent or registered office, or both, except where this information is provided in conjunction with and on an initial report or an annual report form filed under RCW 23B.01.530, 23B.01.550, 23B.02.050, or 23B.16.220;

(j) Agent's resignation, or statement of change of registered office, or both, for each affected corporation;

(k) Initial report; and

(l) Any document not listed in this subsection that is required or permitted to be filed under this title.

(4) Fees shall be adjusted by rule only in an amount that does not exceed the average biennial increase in the cost of providing service. This shall be determined in a biennial cost study performed by the secretary.

(5) The secretary of state shall not collect fees for:

(a) Agent's consent to act as agent;

(b) Agent's resignation, if appointed without consent;

(c) Articles of dissolution;

(d) Certificate of judicial dissolution;

(e) Application for certificate of withdrawal; and

(f) Annual report when filed concurrently with the payment of annual license fees.

(6) The secretary of state shall collect a fee in an amount established by the secretary of state by rule per defendant served, upon being served process under this title. The party to a proceeding causing service of process is entitled to recover this fee as costs if such party prevails in the proceeding.

(7) The secretary of state shall establish by rule and collect a fee from every person or organization:

(a) For furnishing a certified copy of any document, instrument, or paper relating to a corporation;

(b) For furnishing a certificate, under seal, attesting to the existence of a corporation, or any other certificate; and

(c) For furnishing copies of any document, instrument, or paper relating to a corporation, other than of an initial report or an annual report.

(8) For annual license fees for domestic and foreign corporations, see RCW 23B.01.500, 23B.01.510, 23B.01.530, and 23B.01.550. For penalties for nonpayment of annual license fees and failure to complete annual report, see RCW 23B.01.570. [1993 c 269 § 2; 1992 c 107 § 7; 1991 c 72 § 26; 1990 c 178 § 1; 1989 c 165 § 5.]

Effective date—1993 c 269: See note following RCW 23.86.070.

Effective dates—1992 c 107: See note following RCW 19.02.020.

Effective date—1990 c 178: "This act shall take effect July 1, 1990." [1990 c 178 § 13.]

23B.01.230 Effective time and date of document.

(1) Except as provided in subsection (2) of this section and RCW 23B.01.240(3), a document accepted for filing is effective on the date it is filed by the secretary of state and

at the time on that date specified in the document. If no time is specified in the document, the document is effective at the close of business on the date it is filed by the secretary of state.

(2) If a document specifies a delayed effective time and date, the document becomes effective at the time and date specified. If a document specifies a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

(3) When a document is received for filing by the secretary of state in a form which complies with the requirements of this title and which would entitle the document to be filed on receipt, but the secretary of state's approval action occurs subsequent to the date of receipt, the secretary of state's filing date shall relate back to and be shown as the date on which the secretary of state first received the document in acceptable form. [1989 c 165 § 6.]

23B.01.240 Correcting filed documents. (1) A domestic or foreign corporation may correct a document filed by the secretary of state if the document (a) contains an incorrect statement; or (b) was defectively executed, attested, sealed, verified, or acknowledged.

(2) A document is corrected:

(a) By preparing articles of correction that (i) describe the document, including its filing date, or attach a copy of it to the articles of correction, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(b) By delivering the articles of correction to the secretary of state for filing.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed. [1989 c 165 § 7.]

23B.01.250 Filing duty of secretary of state. (1) If a document delivered to the office of the secretary of state for filing satisfies the requirements of RCW 23B.01.200, the secretary of state shall file it.

(2) The secretary of state files a document by stamping or otherwise endorsing "Filed," together with the secretary of state's name and official title and the date of filing, on both the original and the document copy. After filing a document, the secretary of state shall deliver the document copy to the domestic or foreign corporation or its representative.

(3) If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign corporation or its representative, together with a brief written explanation of the reason for the refusal.

(4) The secretary of state's duty to file documents under this section is ministerial. Filing or refusal to file a document does not:

(a) Affect the validity or invalidity of the document in whole or part;

(b) Relate to the correctness or incorrectness of information contained in the document; or

(c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect. [1989 c 165 § 8.]

23B.01.260 Judicial review of secretary of state's refusal to file a document. If the secretary of state refuses to file a document delivered to the office for filing, the person submitting the document, in addition to any other legal remedy which may be available, shall have the right to judicial review of such refusal pursuant to the provisions of chapter 34.05 RCW. [1989 c 165 § 9.]

23B.01.270 Evidentiary effect of copy of filed document. A certificate bearing the manual or facsimile signature of the secretary of state and the seal of the state, when attached to or located on a document or a copy of a document filed by the secretary of state, is conclusive evidence that the original document is on file with the secretary of state. [1989 c 165 § 10.]

23B.01.280 Certificate of existence or authorization.

(1) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

(2) A certificate of existence or authorization means that as of the date of its issuance:

(a) The domestic corporation is duly incorporated under the laws of this state, or that the foreign corporation is authorized to transact business in this state;

(b) All fees and penalties owed to this state under this title have been paid, if (i) payment is reflected in the records of the secretary of state, and (ii) nonpayment affects the existence or authorization of the domestic or foreign corporation;

(c) The corporation's initial report or its most recent annual report required by RCW 23B.16.220 has been delivered to the secretary of state; and

(d) Articles of dissolution or an application for withdrawal have not been filed by the secretary of state.

(3) A person may apply to the secretary of state to issue a certificate covering any fact of record.

(4) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in the corporate form in this state. [1991 c 72 § 27; 1989 c 165 § 11.]

23B.01.290 Penalty for signing false document. Any person who signs a document such person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW. [1989 c 165 § 12.]

23B.01.300 Powers. The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this title, including adoption, amendment, or repeal of rules for the efficient administration of this title. [1989 c 165 § 13.]

23B.01.400 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this title.

(5) "Deliver" includes (a) mailing and (b) for purposes of delivering a demand, consent, or waiver to the corporation or one of its officers, transmission by facsimile equipment.

(6) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect to any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a distribution in partial or complete liquidation, or upon voluntary or involuntary dissolution; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(7) "Effective date of notice" has the meaning provided in RCW 23B.01.410.

(8) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(9) "Entity" includes a corporation and foreign corporation, not-for-profit corporation, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest, and the state, United States, and a foreign government.

(10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(11) "Foreign limited partnership" means a partnership formed under laws other than of this state and having as partners one or more general partners and one or more limited partners.

(12) "Governmental subdivision" includes authority, county, district, and municipality.

(13) "Includes" denotes a partial definition.

(14) "Individual" includes the estate of an incompetent or deceased individual.

(15) "Limited partnership" or "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(16) "Means" denotes an exhaustive definition.

(17) "Notice" has the meaning provided in RCW 23B.01.410.

(18) "Person" includes an individual and an entity.

(19) "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(20) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(21) "Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or 15 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute.

(22) "Record date" means the date established under chapter 23B.07 RCW on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(23) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under RCW 23B.08.400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(24) "Shares" means the units into which the proprietary interests in a corporation are divided.

(25) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(26) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

(27) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(28) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

(29) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this title to vote generally on the matter are for that purpose a single voting group. [1996 c 155 § 4; 1995 c 47 § 1. Prior: 1991 c 269 § 35; 1991 c 72 § 28; 1989 c 165 § 14.]

23B.01.410 Notice. (1) Notice under this title must be in writing except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.

(2) Written notice may be transmitted by: Mail, private carrier or personal delivery; telegraph or teletype; or telephone, wire or wireless equipment which transmits a facsimile of the notice. If these forms of written notice are impracticable, written notice may be transmitted by an advertisement in a newspaper of general circulation in the area where published. Oral notice may be communicated in person or by telephone, wire or wireless equipment which does not transmit a facsimile of the notice. If these forms of oral notice are impracticable, oral notice may be communicated by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed with first-class postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(4) Written notice to a domestic or foreign corporation, authorized to transact business in this state, may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) If expressly authorized by the articles of incorporation or bylaws, and if notice is sent to the person's address, telephone number, or other number appearing on the records of the corporation, when dispatched by telegraph, teletype, or facsimile equipment;

(b) When received;

(c) Except as provided in subsection (3) of this section, five days after its deposit in the United States mail, as evidenced by the postmark, if mailed with first-class postage, prepaid and correctly addressed; or

(d) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if communicated in a comprehensible manner.

(7) If this title prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this title, those requirements govern. [1991 c 72 § 29; 1990 c 178 § 2; 1989 c 165 § 15.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.01.500 Domestic corporations—Notice of due date for payment of annual license fee and filing annual report. Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall mail to each domestic corporation, at its registered office within the state, by first-class mail, a notice that its annual license fee must be paid and its annual report must be filed as required by this title, and stating that if any domestic corporation shall fail to pay its annual license fee or to file its annual report it shall be dissolved and cease to exist. Failure of the secretary of state to mail any such notice shall not relieve a corporation from its obligations to pay the annual license fees and to file the annual reports required by this title. [1989 c 165 § 16.]

23B.01.510 Foreign corporations—Notice of due date for payment of annual license fee and filing annual report. Not less than thirty nor more than ninety days prior to July 1st of each year or to the expiration date of any staggered yearly license, the secretary of state shall mail to each foreign corporation qualified to do business in this state, by first-class mail addressed to its registered office within this state, a notice that its annual license fee must be

paid and its annual report must be filed as required by this title, and stating that if it shall fail to pay its annual license fee or to file its annual report its certificate of authority to transact business within this state may be revoked. Failure of the secretary of state to mail any such notice shall not relieve a corporation from its obligations to pay the annual license fees and to obtain or file the annual reports required by this title. [1990 c 178 § 3; 1989 c 165 § 17.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.01.520 Domestic corporations—Filing and initial license fees. Every domestic corporation, except one for which existing law provides a different fee schedule, shall pay for filing of its articles of incorporation and its first year's license a fee of one hundred seventy-five dollars. [1989 c 165 § 18.]

23B.01.530 Domestic corporations—Inactive corporation defined—Annual license fee. For the privilege of doing business, every corporation organized under the laws of this state, except the corporations for which existing law provides a different fee schedule, shall make and file a statement in the form prescribed by the secretary of state and shall pay an annual license fee each year following incorporation, on or before the expiration date of its corporate license, to the secretary of state. The secretary of state shall collect an annual license fee of ten dollars for each inactive corporation and fifty dollars for other corporations. As used in this section, "inactive corporation" means a corporation that certifies at the time of filing under this section that it did not engage in any business activities during the year ending on the expiration date of its corporate license. [1993 c 269 § 3; 1989 c 165 § 19.]

Effective date—1993 c 269: See note following RCW 23.86.070.

23B.01.540 Foreign corporations—Filing and license fees on qualification. A foreign corporation doing an intrastate business or seeking to do an intrastate business in the state of Washington shall qualify so to do in the manner prescribed in this title and shall pay for the privilege of so doing the filing and license fees prescribed in this title for domestic corporations, including the same fees as are prescribed in RCW 23B.01.520, for the filing of articles of incorporation of a domestic corporation. [1989 c 165 § 20.]

23B.01.550 Foreign corporations—Annual license fees. All foreign corporations doing intrastate business, or hereafter seeking to do intrastate business in this state shall pay for the privilege of doing such intrastate business in this state the same fees as are prescribed by RCW 23B.01.530 for domestic corporations for annual license fees. All license fees shall be paid on or before the first day of July of each and every year or on the annual license expiration date as the secretary of state may establish under this title. [1989 c 165 § 21.]

23B.01.560 License fees for reinstated corporation. (1) A corporation seeking reinstatement shall pay the full amount of all annual corporation license fees which would have been assessed for the license years of the period of

administrative dissolution had the corporation been in active status, plus a surcharge established by the secretary of state by rule, and the license fee for the year of reinstatement.

(2) The penalties herein established shall be in lieu of any other penalties or interest which could have been assessed by the secretary of state under the corporation laws or which, under those laws, would have accrued during any period of delinquency, dissolution, or expiration of corporate duration. [1993 c 269 § 4; 1989 c 165 § 22.]

Effective date—1993 c 269: See note following RCW 23.86.070.

23B.01.570 Penalty for nonpayment of annual corporate license fees and failure to file a substantially complete annual report—Payment of delinquent fees—Rules. In the event any corporation, foreign or domestic, fails to file a full and complete initial report under RCW 23B.02.050(4) and 23B.16.220(3) or does business in this state without having paid its annual corporate license fee and without having filed a substantially complete annual report under RCW 23B.16.220(1) when either is due, there shall become due and owing the state of Washington a penalty as established by rule by the secretary.

A corporation organized under this title may at any time prior to its dissolution as provided in RCW 23B.14.200, and a foreign corporation qualified to do business in this state may at any time prior to the revocation of its certificate of authority as provided in RCW 23B.15.300, pay to the state of Washington its current annual license fee, provided it also pays an amount equal to all previously unpaid annual license fees plus the penalty established by rule by the secretary. [1994 c 287 § 6; 1991 c 72 § 30; 1989 c 165 § 23.]

23B.01.580 Waiver of penalty fees. The secretary of state may, where exigent or mitigating circumstances are presented, waive penalty fees due from any licensed corporation previously in good standing which would otherwise be penalized or lose its active status. Any corporation desiring to seek relief under this section shall, within fifteen days of discovery by corporate officials of the missed filing or lapse, notify the secretary of state in writing. The notification shall include the name and mailing address of the corporation, the corporate officer to whom correspondence should be sent, and a statement under oath by a responsible corporate officer, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. Upon receipt of the notice, the secretary of state shall investigate the circumstances of the missed filing or lapse. If the secretary of state is satisfied that sufficient exigent or mitigating circumstances exist, that the corporation has demonstrated good faith and a reasonable attempt to comply with the applicable corporate license statutes of this state, the secretary of state may issue an order allowing relief from the penalty. If the secretary of state determines the request does not comply with the requirements for relief, the secretary of state shall deny the relief and state the reasons for the denial. Any denial of relief by the secretary of state is not reviewable notwithstanding the provisions of chapter 34.05 RCW. [1990 c 178 § 4; 1989 c 165 § 24.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.01.590 Public service companies entitled to deductions. The annual fee required to be paid to the Washington utilities and transportation commission by any public service corporation shall be deducted from the annual license fee provided in this title and the excess only shall be collected.

It shall be the duty of the commission to furnish to the secretary of state on or before July 1st of each year a list of all public service corporations with the amount of annual license fees paid to the commission for the current year. [1989 c 165 § 25.]

Chapter 23B.02 INCORPORATION

Sections

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23B.02.010 Incorporators. One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the secretary of state for filing. [1989 c 165 § 26.]

23B.02.020 Articles of incorporation. (1) The articles of incorporation must set forth:

- (a) A corporate name for the corporation that satisfies the requirements of RCW 23B.04.010;
- (b) The number of shares the corporation is authorized to issue in accordance with RCW 23B.06.010 and 23B.06.020;
- (c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office in accordance with RCW 23B.05.010; and
- (d) The name and address of each incorporator in accordance with RCW 23B.02.010.

(2) The articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010.

(3) Unless its articles of incorporation provide otherwise, a corporation is governed by the following provisions:

- (a) The board of directors may adopt bylaws to be effective only in an emergency as provided by RCW 23B.02.070;
- (b) A corporation has the purpose of engaging in any lawful business under RCW 23B.03.010;
- (c) A corporation has perpetual existence and succession in its corporate name under RCW 23B.03.020;
- (d) A corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including itemized powers under RCW 23B.03.020;
- (e) All shares are of one class and one series, have unlimited voting rights, and are entitled to receive the net

assets of the corporation upon dissolution under RCW 23B.06.010 and 23B.06.020;

(f) If more than one class of shares is authorized, all shares of a class must have preferences, limitations, and relative rights identical to those of other shares of the same class under RCW 23B.06.010;

(g) If the board of directors is authorized to designate the number of shares in a series, the board may, after the issuance of shares in that series, reduce the number of authorized shares of that series under RCW 23B.06.020;

(h) The board of directors must authorize any issuance of shares under RCW 23B.06.210;

(i) Shares may be issued pro rata and without consideration to shareholders under RCW 23B.06.230;

(j) Shares of one class or series may not be issued as a share dividend with respect to another class or series, unless there are no outstanding shares of the class or series to be issued, or a majority of votes entitled to be cast by such class or series approve as provided in RCW 23B.06.230;

(k) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation under RCW 23B.06.240;

(l) A shareholder has, and may waive, a preemptive right to acquire the corporation's unissued shares as provided in RCW 23B.06.300;

(m) Shares of a corporation acquired by it may be reissued under RCW 23B.06.310;

(n) The board may authorize and the corporation may make distributions not prohibited by statute under RCW 23B.06.400;

(o) The preferential rights upon dissolution of certain shareholders will be considered a liability for purposes of determining the validity of a distribution under RCW 23B.06.400;

(p) Unless this title requires otherwise, the corporation is required to give notice only to shareholders entitled to vote at a meeting and the notice for an annual meeting need not include the purpose for which the meeting is called under RCW 23B.07.050;

(q) A corporation that is a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(r) Subject to statutory exceptions, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting under RCW 23B.07.210;

(s) A majority of the votes entitled to be cast on a matter by a voting group constitutes a quorum, unless the title provides otherwise under RCW 23B.07.250 and 23B.07.270;

(t) Action on a matter, other than election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless this title requires a greater number of affirmative votes under RCW 23B.07.250;

(u) All shares of one or more classes or series that are entitled to vote will be counted together collectively on any matter at a meeting of shareholders under RCW 23B.07.260;

(v) Directors are elected by cumulative voting under RCW 23B.07.280;

(w) Directors are elected by a plurality of votes cast by shares entitled to vote under RCW 23B.07.280;

(x) A corporation must have a board of directors under RCW 23B.08.010;

(y) All corporate powers must be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors under RCW 23B.08.010;

(z) The shareholders may remove one or more directors with or without cause under RCW 23B.08.080;

(aa) A vacancy on the board of directors may be filled by the shareholders or the board of directors under RCW 23B.08.100;

(bb) A corporation shall indemnify a director who was wholly successful in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding under RCW 23B.08.520;

(cc) A director of a corporation who is a party to a proceeding may apply for indemnification of reasonable expenses incurred by the director in connection with the proceeding to the court conducting the proceeding or to another court of competent jurisdiction under RCW 23B.08.540;

(dd) An officer of the corporation who is not a director is entitled to mandatory indemnification under RCW 23B.08.520, and is entitled to apply for court-ordered indemnification under RCW 23B.08.540, in each case to the same extent as a director under RCW 23B.08.570;

(ee) The corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director under RCW 23B.08.570;

(ff) A corporation may indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract under RCW 23B.08.570;

(gg) A corporation's board of directors may adopt certain amendments to the corporation's articles of incorporation without shareholder action under RCW 23B.10.020;

(hh) Unless the title or the board of directors require a greater vote or a vote by voting groups, an amendment to the corporation's articles of incorporation must be approved by each voting group entitled to vote on the proposed amendment by two-thirds, or, in the case of a public company, a majority, of all the votes entitled to be cast by that voting group under RCW 23B.10.030;

(ii) A corporation's board of directors may amend or repeal the corporation's bylaws unless this title reserves this power exclusively to the shareholders in whole or in part, or unless the shareholders in amending or repealing a bylaw provide expressly that the board of directors may not amend or repeal that bylaw under RCW 23B.10.200;

(jj) Unless this title or the board of directors require a greater vote or a vote by voting groups, a plan of merger or share exchange must be approved by each voting group entitled to vote on the merger or share exchange by two-thirds of all the votes entitled to be cast by that voting group under RCW 23B.11.030;

(kk) Approval by the shareholders of the sale, lease, exchange, or other disposition of all, or substantially all, the corporation's property in the usual and regular course of business is not required under RCW 23B.12.010;

(ll) Approval by the shareholders of the mortgage, pledge, dedication to the repayment of indebtedness, or other encumbrance of any or all of the corporation's property, whether or not in the usual and regular course of business, is not required under RCW 23B.12.010;

(mm) Unless the board of directors requires a greater vote or a vote by voting groups, a sale, lease, exchange, or other disposition of all or substantially all of the corporation's property, other than in the usual and regular course of business, must be approved by each voting group entitled to vote on such transaction by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.12.020; and

(nn) Unless the board of directors requires a greater vote or a vote by voting groups, a proposal to dissolve must be approved by each voting group entitled to vote on the dissolution by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.14.020.

(4) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may authorize the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;

(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;

(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;

(e) Members of the board of directors may participate in a meeting of the board by any means of similar communication by which all directors participating can hear each other during the meeting under RCW 23B.08.200;

(f) Action permitted or required by this title to be taken at a board of directors' meeting may be taken without a meeting if action is taken by all members of the board under RCW 23B.08.210;

(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;

(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;

(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;

(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;

(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and

(l) Unless approved by the shareholders, a corporation may indemnify, or make advances to, a director for reason-

able expenses incurred in the defense of any proceeding to which the director was a party because of being a director only to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580.

(5) The articles of incorporation may contain the following provisions:

(a) The names and addresses of the individuals who are to serve as initial directors;

(b) The par value of any authorized shares or classes of shares;

(c) Provisions not inconsistent with law related to the management of the business and the regulation of the affairs of the corporation;

(d) Any provision that under this title is required or permitted to be set forth in the bylaws;

(e) Provisions not inconsistent with law defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(f) If the articles of incorporation authorize dividing shares into classes, the election of all or a specified number of directors may be effected by the holders of one or more authorized classes of shares under RCW 23B.08.040;

(g) The terms of directors may be staggered under RCW 23B.08.060;

(h) Shares may be redeemable or convertible (i) at the option of the corporation, the shareholder, or another person, or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities, or other property; or (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events under RCW 23B.06.010; and

(i) A director's personal liability to the corporation or its shareholders for monetary damages for conduct as a director may be eliminated or limited under RCW 23B.08.320.

(6) The articles of incorporation or the bylaws may contain the following provisions:

(a) A restriction on the transfer or registration of transfer of the corporation's shares under RCW 23B.06.270;

(b) Shareholders may participate in a meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other under RCW 23B.07.080;

(c) A quorum of the board of directors may consist of as few as one-third of the number of directors under RCW 23B.08.240;

(d) If the corporation is registered as an investment company under the investment company act of 1940, a provision limiting the requirement to hold an annual meeting of shareholders as provided in RCW 23B.07.010(2); and

(e) If the corporation is registered as an investment company under the investment company act of 1940, a provision establishing terms of directors which terms may be longer than one year as provided in RCW 23B.05.050.

(7) The articles of incorporation need not set forth any of the corporate powers enumerated in this title. [1996 c 155 § 5; 1994 c 256 § 27; 1989 c 165 § 27.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

23B.02.030 Effect of filing. (1) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(2) The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to the incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily to dissolve the corporation. [1989 c 165 § 28.]

23B.02.040 Liability for preincorporation transactions. All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this title, are jointly and severally liable for liabilities created while so acting except for any liability to any person who also knew that there was no incorporation. [1989 c 165 § 29.]

23B.02.050 Organization of corporation. (1) After incorporation:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(2) Action required or permitted by this title to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

(4) A corporation's initial report containing the information described in RCW 23B.16.220(1) must be delivered to the secretary of state within one hundred twenty days of the date on which the corporation's articles of incorporation were filed. [1991 c 72 § 31; 1989 c 165 § 30.]

23B.02.060 Bylaws. (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010;

(3) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may authorize the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;

(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue

proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;

(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;

(e) Members of the board of directors may participate in a meeting of the board by means of a conference telephone or similar communication equipment under RCW 23B.08.200;

(f) Action permitted or required by this title to be taken at a board of directors' meeting may be taken without a meeting if action is taken by all members of the board under RCW 23B.08.210;

(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;

(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;

(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;

(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;

(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and

(l) Unless approved by shareholders, a corporation may indemnify, or make advances to, a director only for reasonable expenses incurred in the defense of any proceeding to which the director was a party because of being a director to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580 under RCW 23B.08.590.

(4) The bylaws of a corporation may contain any provision, not in conflict with law or the articles of incorporation, for managing the business and regulating the affairs of the corporation, including but not limited to the following:

(a) A restriction on the transfer or registration of transfer of the corporation's shares under RCW 23B.06.270;

(b) Shareholders may participate in a meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other under RCW 23B.07.080; and

(c) A quorum of the board of directors may consist of as few as one-third of the number of directors under RCW 23B.08.240. [1989 c 165 § 31.]

23B.02.070 Emergency bylaws. (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(2) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(3) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) Binds the corporation; and

(b) May not be used to impose liability on a corporate director, officer, employee, or agent.

(4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event. [1989 c 165 § 32.]

Chapter 23B.03

POWERS AND PURPOSES

Sections

- 23B.03.010 Purposes.
- 23B.03.020 General powers.
- 23B.03.030 Emergency powers.
- 23B.03.040 Ultra vires.

23B.03.010 Purposes. (1) Every corporation incorporated under this title has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(2) Corporations organized for the purposes of banking or engaging in business as an insurer shall not be organized under this title. [1989 c 165 § 33.]

23B.03.020 General powers. (1) Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name.

(2) Unless its articles of incorporation provide otherwise, every corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, power:

(a) To sue and be sued, complain, and defend in its corporate name;

(b) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(c) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(d) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(e) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(f) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any person;

(g) To make contracts, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other

securities of the corporation, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(h) To make guarantees respecting the contracts, securities, or obligations of any person; including, but not limited to, any shareholder, affiliated or unaffiliated individual, domestic or foreign corporation, partnership, association, joint venture or trust, if such guarantee may reasonably be expected to benefit, directly or indirectly, the guarantor corporation. As to the enforceability of the guarantee, the decision of the board of directors that the guarantee may be reasonably expected to benefit, directly or indirectly, the guarantor corporation shall be binding in respect to the issue of benefit to the guarantor corporation;

(i) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(j) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(k) To conduct its business, locate offices, and exercise the powers granted by this title within or without this state;

(l) To elect, appoint, or hire officers, employees, and other agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(m) To fix the compensation of directors, and lend them money and credit;

(n) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(o) To make donations for the public welfare or for charitable, scientific, or educational purposes;

(p) To transact any lawful business that will aid governmental policy; and

(q) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation. [1989 c 165 § 34.]

23B.03.030 Emergency powers. (1) In anticipation of or during an emergency defined in subsection (4) of this section, the board of directors of a corporation may:

(a) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(b) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(2) During an emergency defined in subsection (4) of this section, unless emergency bylaws provide otherwise:

(a) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(b) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(3) Corporate action taken in good faith during an emergency under this section to further the business affairs of the corporation:

- (a) Binds the corporation; and
- (b) May not be used to impose liability on a corporate director, officer, employee, or agent.
- (4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event. [1989 c 165 § 35.]

23B.03.040 Ultra vires. (1) Except as provided in subsection (2) of this section, corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

- (a) In a proceeding by a shareholder against the corporation to enjoin the act;
- (b) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or
- (c) In a proceeding by the attorney general under RCW 23B.14.300.
- (3) In a shareholder's proceeding under subsection (2)(a) of this section to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, and may award damages for loss suffered by the corporation or another party because of enjoining or setting aside the unauthorized act. [1989 c 165 § 36.]

Chapter 23B.04

NAME

Sections

- 23B.04.010 Corporate name.
- 23B.04.020 Reserved name.
- 23B.04.030 Registered name.

23B.04.010 Corporate name. (1) A corporate name:

- (a) Must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.;"
- (b) Must not contain language stating or implying that the corporation is organized for a purpose other than those permitted by RCW 23B.03.010 and its articles of incorporation;
- (c) Must not contain any of the following words or phrases:
 - "Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and
- (d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:
 - (i) The corporate name of a corporation incorporated or authorized to transact business in this state;
 - (ii) A corporate name reserved or registered under RCW 23B.04.020 or 23B.04.030;

(iii) The fictitious name adopted pursuant to RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(iv) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state;

(v) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.08 or 25.10 RCW; and

(vi) The name of any limited liability company organized or registered under chapter 25.15 RCW.

(2) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation, company, holder, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(3) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation, or of another domestic or foreign limited liability company, or of a domestic or foreign limited partnership, that is used in this state if the other corporation is incorporated or authorized to transact business in this state, or if the limited liability company is organized or authorized to transact business in this state, or if the limited partnership is formed or authorized to transact business in this state, and the proposed user corporation:

(a) Has merged with the other corporation, limited liability company, or limited partnership; or

(b) Has been formed by reorganization of the other corporation.

(4) This title does not control the use of assumed business names or "trade names."

(5) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

- (1)(a) A variation in the designation, under subsection (1)(a) of this section, used for the same name;
- (b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;
- (c) Punctuation, capitalization, or special characters or symbols in the same name; or
- (d) Use of abbreviation or the plural form of a word in the same name. [1994 c 211 § 1304. Prior: 1991 c 269 § 36; 1991 c 72 § 32; 1989 c 165 § 37.]

**Reviser's note:* Chapter 25.08 RCW was repealed by 1981 c 51 § 72, effective January 1, 1982. See RCW 25.10.670 for application of chapter 25.10 RCW to previously existing partnerships.

Effective date—Severability—1994 c 211: See RCW 25.15.900 and 25.15.902.

23B.04.020 Reserved name. (1) A person may reserve the exclusive use of a corporate name, including a fictitious name adopted pursuant to RCW 23B.15.060 for a foreign corporation whose corporate name is not available,

by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the corporate name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred eighty-day period.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee. [1989 c 165 § 38.]

23B.04.030 Registered name. (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by RCW 23B.15.060, if the name is distinguishable upon the records of the secretary of state from the names specified in RCW 23B.04.010(1).

(2) A foreign corporation registers its corporate name, or its corporate name with any addition required by RCW 23B.15.060, by delivering to the secretary of state for filing an application that:

(a) Sets forth its corporate name, or its corporate name with any addition required by RCW 23B.15.060, and the state or country and date of its incorporation; and

(b) Is accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

(3) The name is registered for the applicant's exclusive use upon the effective date of the application and until the close of the calendar year in which the application for registration is filed.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application, which complies with the requirements of subsection (2) of this section, between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name, or consent in writing to the use of that name by a corporation thereafter incorporated under this title, by a limited partnership thereafter formed under chapter 25.10 RCW, or by another foreign corporation or limited partnership thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the domestic limited partnership is formed, or the foreign corporation qualifies or consents to the qualification of another foreign corporation or limited partnership under the registered name. [1989 c 165 § 39.]

Chapter 23B.05

OFFICE AND AGENT

Sections

23B.05.010	Registered office and registered agent.
23B.05.020	Change of registered office or registered agent.
23B.05.030	Resignation of registered agent.
23B.05.040	Service on corporation.
23B.05.050	Annual meeting of shareholders—Limitations—Terms of directors

23B.05.010 Registered office and registered agent.

(1) Each corporation must continuously maintain in this state:

(a) A registered office that may be the same as any of its places of business. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in the same city as the registered office in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent that may be:

(i) An individual residing in this state whose business office is identical with the registered office;

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(iii) A foreign corporation or not-for-profit foreign corporation authorized to conduct affairs in this state whose business office is identical with the registered office.

(2) A registered agent shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state. [1989 c 165 § 40.]

23B.05.020 Change of registered office or registered agent.

(1) A corporation may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(a) The name of the corporation;

(b) If the current registered office is to be changed, the street address of the new registered office in accord with RCW 23B.05.010(1)(a);

(c) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (1) of this section and recites that the

corporation has been notified of the change. [1989 c 165 § 41.]

23B.05.030 Resignation of registered agent. (1) A registered agent may resign as agent by signing and delivering to the secretary of state for filing a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(2) After filing the statement the secretary of state shall mail a copy of the statement to the corporation at its principal office.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the 31st day after the date on which the statement was filed. [1989 c 165 § 42.]

23B.05.040 Service on corporation. (1) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.

(2) The secretary of state shall be an agent of a corporation upon whom any such process, notice, or demand may be served if:

(a) The corporation fails to appoint or maintain a registered agent in this state; or

(b) The registered agent cannot with reasonable diligence be found at the registered office.

(3) Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the corporation department of the secretary of state's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the secretary of the corporation at the corporation's principal office as shown on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.

(4) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, and shall record therein the time of such service and the secretary of state's action with reference thereto.

(5) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [1989 c 165 § 43.]

23B.05.050 Annual meeting of shareholders—Limitations—Terms of directors. A corporation registered under the investment company act of 1940 that limits the requirement to hold an annual meeting of shareholders in accordance with RCW 23B.07.010(2) may include in its articles of incorporation or bylaws a provision establishing terms of directors which terms may be longer than one year. [1994 c 256 § 31.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

Chapter 23B.06

SHARES AND DISTRIBUTIONS

Sections

23B.06.010	Authorized shares.
23B.06.020	Terms of class or series.
23B.06.030	Issued and outstanding shares.
23B.06.040	Fractional shares.
23B.06.200	Subscription for shares before incorporation.
23B.06.210	Issuance of shares.
23B.06.220	Liability of shareholders.
23B.06.230	Share dividends.
23B.06.240	Share options.
23B.06.250	Certificates.
23B.06.260	Shares without certificates.
23B.06.270	Restriction on transfer of shares and other securities.
23B.06.280	Expense of issue.
23B.06.300	Shareholders' preemptive rights.
23B.06.310	Corporation's acquisition of its own shares.
23B.06.400	Distributions to shareholders.

23B.06.010 Authorized shares. (1) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue.

(a) If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation.

(b) Any of the designations, preferences, limitations, or relative rights of any class or series may be made dependent upon facts ascertainable outside the articles of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issuance of shares adopted by the board of directors pursuant to authority expressly vested in it by the corporation's articles of incorporation, if the manner in which such facts shall operate on the designations, preferences, limitations, or relative rights of such class or series is clearly and expressly set forth in the articles of incorporation or in the resolution or resolutions providing for the issue of such shares adopted by the board of directors.

(c) All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by RCW 23B.06.020.

(2) The articles of incorporation must authorize (a) one or more classes of shares that together have unlimited voting rights, and (b) one or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares that:

(a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this title;

(b) Are redeemable or convertible as specified in the articles of incorporation (i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event, (ii) for cash, indebtedness, securities, or other property, (iii) in a designated amount or in an amount

determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) of this section is not exhaustive. [1989 c 165 § 44.]

23B.06.020 Terms of class or series. (1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights, within the limits set forth in this section of (a) any class of shares before the issuance of any shares of that class, or (b) one or more series within a class, and designate the number of shares within that series, before the issuance of any shares of that series.

(2) Each series of a class must be given a distinguishing designation.

(3) All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment, which are effective without shareholder action, that set forth:

(a) The name of the corporation;

(b) The text of the amendment determining the terms of the class or series of shares;

(c) The date it was adopted; and

(d) The statement that the amendment was duly adopted by the board of directors.

(5) Unless the articles of incorporation provide otherwise, the board of directors may, after the issuance of shares of a series whose number it is authorized to designate, amend the resolution establishing the series to decrease, but not below the number of shares of such series then outstanding, the number of authorized shares of that series, by filing articles of amendment, which are effective without shareholder action, in the manner provided in subsection (4) of this section. [1989 c 165 § 45.]

23B.06.030 Issued and outstanding shares. (1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (4) of this section and to RCW 23B.06.400.

(3) Redeemable shares are deemed to have been redeemed and not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to

pay the holders the redemption price on surrender of the shares.

(4) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding. [1989 c 165 § 46.]

23B.06.040 Fractional shares. (1) A corporation may:

(a) Issue fractions of a share or pay in money the value of fractions of a share;

(b) Arrange for disposition of fractional shares by the shareholders;

(c) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by RCW 23B.06.250(2).

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(a) That the scrip will become void if not exchanged for full shares before a specified date; and

(b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders. [1989 c 165 § 47.]

23B.06.200 Subscription for shares before incorporation. (1) A written subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(2) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(3) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(4) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than twenty days after the corporation sends written demand for payment to the subscriber.

(5) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to RCW 23B.06.210. [1989 c 165 § 48.]

23B.06.210 Issuance of shares. (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) Any issuance of shares must be authorized by the board of directors. Shares may be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) A good faith determination by the board of directors that the consideration received or to be received for the shares to be issued is adequate is conclusive insofar as the adequacy of consideration relates to whether the shares are validly issued, fully paid and nonassessable. When the board of directors has made such a determination and the corporation has received the consideration, the shares issued therefor are fully paid and nonassessable.

(4) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect to the shares against their purchase price, until the services are performed, the benefits are received, or the note is paid. If the services are not performed, the benefits are not received, or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(5) Where it cannot be determined that outstanding shares are fully paid and nonassessable, there shall be a conclusive presumption that such shares are fully paid and nonassessable if the board of directors makes a good faith determination that there is no substantial evidence that the full consideration for such shares has not been paid. [1989 c 165 § 49.]

23B.06.220 Liability of shareholders. A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued under RCW 23B.06.210 or specified in the subscription agreement under RCW 23B.06.200. [1989 c 165 § 50.]

23B.06.230 Share dividends. (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(2) Shares of one class or series may not be issued as a share dividend in respect to shares of another class or series unless (a) the articles of incorporation so authorize, (b) a majority of the votes entitled to be cast by the class or series to be issued approve the issue, or (c) there are no outstanding shares of the class or series to be issued. [1989 c 165 § 51.]

23B.06.240 Share options. Unless the articles of incorporation provide otherwise, a corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued. [1989 c 165 § 52.]

23B.06.250 Certificates. (1) Shares may but need not be represented by certificates. Unless this title or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(2) At a minimum each share certificate must state on its face:

(a) The name of the issuing corporation and that it is organized under the laws of this state;

(b) The name of the person to whom issued; and

(c) The number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series, and the authority of the board of directors to determine variations for future series, must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information without charge on request in writing.

(4) Each share certificate (a) must be signed, either manually or in facsimile, by two officers designated in the bylaws or by the board of directors and (b) may bear the corporate seal or its facsimile.

(5) If the person who signed, either manually or in facsimile, a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid. [1989 c 165 § 53.]

23B.06.260 Shares without certificates. (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by RCW 23B.06.250 (2) and (3), and, if applicable, RCW 23B.06.270. [1989 c 165 § 54.]

23B.06.270 Restriction on transfer of shares and other securities. (1) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the

shares are parties to the restriction agreement or voted in favor of the restriction.

(2) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by RCW 23B.06.260(2). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(3) A restriction on the transfer or registration of transfer of shares is authorized:

(a) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(b) To preserve exemptions under federal or state securities law; or

(c) For any other reasonable purpose.

(4) A restriction on the transfer or registration of transfer of shares may:

(a) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;

(b) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire the restricted shares;

(c) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(d) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares. [1989 c 165 § 55.]

23B.06.280 Expense of issue. A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares. [1989 c 165 § 56.]

23B.06.300 Shareholders' preemptive rights. (1) Unless the articles of incorporation provide otherwise, and subject to the limitations in subsections (3) and (4) of this section, the shareholders of a corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

(2) Unless the articles of incorporation provide otherwise, a shareholder may waive the shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

(3) Unless the articles of incorporation provide otherwise, there is no preemptive right with respect to:

(a) Shares issued as compensation to directors, officers, agents, or employees of the corporation, or its subsidiaries or affiliates;

(b) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents,

or employees of the corporation, or its subsidiaries or affiliates;

(c) Shares issued pursuant to the corporation's initial plan of financing; and

(d) Shares sold otherwise than for money.

(4) Unless the articles of incorporation provide otherwise:

(a) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class; and

(b) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(5) Unless the articles of incorporation provide otherwise, shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(6) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares. [1989 c 165 § 57.]

23B.06.310 Corporation's acquisition of its own shares. (1) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(3) The board of directors may adopt articles of amendment under this section without shareholder action and deliver them to the secretary of state for filing. The articles must set forth:

(a) The name of the corporation;

(b) The reduction in the number of authorized shares, itemized by class and series; and

(c) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares. [1989 c 165 § 58.]

23B.06.400 Distributions to shareholders. (1) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (2) of this section.

(2) No distribution may be made if, after giving it effect:

(a) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(b) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if

the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(3) For purposes of determinations under subsection (2) of this section:

(a) The board of directors may base a determination that a distribution is not prohibited under subsection (2) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances; and

(b) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section.

(4) The effect of a distribution under subsection (2) of this section is measured:

(a) In the case of a distribution of indebtedness, the terms of which provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made; or

(b) In the case of any other distribution:

(i) If the distribution is by purchase, redemption, or other acquisition of the corporation's shares, the effect of the distribution is measured as of the earlier of the date any money or other property is transferred or debt incurred by the corporation, or the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(ii) If the distribution is of indebtedness other than that described in subsection (4) (a) and (b)(i) of this section, the effect of the distribution is measured as of the date the indebtedness is distributed; and

(iii) In all other cases, the effect of the distribution is measured as of the date the distribution is authorized if payment occurs within one hundred twenty days after the date of authorization, or the date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

(5) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent provided otherwise by agreement.

(6) In circumstances to which this section and related sections of this title are applicable, such provisions supersede the applicability of any other statutes of this state with respect to the legality of distributions. [1990 c 178 § 10; 1989 c 165 § 59.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

Chapter 23B.07 SHAREHOLDERS

Sections

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23B.07.010 Annual meeting. (1) Except as provided in subsection (2) of this section, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(2)(a) If the articles of incorporation or the bylaws of a corporation registered as an investment company under the investment company act of 1940 so provide, the corporation is not required to hold an annual meeting of shareholders in any year in which the election of directors is not required by the investment company act of 1940.

(b) If a corporation is required under (a) of this subsection to hold an annual meeting of shareholders to elect directors, the meeting shall be held no later than one hundred twenty days after the occurrence of the event requiring the meeting.

(3) Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(4) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action. [1994 c 256 § 28; 1989 c 165 § 60.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

23B.07.020 Special meeting. (1) A corporation shall hold a special meeting of shareholders:

(a) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) Except as set forth in subsections (2) and (3) of this section, if the holders of at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the

meeting describing the purpose or purposes for which it is to be held.

(2) The right of shareholders of a public company to call a special meeting may be limited or denied to the extent provided in the articles of incorporation.

(3) If the corporation is other than a public company, the articles or bylaws may require the demand specified in subsection (1)(b) of this section be made by a greater percentage, not in excess of twenty-five percent, of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting.

(4) If not otherwise fixed under RCW 23B.07.030 or 23B.07.070, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(5) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(6) Only business within the purpose or purposes described in the meeting notice required by RCW 23B.07.050(3) may be conducted at a special shareholders' meeting. [1989 c 165 § 61.]

23B.07.030 Court-ordered meeting. (1) The superior court of the county in which the corporation's registered office is located may, after notice to the corporation, summarily order a meeting to be held:

(a) On application of any shareholder of the corporation entitled to vote in the election of directors at an annual meeting, if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting; or

(b) On application of a shareholder who signed a demand for a special meeting valid under RCW 23B.07.020, if:

(i) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may, after notice to the corporation, fix the time and place of the meeting, determine the shares and shareholders entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the manner, form, and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting. [1989 c 165 § 62.]

23B.07.040 Action without meeting. (1) Action required or permitted by this title to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered

to the corporation for inclusion in the minutes or filing with the corporate records.

(2) If not otherwise fixed under RCW 23B.07.030 or 23B.07.070, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (1) of this section.

(3) A shareholder may withdraw consent only by delivering a written notice of withdrawal to the corporation prior to the time when all consents have been delivered to the corporation.

(4) Action taken under this section is effective when all consents have been delivered to the corporation, unless the consent specifies a later effective date.

(5) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(6) If this title requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least ten days before the action is taken. The notice must contain or be accompanied by the same material that, under this title, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to such shareholders for action. [1991 c 72 § 33; 1989 c 165 § 63.]

23B.07.050 Notice of meeting. (1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting. Such notice shall be given no fewer than ten nor more than sixty days before the meeting date, except that notice of a shareholders' meeting to act on an amendment to the articles of incorporation, a plan of merger or share exchange, a proposed sale of assets pursuant to RCW 23B.12.020, or the dissolution of the corporation shall be given no fewer than twenty nor more than sixty days before the meeting date. Unless this title or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless this title or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(3) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(4) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under RCW 23B.07.070, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date. [1989 c 165 § 64.]

23B.07.060 Waiver of notice. (1) A shareholder may waive any notice required by this title, the articles of

incorporation, or bylaws before or after the date and time of the meeting that is the subject of such notice, or in the case of notice required by RCW 23B.07.040(6), before or after the action to be taken by written consent is effective. Except as provided by subsections (2) and (3) of this section, the waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A shareholder's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

(3) A shareholder waives objection to consideration of a particular matter at a meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented. [1991 c 72 § 34; 1989 c 165 § 65.]

23B.07.070 Record date. (1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(2) If not otherwise fixed under subsection (1) of this section or RCW 23B.07.030, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

(4) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

(5) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of shareholders.

(6) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(7) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date. [1989 c 165 § 66.]

23B.07.080 Shareholder participation by means of communication equipment. If the articles of incorporation or bylaws so provide, shareholders may participate in any meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each

other during the meeting. A shareholder participating in a meeting by this means is deemed to be present in person at the meeting. [1989 c 165 § 67.]

23B.07.200 Shareholders' list for meeting. (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders on the record date who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

(2) The shareholders' list must be available for inspection by any shareholder, beginning ten days prior to the meeting and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder, the shareholder's agent, or the shareholder's attorney to inspect the shareholders' list before or at the meeting, the superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection is complete.

(5) A shareholder's right to copy the shareholders' list, and a shareholder's right to otherwise inspect and copy the record of shareholders, is governed by RCW 23B.16.020(3).

(6) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting. [1989 c 165 § 68.]

23B.07.210 Voting entitlement of shares. (1) Except as provided in subsections (2) and (3) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(2) The shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(3) Subsection (2) of this section does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity. [1989 c 165 § 69.]

23B.07.220 Proxies. (1) A shareholder may vote the shareholder's shares in person or by proxy.

(2) A shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment

form, either personally or by the shareholder's attorney-in-fact or agent.

(3) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment form.

(4) An appointment of a proxy is revocable by the shareholder unless the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

- (a) A pledgee;
- (b) A person who purchased or agreed to purchase the shares;
- (c) A creditor of the corporation who extended its credit under terms requiring the appointment;
- (d) An employee of the corporation whose employment contract requires the appointment; or
- (e) A party to a voting agreement created under RCW 23B.07.310.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(6) An appointment made irrevocable under subsection (4) of this section is revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to RCW 23B.07.240 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment. [1989 c 165 § 70.]

23B.07.230 Shares held by nominees. (1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

- (2) The procedure may set forth:
 - (a) The types of nominees to which it applies;
 - (b) The rights or privileges that the corporation recognizes in a beneficial owner;
 - (c) The manner in which the procedure is selected by the nominee;
 - (d) The information that must be provided when the procedure is selected;
 - (e) The period for which selection of the procedure is effective; and
 - (f) Other aspects of the rights and duties created. [1989 c 165 § 71.]

23B.07.240 Corporation's acceptance of votes. (1) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(a) The shareholder is an entity and the name signed purports to be that of an officer, partner, or agent of the entity;

(b) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(c) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

(e) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coowners and the person signing appears to be acting on behalf of all the coowners.

(3) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise. [1989 c 165 § 72.]

23B.07.250 Quorum and voting requirements. (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this title provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting other than solely to object to holding the meeting or transacting business at the meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors, is approved by a voting group if the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action, unless the articles of incorporation or this title require a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing, or deleting either (i) a quorum for a voting group greater or lesser than specified in subsection (1) of this section, or (ii) a voting requirement for a voting group greater than specified in subsection (3) of this section, is governed by RCW 23B.07.270.

(5) The election of directors is governed by RCW 23B.07.280. [1989 c 165 § 73.]

23B.07.260 Action by single and multiple voting groups. (1) If the articles of incorporation or this title provide for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in RCW 23B.07.250.

(2) If the articles of incorporation or this title provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in RCW 23B.07.250. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter. [1989 c 165 § 74.]

23B.07.270 Greater or lesser quorum or voting requirements. (1) The articles of incorporation may provide for a greater or lesser quorum, but not less than one-third of the votes entitled to be cast, for shareholders, or voting groups of shareholders, than is provided for by this title.

(2) The articles of incorporation may provide for a greater voting requirement for shareholders, or voting groups of shareholders, than is provided for by this title.

(3) Under RCW 23B.10.030, 23B.11.030, 23B.12.020, and 23B.14.020, the articles of incorporation may provide for a lesser vote than is otherwise prescribed in those sections or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the plan or transaction is not less than a majority of all the votes entitled to be cast on the plan or transaction by that voting group.

(4) Except as provided in subsection (5) of this section, an amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement for a particular corporate action must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect for the corporate action.

(5) An amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement for a merger, share exchange, sale of

substantially all assets, or dissolution must be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect for the particular corporate action, or the quorum and voting requirements then in effect for amendments to articles of incorporation, whichever is greater. [1990 c 178 § 11; 1989 c 165 § 75.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.07.280 Voting for directors—Cumulative voting. (1) Unless otherwise provided in the articles of incorporation, shareholders entitled to vote at any election of directors are entitled to cumulate votes by multiplying the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and to cast the product for a single candidate or distribute the product among two or more candidates.

(2) Unless otherwise provided in the articles of incorporation, in any election of directors the candidates elected are those receiving the largest numbers of votes cast by the shares entitled to vote in the election, up to the number of directors to be elected by such shares. [1989 c 165 § 76.]

23B.07.300 Voting trusts. (1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each owner of a beneficial interest transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than ten years after its effective date unless extended under subsection (3) of this section.

(3) All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid only until the earlier of ten years from the date the first shareholder signs the extension agreement or the date of expiration of the extension. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it. [1989 c 165 § 77.]

23B.07.310 Voting agreements. (1) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of RCW 23B.07.300.

(2) A voting agreement created under this section is specifically enforceable. [1989 c 165 § 78.]

23B.07.320 Agreements among shareholders—Acquisition of shares after agreement. (1) An agreement among the shareholders of a corporation that is not contrary to public policy and that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this title in that it:

(a) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in RCW 23B.06.400;

(c) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(d) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation;

(g) Provides a process by which a deadlock among directors or shareholders may be resolved;

(h) Requires dissolution of the corporation at the request of one or more shareholders or upon the occurrence of a specified event or contingency; or

(i) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them.

(2) An agreement authorized by this section shall be:

(a) Set forth in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;

(b) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(c) Valid for ten years, unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by RCW 23B.06.260(2). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Unless the agreement provides otherwise, any person who acquires outstanding or newly issued shares in the corporation after an agreement authorized by this section has been effected, whether by purchase, gift, operation of law, or otherwise, is deemed to have assented to the agreement and to be a party to the

agreement. A purchaser of shares who is aggrieved because he or she at the time of purchase did not have actual or constructive knowledge of the existence of the agreement may either: (a) Bring an action to rescind the purchase within the earlier of ninety days after discovery of the existence of the agreement or two years after the purchase of the shares; or (b) continue to hold the shares subject to the agreement but with a right of action for any damages resulting from nondisclosure of the existence of the agreement. A purchaser shall be deemed to have constructive knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made. [1995 c 47 § 6; 1993 c 290 § 4.]

23B.07.400 Derivative proceedings procedure. (1)

A person may not commence a proceeding in the right of a domestic or foreign corporation unless the person was a shareholder of the corporation when the transaction complained of occurred or unless the person became a shareholder through transfer by operation of law from one who was a shareholder at that time.

(2) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why a demand was not made. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

(3) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the

court shall direct that notice be given to the shareholders affected.

(4) On termination of the proceeding the court may require the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.

(5) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on behalf of the beneficial owner. [1989 c 165 § 79.]

Chapter 23B.08 DIRECTORS AND OFFICERS

Sections

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23B.08.010 Requirement for and duties of board of directors. (1) Except as provided in subsection (3) of this section, each corporation must have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation.

(3) A corporation may dispense with or limit the authority of its board of directors by describing in its articles

of incorporation who will perform some or all of the duties of the board of directors. [1989 c 165 § 80.]

23B.08.020 Qualifications of directors. The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe. [1989 c 165 § 81.]

23B.08.030 Number and election of directors. (1) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless (a) their terms are staggered under RCW 23B.08.060, or (b) their terms are otherwise governed by RCW 23B.05.050. [1994 c 256 § 29; 1989 c 165 § 82.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

23B.08.040 Election of directors by certain classes or series of shares. If the articles of incorporation authorize dividing the shares into classes or series, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes or series of shares. A class, or classes, or series of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors. [1989 c 165 § 83.]

23B.08.050 Terms of directors—Generally. (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election unless (a) their terms are staggered under RCW 23B.08.060, or (b) their terms are otherwise governed by RCW 23B.05.050.

(3) A decrease in the number of directors does not shorten an incumbent director's term.

(4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(5) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualified or until there is a decrease in the number of directors. [1994 c 256 § 30; 1989 c 165 § 84.]

Findings—Construction—1994 c 256: See RCW 43.320.007.

23B.08.060 Staggered terms for directors. (1) The articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing one-half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be

chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

(2) If cumulative voting is authorized, any provision establishing staggered terms of directors shall provide that at least three directors shall be elected at each annual shareholders' meeting. [1989 c 165 § 85.]

23B.08.070 Resignation of directors. (1) A director may resign at any time by delivering written notice to the board of directors, its chairperson, the president, or the secretary.

(2) A resignation is effective when the notice is delivered unless the notice specifies a later effective date. [1989 c 165 § 86.]

23B.08.080 Removal of directors by shareholders. (1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by holders of one or more authorized classes or series of shares, only the holders of those classes or series of shares may participate in the vote to remove the director.

(3) If cumulative voting is authorized, and if less than the entire board is to be removed, no director may be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director.

(4) A director may be removed by the shareholders only at a special meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director. [1995 c 47 § 7; 1989 c 165 § 87.]

23B.08.090 Removal of directors by judicial proceeding. (1) The superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten percent of the outstanding shares of any class if the court finds that (a) the director engaged in fraudulent or dishonest conduct with respect to the corporation, and (b) removal is in the best interest of the corporation.

(2) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(3) If shareholders commence a proceeding under subsection (1) of this section, they shall make the corporation a party defendant. [1989 c 165 § 88.]

23B.08.100 Vacancy on board of directors. (1) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

- (a) The shareholders may fill the vacancy;
- (b) The board of directors may fill the vacancy; or

(c) If the directors in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors in office.

(2) If the vacant office was held by a director elected by holders of one or more authorized classes or series of shares, only the holders of those classes or series of shares are entitled to vote to fill the vacancy.

(3) A vacancy that will occur at a specific later date, by reason of a resignation effective at a later date under RCW 23B.08.070(2) or otherwise, may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs. [1989 c 165 § 89.]

23B.08.110 Compensation of directors. Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors. [1989 c 165 § 90.]

23B.08.200 Meetings and action of the board. (1) The board of directors may hold regular or special meetings in or out of this state.

(2) Unless the articles of incorporation or bylaws provide otherwise, any or all directors may participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating can hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting. [1989 c 165 § 91.]

23B.08.210 Action without meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this title to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director either before or after the action taken, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a later effective date.

(3) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. [1989 c 165 § 92.]

23B.08.220 Notice of meeting. (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws. [1989 c 165 § 93.]

23B.08.230 Waiver of notice. (1) A director may waive any notice required by this title, the articles of incorporation, or bylaws before or after the date and time

stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided by subsection (2) of this section, the waiver must be in writing, signed by the director entitled to the notice, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting. [1989 c 165 § 94.]

23B.08.240 Quorum and voting. (1) Unless the articles of incorporation or bylaws require a greater or lesser number, a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) Notwithstanding subsection (1) of this section, a quorum of a board of directors may in no event be less than one-third of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors when action is taken is deemed to have assented to the action taken unless: (a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding it or transacting business at the meeting; (b) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or (c) the director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation within a reasonable time after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken. [1991 c 72 § 35; 1989 c 165 § 95.]

23B.08.250 Committees. (1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees of directors. Each committee must have two or more members, who serve at the pleasure of the board of directors.

(2) The creation of a committee and appointment of members to it must be approved by the greater of (a) a majority of all the directors in office when the action is taken or (b) the number of directors required by the articles of incorporation or bylaws to take action under RCW 23B.08.240.

(3) RCW 23B.08.200 through 23B.08.240, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under RCW 23B.08.010.

(5) A committee may not, however:

(a) Authorize or approve a distribution except according to a general formula or method prescribed by the board of directors;

(b) Approve or propose to shareholders action that this title requires be approved by shareholders;

(c) Fill vacancies on the board of directors or on any of its committees;

(d) Amend articles of incorporation pursuant to RCW 23B.10.020;

(e) Adopt, amend, or repeal bylaws;

(f) Approve a plan of merger not requiring shareholder approval; or

(g) Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee, or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(6) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in RCW 23B.08.300. [1989 c 165 § 96.]

23B.08.300 General standards for directors. (1) A director shall discharge the duties of a director, including duties as member of a committee:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the director reasonably believes to be in the best interests of the corporation.

(2) In discharging the duties of a director, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(b) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(c) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section. [1989 c 165 § 97.]

23B.08.310 Liability for unlawful distributions. (1) A director who votes for or assents to a distribution made in violation of RCW 23B.06.400 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating RCW 23B.06.400 or the articles of incorporation if it is established that the director did not

perform the director's duties in compliance with RCW 23B.08.300. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(2) A director held liable under subsection (1) of this section for an unlawful distribution is entitled to contribution:

(a) From every other director who could be held liable under subsection (1) of this section for the unlawful distribution; and

(b) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of RCW 23B.06.400 or the articles of incorporation.

(3) A proceeding under this section is barred unless it is commenced within two years after the date on which the effect of the distribution was measured under RCW 23B.06.400(4). [1989 c 165 § 98.]

23B.08.320 Limitation on liability of directors. The articles of incorporation may contain provisions not inconsistent with law that eliminate or limit the personal liability of a director to the corporation or its shareholders for monetary damages for conduct as a director, provided that such provisions shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, for conduct violating RCW 23B.08.310, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when such provision becomes effective. [1989 c 165 § 99.]

23B.08.400 Officers. (1) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(2) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(4) The same individual may simultaneously hold more than one office in a corporation. [1989 c 165 § 100.]

23B.08.410 Duties of officers. Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by an officer authorized by the board of directors to prescribe the duties of other officers. [1989 c 165 § 101.]

23B.08.420 Standards of conduct for officers. (1) An officer with discretionary authority shall discharge the officer's duties under that authority:

(a) In good faith;

(b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(c) In a manner the officer reasonably believes to be in the best interests of the corporation.

(2) In discharging the officer's duties, the officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(a) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(b) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(3) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) An officer is not liable for any action taken as an officer, or any failure to take any action, if the officer performed the duties of the officer's office in compliance with this section. [1989 c 165 § 102.]

23B.08.430 Resignation and removal of officers. (1) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

(2) A board of directors may remove any officer at any time with or without cause. An officer or assistant officer, if appointed by another officer, may be removed by any officer authorized to appoint officers or assistant officers. [1989 c 165 § 103.]

23B.08.440 Contract rights of officers. (1) The appointment of an officer does not itself create contract rights.

(2) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer. [1989 c 165 § 104.]

23B.08.500 Indemnification definitions. For purposes of RCW 23B.08.510 through 23B.08.600:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed

with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

(5) "Official capacity" means: (a) When used with respect to a director, the office of director in a corporation; and (b) when used with respect to an individual other than a director, as contemplated in RCW 23B.08.570, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal. [1989 c 165 § 105.]

23B.08.510 Authority to indemnify. (1) Except as provided in subsection (4) of this section, a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if:

(a) The individual acted in good faith; and

(b) The individual reasonably believed:

(i) In the case of conduct in the individual's official capacity with the corporation, that the individual's conduct was in its best interests; and

(ii) In all other cases, that the individual's conduct was at least not opposed to its best interests; and

(c) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

(2) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of subsection (1)(b)(ii) of this section.

(3) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(4) A corporation may not indemnify a director under this section:

(a) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(b) In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in the director's official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(5) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding. [1989 c 165 § 106.]

23B.08.520 Mandatory indemnification. Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because of being a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding. [1989 c 165 § 107.]

23B.08.530 Advance for expenses. (1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) The director furnishes the corporation a written affirmation of the director's good faith belief that the director has met the standard of conduct described in RCW 23B.08.510; and

(b) The director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct.

(2) The undertaking required by subsection (1)(b) of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Authorization of payments under this section may be made by provision in the articles of incorporation or bylaws, by resolution adopted by the shareholders or board of directors, or by contract. [1989 c 165 § 108.]

23B.08.540 Court-ordered indemnification. Unless a corporation's articles of incorporation provide otherwise, a director of a corporation who is a party to a proceeding may apply for indemnification or advance of expenses to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court after giving any notice the court considers necessary may order indemnification or advance of expenses if it determines:

(1) The director is entitled to mandatory indemnification under RCW 23B.08.520, in which case the court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification;

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in RCW 23B.08.510 or was adjudged liable as described in RCW 23B.08.510(4), but if the director was adjudged so liable the director's indemnification is limited to reasonable expenses incurred unless the articles of incorporation or a bylaw, contract, or resolution approved or ratified by the shareholders pursuant to RCW 23B.08.560 provides otherwise; or

(3) In the case of an advance of expenses, the director is entitled pursuant to the articles of incorporation, bylaws, or any applicable resolution or contract, to payment or reimbursement of the director's reasonable expenses incurred as a party to the proceeding in advance of final disposition of the proceeding. [1989 c 165 § 109.]

23B.08.550 Determination and authorization of indemnification. (1) A corporation may not indemnify a director under RCW 23B.08.510 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in RCW 23B.08.510.

(2) The determination shall be made:

(a) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) If a quorum cannot be obtained under (a) of this subsection, by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding;

(c) By special legal counsel:

(i) Selected by the board of directors or its committee in the manner prescribed in (a) or (b) of this subsection; or

(ii) If a quorum of the board of directors cannot be obtained under (a) of this subsection and a committee cannot be designated under (b) of this subsection, selected by majority vote of the full board of directors, in which selection directors who are parties may participate; or

(d) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(3) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (2)(c) of this section to select counsel. [1989 c 165 § 110.]

23B.08.560 Shareholder authorized indemnification and advancement of expenses. (1) If authorized by the articles of incorporation, a bylaw adopted or ratified by the shareholders, or a resolution adopted or ratified, before or after the event, by the shareholders, a corporation shall have power to indemnify or agree to indemnify a director made a party to a proceeding, or obligate itself to advance or reimburse expenses incurred in a proceeding, without regard to the limitations in RCW 23B.08.510 through 23B.08.550, provided that no such indemnity shall indemnify any director from or on account of:

(a) Acts or omissions of the director finally adjudged to be intentional misconduct or a knowing violation of law;

(b) Conduct of the director finally adjudged to be in violation of RCW 23B.08.310; or

(c) Any transaction with respect to which it was finally adjudged that such director personally received a benefit in money, property, or services to which the director was not legally entitled.

(2) Unless the articles of incorporation, or a bylaw or resolution adopted or ratified by the shareholders, provide otherwise, any determination as to any indemnity or advance of expenses under subsection (1) of this section shall be made in accordance with RCW 23B.08.550. [1989 c 165 § 111.]

23B.08.570 Indemnification of officers, employees, and agents. Unless a corporation's articles of incorporation provide otherwise:

(1) An officer of the corporation who is not a director is entitled to mandatory indemnification under RCW 23B.08.520, and is entitled to apply for court-ordered indemnification under RCW 23B.08.540, in each case to the same extent as a director;

(2) The corporation may indemnify and advance expenses under RCW 23B.08.510 through 23B.08.560 to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and

(3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract. [1989 c 165 § 112.]

23B.08.580 Insurance. A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by the individual in that capacity or arising from the individual's status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the individual against the same liability under RCW 23B.08.510 or 23B.08.520. [1989 c 165 § 113.]

23B.08.590 Validity of indemnification or advance for expenses. (1) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its shareholders or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with RCW 23B.08.500 through 23B.08.580. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles of incorporation.

(2) RCW 23B.08.500 through 23B.08.580 do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with the director's appearance as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding. [1989 c 165 § 114.]

23B.08.600 Report to shareholders. If a corporation indemnifies or advances expenses to a director under RCW 23B.08.510, 23B.08.520, 23B.08.530, 23B.08.540, or 23B.08.560 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the shareholders with or before the notice of the next shareholders' meeting. [1989 c 165 § 115.]

23B.08.700 Definitions. For purposes of RCW 23B.08.710 through 23B.08.730:

(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, if:

(a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that the director or a related person is a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

(b) The transaction is brought, or is of such character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction: (i) An entity, other than the corporation, of which the director is a director, general partner, agent, or employee; (ii) a person that controls one or more of the entities specified in (b)(i) of this subsection or an entity that is controlled by, or is under common control with, one or more of the entities specified in (b)(i) of this subsection; or (iii) an individual who is a general partner, principal, or employer of the director.

(2) "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, respecting which a director of the corporation has a conflicting interest.

(3) "Related person" of a director means (a) the spouse, or a parent or sibling thereof, of the director, or a child, grandchild, sibling, parent, or spouse of any thereof, of the director, or an individual having the same home as the director, or a trust or estate of which an individual specified herein is a substantial beneficiary; or (b) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.

(4) "Required disclosure" means disclosure by the director who has a conflicting interest of (a) the existence and nature of the director's conflicting interest, and (b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral

withdrawal from the transaction would entail significant loss, liability, or other damage. [1989 c 165 § 116.]

23B.08.710 Judicial action. (1) A transaction effected or proposed to be effected by a corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, that is not a director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because a director of the corporation, or any person with whom or which the director has a personal, economic, or other association, has an interest in the transaction.

(2) A director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because the director, or any person with whom or which the director has a personal, economic, or other association, has an interest in the transaction, if:

(a) Directors' action respecting the transaction was at any time taken in compliance with RCW 23B.08.720;

(b) Shareholders' action respecting the transaction was at any time taken in compliance with RCW 23B.08.730; or

(c) The transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation. [1989 c 165 § 117.]

23B.08.720 Directors' action. (1) Directors' action respecting a transaction is effective for purposes of RCW 23B.08.710(2)(a) if the transaction received the affirmative vote of a majority, but no fewer than two, of those qualified directors on the board of directors or on a duly empowered committee of the board who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection (2) of this section, provided that action by a committee is so effective only if:

(a) All its members are qualified directors; and

(b) Its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(2) If a director has a conflicting interest respecting a transaction, but neither the director nor a related person of the director specified in RCW 23B.08.700(3)(a) is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the disclosure described in RCW 23B.08.700(4)(b), then disclosure is sufficient for purposes of subsection (1) of this section if the director (a) discloses to the directors voting on the transaction the existence and nature of the director's conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction, and (b) plays no part, directly or indirectly, in their deliberations or vote.

(3) A majority, but no fewer than two, of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section. Directors' action that otherwise

complies with this section is not affected by the presence or vote of a director who is not a qualified director.

(4) For purposes of this section "qualified director" means, with respect to a director's conflicting interest transaction, any director who does not have either (a) a conflicting interest respecting the transaction, or (b) a familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction. [1989 c 165 § 118.]

23B.08.730 Shareholders' action. (1) Shareholders' action respecting a transaction is effective for purposes of RCW 23B.08.710(2)(b) if a majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after (a) notice to shareholders describing the director's conflicting interest transaction, (b) provision of the information referred to in subsection (4) of this section, and (c) required disclosure to the shareholders who voted on the transaction, to the extent the information was not known by them.

(2) For purposes of this section, "qualified shares" means any shares entitled to vote with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary, or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned, or the voting of which is controlled, by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

(3) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to the provisions of subsections (4) and (5) of this section, shareholders' action that otherwise complies with this section is not affected by the presence of holders, or the voting, of shares that are not qualified shares.

(4) For purposes of compliance with subsection (1) of this section, a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary, or other officer or agent of the corporation authorized to tabulate votes, of the number, and the identity of persons holding or controlling the vote, of all shares that the director knows are beneficially owned, or the voting of which is controlled, by the director, or by a related person of the director, or both.

(5) If a shareholders' vote does not comply with subsection (1) of this section solely because of a failure of a director to comply with subsection (4) of this section, and if the director establishes that the director's failure did not determine and was not intended by the director to influence the outcome of the vote, the court may, with or without further proceedings respecting RCW 23B.08.710(2)(c), take such action respecting the transaction and the director, and give such effect, if any, to the shareholders' vote, as it considers appropriate in the circumstances. [1989 c 165 § 119.]

Chapter 23B.09

[RESERVED]

Chapter 23B.10

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

Sections

23B.10.010	Authority to amend articles of incorporation.
23B.10.020	Amendment of articles of incorporation by board of directors.
23B.10.030	Amendment of articles of incorporation by board of directors and shareholders.
23B.10.040	Voting on amendments to articles of incorporation by voting groups.
23B.10.050	Amendment of articles of incorporation before issuance of shares.
23B.10.060	Articles of amendment.
23B.10.070	Restated articles of incorporation.
23B.10.080	Amendment of articles of incorporation pursuant to reorganization.
23B.10.090	Effect of amendment of articles of incorporation.
23B.10.200	Amendment of bylaws by board of directors or shareholders.
23B.10.210	Bylaw increasing quorum or voting requirements for directors.

23B.10.010 Authority to amend articles of incorporation. (1) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(2) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement, or purpose or duration of the corporation. [1989 c 165 § 120.]

23B.10.020 Amendment of articles of incorporation by board of directors. Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) If the corporation has only one class of shares outstanding, to provide, change, or eliminate any provision with respect to the par value of any class of shares;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;

(4) If the corporation has only one class of shares outstanding, solely to change the number of authorized shares to effectuate a split of, or stock dividend in, the corporation's own shares, or solely to do so and to change the number of authorized shares in proportion thereto;

(5) To change the corporate name; or

(6) To make any other change expressly permitted by this title to be made without shareholder action. [1989 c 165 § 121.]

23B.10.030 Amendment of articles of incorporation by board of directors and shareholders. (1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For the amendment to be adopted:

(a) The board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(b) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposed amendment on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with *RCW 23B.07.050. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy of the amendment.

(5) Unless this title, the articles of incorporation, or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by each voting group entitled to vote thereon by two-thirds, or, in the case of a public company, a majority, of all the votes entitled to be cast by that voting group. The articles of incorporation of a corporation other than a public company may provide for a lesser vote than that provided for in this subsection, or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the amendment is not less than a majority of all the votes entitled to be cast on the amendment by that voting group. [1989 c 165 § 122.]

***Reviser's note:** The reference to "section 62 of this act" has been translated to "RCW 23B.07.050," the section dealing with notice of shareholder meetings. A literal translation would have been "RCW 23B.07.030," which appears to be erroneous.

23B.10.040 Voting on amendments to articles of incorporation by voting groups. (1) The holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this title, on a proposed amendment if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of the class;

(b) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(c) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(d) Change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(e) Change the shares of all or part of the class into a different number of shares of the same class;

(f) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(g) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(h) Limit or deny an existing preemptive right of all or part of the shares of the class; or

(i) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect only a series of a class of shares in one or more of the ways described in subsection (1) of this section, only the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(3) If a proposed amendment that entitles two or more series of shares within a class to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series within the class so affected must vote together as a single voting group on the proposed amendment.

(4) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares. [1989 c 165 § 123.]

23B.10.050 Amendment of articles of incorporation before issuance of shares. If a corporation has not yet issued shares, its board of directors, or incorporators if initial directors were not named in the articles of incorporation and have not been elected, may adopt one or more amendments to the corporation's articles of incorporation. [1989 c 165 § 124.]

23B.10.060 Articles of amendment. A corporation amending its articles of incorporation shall deliver to the secretary of state for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) The date of each amendment's adoption;

(5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required; and

(6) If shareholder action was required, a statement that the amendment was duly approved by the shareholders in accordance with the provisions of RCW 23B.10.030 and 23B.10.040. [1989 c 165 § 125.]

23B.10.070 Restated articles of incorporation. (1) Any officer of the corporation may restate its articles of incorporation at any time.

(2) A restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment not requiring shareholder approval, it must be adopted by the board of directors. If the restatement includes an amendment requiring shareholder approval, it must be adopted in accordance with RCW 23B.10.030.

(3) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.

(4) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) If the restatement does not include an amendment to the articles of incorporation, a statement to that effect;

(b) If the restatement contains an amendment to the articles of incorporation not requiring shareholder approval, a statement that the board of directors adopted the restatement and the date of such adoption;

(c) If the restatement contains an amendment to the articles of incorporation requiring shareholder approval, the information required by RCW 23B.10.060; and

(d) Both the articles of restatement and the certificate must be executed.

(5) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(6) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (4) of this section. [1991 c 72 § 36; 1989 c 165 § 126.]

23B.10.080 Amendment of articles of incorporation pursuant to reorganization. (1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by RCW 23B.02.020.

(2) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(a) The name of the corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding under federal statute.

(3) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

(4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan. [1989 c 165 § 127.]

23B.10.090 Effect of amendment of articles of incorporation. An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name. [1989 c 165 § 128.]

23B.10.200 Amendment of bylaws by board of directors or shareholders. (1) A corporation's board of directors may amend or repeal the corporation's bylaws, or adopt new bylaws, unless:

(a) The articles of incorporation or this title reserve this power exclusively to the shareholders in whole or part; or

(b) The shareholders, in amending or repealing a particular bylaw, provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws, or adopt new bylaws, even though the bylaws may also be amended or repealed, or new bylaws may also be adopted, by its board of directors. [1989 c 165 § 129.]

23B.10.210 Bylaw increasing quorum or voting requirements for directors. (1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) If originally adopted by the shareholders, only by the shareholders; or

(b) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) If the corporation is a public company, action by the board of directors under subsection (1)(b) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the quorum requirement and be adopted by the vote required to take action under the quorum and voting requirement then in effect.

(4) If the corporation is not a public company, action by the board of directors under subsection (1)(b) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote

required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater. [1989 c 165 § 130.]

Chapter 23B.11

MERGER AND SHARE EXCHANGE

Sections

23B.11.010	Merger.
23B.11.020	Share exchange.
23B.11.030	Action on plan of merger or share exchange.
23B.11.040	Merger of subsidiary.
23B.11.050	Articles of merger or share exchange.
23B.11.060	Effect of merger or share exchange.
23B.11.070	Merger or share exchange with foreign corporation.
23B.11.080	Merger with limited partnership.
23B.11.090	Articles of merger—Limited partnership.
23B.11.100	Effect of merger with limited partnership.
23B.11.110	Merger with foreign limited partnerships and corporations—Effect.

23B.11.010 Merger. (1) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders, if required by RCW 23B.11.030, approve a plan of merger.

(2) The plan of merger must set forth:

(a) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation; and

(b) Other provisions relating to the merger. [1989 c 165 § 131.]

23B.11.020 Share exchange. (1) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders, if required by RCW 23B.11.030, approve the exchange.

(2) The plan of exchange must set forth:

(a) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(b) The terms and conditions of the exchange;

(c) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for cash or other property in whole or part.

(3) The plan of exchange may set forth other provisions relating to the exchange.

(4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise. [1989 c 165 § 132.]

23B.11.030 Action on plan of merger or share exchange. (1) After adopting a plan of merger or share

exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (7) of this section, or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) The shareholders entitled to vote must approve the plan.

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(5) Unless this title, the articles of incorporation, or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the plan of merger to be authorized must be approved by each voting group entitled to vote separately on the plan by two-thirds of all the votes entitled to be cast on the plan by that voting group. The articles of incorporation may provide for a lesser vote than that provided in this subsection, or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the plan of merger is not less than a majority of all the votes entitled to be cast on the plan of merger by that voting group. Separate voting by voting groups is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under RCW 23B.10.040.

(6) Unless this title, the articles of incorporation, or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the plan of share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by two-thirds of all the votes entitled to be cast on the plan by that voting group. The articles of incorporation may provide for a lesser vote than that provided in this subsection, or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the plan of share exchange is not less than a majority of all the votes entitled to be cast on the plan of share exchange by that voting group. Separate voting by voting groups is required on a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerat-

ed in RCW 23B.10.020, from its articles of incorporation before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of voting shares of the surviving corporation authorized by its articles of incorporation immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of participating shares authorized by its articles of incorporation immediately before the merger.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors. [1989 c 165 § 133.]

23B.11.040 Merger of subsidiary. (1) A parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.

(2) The board of directors of the parent shall adopt a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

(b) The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.

(3) Within ten days after the corporate action is taken, the parent shall mail a copy of the plan of merger to each shareholder of the subsidiary.

(4) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation, except for amendments enumerated in RCW 23B.10.020. [1989 c 165 § 134.]

23B.11.050 Articles of merger or share exchange. After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring

corporation shall deliver to the secretary of state for filing articles of merger or share exchange setting forth:

(1) The plan of merger or share exchange;

(2) If shareholder approval was not required, a statement to that effect; or

(3) If approval of the shareholders of one or more corporations party to the merger or share exchange was required, a statement that the merger or share exchange was duly approved by the shareholders pursuant to RCW 23B.11.030. [1989 c 165 § 135.]

23B.11.060 Effect of merger or share exchange. (1) When a merger takes effect:

(a) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(b) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(c) The surviving corporation has all liabilities of each corporation party to the merger;

(d) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(e) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(f) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the articles of merger or to their rights under chapter 23B.13 RCW.

(2) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights under chapter 23B.13 RCW. [1989 c 165 § 136.]

23B.11.070 Merger or share exchange with foreign corporation. (1) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(a) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(b) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(c) The foreign corporation complies with RCW 23B.11.050 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(d) Each domestic corporation complies with the applicable provisions of RCW 23B.11.010 through 23B.11.040 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with RCW 23B.11.050.

(2) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

(a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(b) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under chapter 23B.13 RCW.

(3) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise. [1989 c 165 § 137.]

23B.11.080 Merger with limited partnership. (1) One or more domestic corporations may merge with one or more limited partnerships if:

(a) The board of directors of each corporation adopts and the shareholders of each corporation approve, if approval would be necessary, the plan of merger as required by RCW 23B.11.030; and

(b) The partners of each limited partnership approve the plan of merger as required by RCW 25.10.810.

(2) The plan of merger must set forth:

(a) The name of each corporation and limited partnership planning to merge and the name of the surviving corporation or limited partnership into which each other corporation or limited partnership plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation and the partnership interests of each limited partnership into shares, partnership interests, obligations or other securities of the surviving corporation or limited partnership, or into cash or other property, including shares, obligations, or securities of any other corporation, and partnership interests, obligations, or securities of any other limited partnership, in whole or in part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation;

(b) Amendments to the certificate of limited partnership of the surviving limited partnership; and

(c) Other provisions relating to the merger. [1991 c 269 § 38.]

23B.11.090 Articles of merger—Limited partnership. After a plan of merger for one or more corporations and one or more limited partnerships is approved by the shareholders of each corporation (or adopted by the board of directors of any corporation for which shareholder approval is not required), and is approved by the partners for each limited partnership as required by RCW 25.10.810, the surviving entity must:

(1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:

(a) The plan of merger;

(b) A statement that the merger was duly approved by the shareholders of each corporation pursuant to RCW

23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and

(c) A statement that the merger was duly approved by the partners of each limited partnership pursuant to RCW 25.10.810.

(2) If the surviving entity is a limited partnership, comply with the requirements in RCW 25.10.820. [1991 c 269 § 39.]

23B.11.100 Effect of merger with limited partnership. When a merger of one or more corporations and one or more limited partnerships takes effect, and a corporation is the surviving entity:

(1) Every other corporation and every limited partnership party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation, and every limited partnership, ceases;

(2) The title to all real estate and other property owned by each corporation and limited partnership party to the merger is vested in the surviving corporation without reversion or impairment;

(3) The surviving corporation has all the liabilities of each corporation and limited partnership party to the merger;

(4) A proceeding pending against any corporation or limited partnership party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation or limited partnership whose existence ceased;

(5) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger;

(6) The former holders of the shares of every corporation party to the merger are entitled only to the rights provided in the plan of merger or to their rights under chapter 23B.13 RCW; and

(7) The former holders of partnership interests of every limited partnership party to the merger are entitled only to the rights provided in the plan of merger or to their rights under chapter 25.10 RCW. [1991 c 269 § 40.]

23B.11.110 Merger with foreign limited partnerships and corporations—Effect. (1) One or more foreign limited partnerships and one or more foreign corporations may merge with one or more domestic corporations, provided that:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited partnership was organized and the law of the state or country under which each foreign corporation was incorporated and each foreign limited partnership or foreign corporation complies with that law in effecting the merger;

(b) If the surviving entity is a foreign or domestic corporation, that corporation complies with RCW 23B.11.090;

(c) If the surviving entity is a foreign or domestic limited partnership, that limited partnership complies with RCW 25.10.820;

(d) Each domestic corporation complies with RCW 23B.11.080; and

(e) Each domestic limited partnership complies with RCW 25.10.810.

(2) Upon the merger taking effect, a surviving foreign corporation or limited partnership is deemed:

(a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders or partners of each domestic corporation or domestic limited partnership party to the merger; and

(b) To agree that it will promptly pay to the dissenting shareholders or partners of each domestic corporation or domestic limited partnership party to the merger the amount, if any, to which they are entitled under chapter 23B.13 RCW, in the case of dissenting shareholders, or under chapter 25.10 RCW, in the case of dissenting partners. [1991 c 269 § 41.]

Chapter 23B.12 SALE OF ASSETS

Sections

23B.12.010 Sale of assets in regular course of business and mortgage of assets.

23B.12.020 Sale of assets other than in the regular course of business.

23B.12.010 Sale of assets in regular course of business and mortgage of assets. (1) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business; or

(b) Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of its property whether or not in the usual and regular course of business.

(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) of this section is not required. [1990 c 178 § 12; 1989 c 165 § 138.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.12.020 Sale of assets other than in the regular course of business. (1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction to be authorized:

(a) The board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) The shareholders entitled to vote must approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(5) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the transaction to be authorized must be approved by two-thirds of all the votes entitled to be cast on the transaction. The articles of incorporation may provide for a lesser vote than that provided for in this subsection, or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the transaction is not less than a majority of all the votes entitled to be cast on the transaction by that voting group.

(6) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned, subject to any contractual rights, without further shareholder action.

(7) A transaction that constitutes a distribution is governed by RCW 23B.06.400 and not by this section. [1989 c 165 § 139.]

Chapter 23B.13 DISSENTERS' RIGHTS

Sections

23B.13.010 Definitions.

23B.13.020 Right to dissent.

23B.13.030 Dissent by nominees and beneficial owners.

23B.13.200 Notice of dissenters' rights.

23B.13.210 Notice of intent to demand payment.

23B.13.220 Dissenters' notice.

23B.13.230 Duty to demand payment.

23B.13.240 Share restrictions.

23B.13.250 Payment.

23B.13.260 Failure to take action.

23B.13.270 After-acquired shares.

23B.13.280 Procedure if shareholder dissatisfied with payment or offer.

23B.13.300 Court action.

23B.13.310 Court costs and counsel fees.

23B.13.010 Definitions. As used in this chapter:

(1) "Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

(2) "Dissenter" means a shareholder who is entitled to dissent from corporate action under RCW 23B.13.020 and who exercises that right when and in the manner required by RCW 23B.13.200 through 23B.13.280.

(3) "Fair value," with respect to a dissenter's shares, means the value of the shares immediately before the effective date of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

(4) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

(5) "Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(6) "Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

(7) "Shareholder" means the record shareholder or the beneficial shareholder. [1989 c 165 § 140.]

23B.13.020 Right to dissent. (1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party (i) if shareholder approval is required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation and the shareholder is entitled to vote on the merger, or (ii) if the corporation is a subsidiary that is merged with its parent under RCW 23B.11.040;

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation that materially reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under RCW 23B.06.040; or

(e) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW 25.10.900 through 25.10.955, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

(a) The proposed corporate action is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or

(c) The shareholder's demand for payment is withdrawn with the written consent of the corporation. [1991 c 269 § 37; 1989 c 165 § 141.]

23B.13.030 Dissent by nominees and beneficial owners. (1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in the shareholder's name only if the shareholder dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf the shareholder asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which the dissenter dissents and the dissenter's other shares were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on the beneficial shareholder's behalf only if:

(a) The beneficial shareholder submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) The beneficial shareholder does so with respect to all shares of which such shareholder is the beneficial shareholder or over which such shareholder has power to direct the vote. [1989 c 165 § 142.]

23B.13.200 Notice of dissenters' rights. (1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

(2) If corporate action creating dissenters' rights under RCW 23B.13.020 is taken without a vote of shareholders, the corporation, within ten days after [the] effective date of such corporate action, shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in RCW 23B.13.220. [1989 c 165 § 143.]

23B.13.210 Notice of intent to demand payment. (1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights must (a) deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed action is effected, and (b) not vote such shares in favor of the proposed action.

(2) A shareholder who does not satisfy the requirements of subsection (1) of this section is not entitled to payment for the shareholder's shares under this chapter. [1989 c 165 § 144.]

23B.13.220 Dissenters' notice. (1) If proposed corporate action creating dissenters' rights under RCW

23B.13.020 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of RCW 23B.13.210.

(2) The dissenters' notice must be sent within ten days after the effective date of the corporate action, and must:

(a) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1) of this section is delivered; and

(e) Be accompanied by a copy of this chapter. [1989 c 165 § 145.]

23B.13.230 Duty to demand payment. (1) A shareholder sent a dissenters' notice described in RCW 23B.13.220 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the dissenters' notice pursuant to RCW 23B.13.220(2)(c), and deposit the shareholder's certificates in accordance with the terms of the notice.

(2) The shareholder who demands payment and deposits the shareholder's share certificates under subsection (1) of this section retains all other rights of a shareholder until the proposed corporate action is effected.

(3) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for the shareholder's shares under this chapter. [1989 c 165 § 146.]

23B.13.240 Share restrictions. (1) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is effected or the restriction is released under RCW 23B.13.260.

(2) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until the effective date of the proposed corporate action. [1989 c 165 § 147.]

23B.13.250 Payment. (1) Except as provided in RCW 23B.13.270, within thirty days of the later of the effective date of the proposed corporate action, or the date the payment demand is received, the corporation shall pay each dissenter who complied with RCW 23B.13.230 the amount the corporation estimates to be the fair value of the shareholder's shares, plus accrued interest.

(2) The payment must be accompanied by:

(a) The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(b) An explanation of how the corporation estimated the fair value of the shares;

(c) An explanation of how the interest was calculated;

(d) A statement of the dissenter's right to demand payment under RCW 23B.13.280; and

(e) A copy of this chapter. [1989 c 165 § 148.]

23B.13.260 Failure to take action. (1) If the corporation does not effect the proposed action within sixty days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release any transfer restrictions imposed on uncertificated shares.

(2) If after returning deposited certificates and releasing transfer restrictions, the corporation wishes to undertake the proposed action, it must send a new dissenters' notice under RCW 23B.13.220 and repeat the payment demand procedure. [1989 c 165 § 149.]

23B.13.270 After-acquired shares. (1) A corporation may elect to withhold payment required by RCW 23B.13.250 from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1) of this section, after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The corporation shall send with its offer an explanation of how it estimated the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under RCW 23B.13.280. [1989 c 165 § 150.]

23B.13.280 Procedure if shareholder dissatisfied with payment or offer. (1) A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and amount of interest due, and demand payment of the dissenter's estimate, less any payment under RCW 23B.13.250, or reject the corporation's offer under RCW 23B.13.270 and demand payment of the dissenter's estimate of the fair value of the dissenter's shares and interest due, if:

(a) The dissenter believes that the amount paid under RCW 23B.13.250 or offered under RCW 23B.13.270 is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

(b) The corporation fails to make payment under RCW 23B.13.250 within sixty days after the date set for demanding payment; or

(c) The corporation does not effect the proposed action and does not return the deposited certificates or release the

transfer restrictions imposed on uncertificated shares within sixty days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless the dissenter notifies the corporation of the dissenter's demand in writing under subsection (1) of this section within thirty days after the corporation made or offered payment for the dissenter's shares. [1989 c 165 § 151.]

23B.13.300 Court action. (1) If a demand for payment under RCW 23B.13.280 remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The corporation shall commence the proceeding in the superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located. If the corporation is a foreign corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(3) The corporation shall make all dissenters, whether or not residents of this state, whose demands remain unsettled, parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The corporation may join as a party to the proceeding any shareholder who claims to be a dissenter but who has not, in the opinion of the corporation, complied with the provisions of this chapter. If the court determines that such shareholder has not complied with the provisions of this chapter, the shareholder shall be dismissed as a party.

(5) The jurisdiction of the court in which the proceeding is commenced under subsection (2) of this section is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(6) Each dissenter made a party to the proceeding is entitled to judgment (a) for the amount, if any, by which the court finds the fair value of the dissenter's shares, plus interest, exceeds the amount paid by the corporation, or (b) for the fair value, plus accrued interest, of the dissenter's after-acquired shares for which the corporation elected to withhold payment under RCW 23B.13.270. [1989 c 165 § 152.]

23B.13.310 Court costs and counsel fees. (1) The court in a proceeding commenced under RCW 23B.13.300 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess the costs

against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under RCW 23B.13.280.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of RCW 23B.13.200 through 23B.13.280; or

(b) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by chapter 23B.13 RCW.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited. [1989 c 165 § 153.]

Chapter 23B.14 DISSOLUTION

Sections

- 23B.14.010 Dissolution by initial directors or incorporators.
- 23B.14.020 Dissolution by board of directors and shareholders.
- 23B.14.030 Articles of dissolution.
- 23B.14.040 Revocation of dissolution.
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23B.14.010 Dissolution by initial directors or incorporators. A majority of the initial directors, or, if initial directors were not named in the articles of incorporation and have not been elected, the incorporators of a corporation that either has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state for filing:

(1) A copy of a revenue clearance certificate issued pursuant to RCW 82.32.260; and

(2) Articles of dissolution that set forth:

(a) The name of the corporation;

(b) The date of its incorporation;

(c) Either (i) that none of the corporation's shares have been issued or (ii) that the corporation has not commenced business;

(d) That no debt of the corporation remains unpaid;

(e) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and

(f) That a majority of the initial directors authorized the dissolution, or that initial directors were not named in the articles of incorporation and have not been elected and a majority of incorporators authorized the dissolution. [1989 c 165 § 154.]

23B.14.020 Dissolution by board of directors and shareholders. (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be adopted:

(a) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal for dissolution on any basis.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(5) Unless the articles of incorporation or the board of directors, acting pursuant to subsection (3) of this section, require a greater vote or a vote by voting groups, the proposal to dissolve must be approved by two-thirds of all the votes entitled to be cast on that proposal in order to be adopted. The articles of incorporation may provide for a lesser vote than that provided for in this subsection, or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the proposal to dissolve is not less than a majority of all the votes entitled to be cast on the proposal by that voting group. [1989 c 165 § 155.]

23B.14.030 Articles of dissolution. (1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state for filing:

(a) A copy of a revenue clearance certificate issued pursuant to RCW 82.32.260; and

(b) Articles of dissolution setting forth:

(i) The name of the corporation;

(ii) The date dissolution was authorized; and

(iii) If shareholder approval was required for dissolution, a statement that dissolution was duly approved by the shareholders in accordance with RCW 23B.14.020.

(2) A corporation is dissolved upon the effective date of its articles of dissolution. [1989 c 165 § 156.]

23B.14.040 Revocation of dissolution. (1) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of

directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) The name of the corporation and a statement that such name satisfies the requirements of RCW 23B.04.010; if the name is not available, the corporation must file articles of amendment changing its name with the articles of revocation of dissolution;

(b) The effective date of the dissolution that was revoked;

(c) The date that the revocation of dissolution was authorized;

(d) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;

(e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) If shareholder action was required to revoke the dissolution, a statement that revocation of the dissolution was duly approved by the shareholders in accordance with RCW 23B.14.040(2) and 23B.14.020.

(4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred. [1989 c 165 § 157.]

23B.14.050 Effect of dissolution. (1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will not be distributed in kind to its shareholders;

(c) Discharging or making provision for discharging its liabilities;

(d) Distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

(a) Transfer title to the corporation's property;

(b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) Subject its directors or officers to standards of conduct different from those prescribed in chapter 23B.08 RCW;

(d) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(e) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) Terminate the authority of the registered agent of the corporation. [1989 c 165 § 158.]

23B.14.060 Known claims against a dissolved corporation. (1) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(2) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(a) Describe information that must be included in a claim;

(b) Provide a mailing address where a claim may be sent;

(c) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(d) State that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved corporation is barred:

(a) If a claimant who was given written notice under subsection (2) of this section does not deliver the claim to the dissolved corporation by the deadline; or

(b) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution. [1989 c 165 § 159.]

23B.14.200 Administrative dissolution—Grounds. The secretary of state may administratively dissolve a corporation under RCW 23B.14.210 if:

(1) The corporation does not pay any license fees or penalties, imposed by this title, when they become due;

(2) The corporation does not deliver its completed initial report or annual report to the secretary of state when it is due;

(3) The corporation is without a registered agent or registered office in this state;

(4) The corporation does not notify the secretary of state that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) The corporation's period of duration stated in its articles of incorporation expired after July 1, 1990; or

(6) The corporation's period of duration stated in its articles of incorporation expired prior to July 1, 1990, but the corporation has timely paid all license fees imposed by this title and set by rule by the secretary, has timely filed annual reports with the secretary of state, has never been without a registered agent or registered office in this state for sixty days or more, and has never failed to notify the secretary of state of changes in a registered agent or registered office within sixty days of such change. [1994 c 287 § 7; 1991 c 72 § 37; 1990 c 178 § 5; 1989 c 165 § 160.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.14.210 Administrative dissolution—Procedure and effect. (1) If the secretary of state determines that one or more grounds exist under RCW 23B.14.200 for dissolving a corporation, the secretary of state shall give the corporation written notice of the determination by first-class mail, postage prepaid.

(2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is effective, the secretary of state shall administratively dissolve the corporation and give the corporation written notice of the dissolution that recites the ground or grounds therefor and its effective date.

(3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under RCW 23B.14.050 and notify claimants under RCW 23B.14.060.

(4) The administrative dissolution of a corporation does not terminate the authority of its registered agent. [1989 c 165 § 161.]

23B.14.220 Reinstatement following administrative dissolution—Application. (1) A corporation administratively dissolved under RCW 23B.14.210 may apply to the secretary of state for reinstatement within five years after the effective date of dissolution. The application must:

(a) Recite the name of the corporation and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) State that the corporation's name satisfies the requirements of RCW 23B.04.010.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the name is available, the secretary of state shall reinstate the corporation and give the corporation written notice of the reinstatement that recites the effective date of reinstatement. If the name is not available, the corporation must file articles of amendment changing its name with its application for reinstatement.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

(4) The application must be authorized either by action of the shareholders, or of the corporation's board of directors, membership in both groups determined as of the date of administrative dissolution. If vacancies in the board of directors occur after the date of dissolution, the shareholders, or the remaining directors, even if less than a quorum of the board, may fill the vacancies. A special meeting of the shareholders for purposes of authorizing the application for reinstatement, or for purposes of electing directors, may be called by any person who was an officer, director, or shareholder of the corporation at the time of administrative dissolution. [1995 c 47 § 2; 1989 c 165 § 162.]

23B.14.300 Judicial dissolution—Grounds. The superior courts may dissolve a corporation:

(1) In a proceeding by the attorney general if it is established that:

(a) The corporation obtained its articles of incorporation through fraud; or

(b) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2) In a proceeding by a shareholder if it is established that:

(a) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(b) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(d) The corporate assets are being misapplied or wasted; or

(e) The corporation has ceased all business activity and has failed, within a reasonable time, to dissolve, to liquidate its assets, or to distribute its remaining assets among its shareholders;

(3) In a proceeding by a creditor if it is established that:

(a) The creditor's claim has been reduced to judgment, the execution on the judgment was returned unsatisfied, and the corporation is insolvent; or

(b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision. [1995 c 47 § 3; 1993 c 290 § 3; 1989 c 165 § 163.]

23B.14.310 Judicial dissolution—Procedure. (1) Venue for any proceeding to dissolve a corporation brought by any party named in RCW 23B.14.300 lies in the county where a corporation's registered office is or was last located.

(2) It is not necessary to make shareholders or directors parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held. [1989 c 165 § 164.]

23B.14.320 Receivership or custodianship. (1) A court in a judicial proceeding brought to dissolve a corpora-

tion may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(2) The court may appoint an individual or a domestic or foreign corporation, authorized to transact business in this state, as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) The receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court, and (ii) may sue and defend in the receiver's own name as receiver of the corporation in all courts of this state; and

(b) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(4) The court, during a receivership, may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and counsel from the assets of the corporation or proceeds from the sale of the assets. [1989 c 165 § 165.]

23B.14.330 Decree of dissolution—Other orders, decrees, and injunctions—Revenue clearance certificate.

(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in RCW 23B.14.300 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, or, with or without ordering dissolution, may make such other orders and decrees and issue such injunctions in the case as justice and equity require.

(2) The court shall not enter or sign any decree of dissolution until it receives a copy of a revenue clearance certificate for the corporation issued pursuant to RCW 82.32.260.

(3) If the court enters a decree of dissolution, the petitioner or moving party shall deliver a certified copy of the decree and a copy of the revenue clearance certificate to the secretary of state, who shall file them. The court shall then direct the winding up and liquidation of the corporation's business and affairs in accordance with RCW 23B.14.050. [1995 c 47 § 4; 1989 c 165 § 166.]

23B.14.340 Survival of remedy after dissolution. The dissolution of a corporation either: (1) By the filing by the secretary of state of its articles of dissolution, (2) by administrative dissolution by the secretary of state, (3) by a

decree of court, or (4) by expiration of its period of duration shall not take away or impair any remedy available against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding against the corporation may be defended by the corporation in its corporate name. [1995 c 47 § 5; 1990 c 178 § 6; 1989 c 165 § 167.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.14.390 Secretary of state—List of dissolved corporations. On the first day of each month, the secretary of state shall prepare a list of corporations dissolved during the preceding month pursuant to RCW 23B.14.030, 23B.14.210, and 23B.14.330. [1995 c 47 § 8.]

23B.14.400 Deposit with state treasurer. Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them may be reduced to cash and deposited with the state treasurer for safekeeping. If assets are transferred to the state treasurer, and if the creditor, claimant, or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the state treasurer or other appropriate state official shall pay such person or such person's representative that amount. [1989 c 165 § 168.]

Chapter 23B.15 FOREIGN CORPORATIONS

Sections

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23B.15.010 Authority to transact business required.

(1) Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1) of this section:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(c) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this state before becoming binding contracts and where the contracts do not involve any local performance other than delivery and installation;

(g) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(k) Transacting business in interstate commerce;

(l) Owning and controlling a subsidiary corporation incorporated in or transacting business within this state; or

(m) Operating an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW and in accordance with RCW 23B.15.015.

(3) The list of activities in subsection (2) of this section is not exhaustive. [1993 c 181 § 11; 1990 c 178 § 7; 1989 c 165 § 169.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.15.015 Foreign degree-granting institution branch campus—Acts not deemed transacting business in state. In addition to those acts that are specified in RCW 23B.15.010(2), a foreign degree-granting institution that establishes an approved branch campus in the state under chapter 28B.90 RCW shall not be deemed to transact business in the state solely because it:

(1) Owns and controls an incorporated branch campus in this state;

(2) Pays the expenses of tuition, or room and board charged by the incorporated branch campus for its students enrolled at the branch campus or contributes to the capital thereof; or

(3) Provides personnel who furnish assistance and counsel to its students while in the state but who have no authority to enter into any transactions for or on behalf of the foreign degree-granting institution. [1993 c 181 § 5.]

23B.15.020 Consequences of transacting business without authority. (1) Unless it is otherwise authorized to transact business pursuant to a state or federal statute, a foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in

any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation which transacts business in this state without a certificate of authority is liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this title upon such corporation had it applied for and received a certificate of authority to transact business in this state as required by this title and thereafter filed all reports required by this title, plus all penalties imposed by this title for failure to pay such fees.

(5) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state. [1990 c 178 § 8; 1989 c 165 § 170.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.15.030 Application for certificate of authority.

(1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must state:

(a) That the name of the foreign corporation meets the requirements stated in RCW 23B.15.060;

(b) The name of the state or country under whose law it is incorporated;

(c) Its date of incorporation and period of duration;

(d) The street address of its principal office;

(e) The street address of its registered office in this state and the name of its registered agent at that office, in accordance with RCW 23B.15.070; and

(f) The names and usual business addresses of its current directors and officers.

(2) The foreign corporation shall deliver with the completed application a certificate of existence, or a document of similar import, issued no more than sixty days before the date of the application and duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated. [1989 c 165 § 171.]

23B.15.040 Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the secretary of state if it changes:

(a) Its corporate name; or

(b) The period of its duration.

(2) A foreign corporation may apply for an amended certificate of authority by delivering an application to the secretary of state for filing that sets forth:

(a) The name of the foreign corporation and the name in which the corporation is authorized to transact business in Washington, if different;

(b) The name of the state or country under whose law it is incorporated;

(c) The date it was authorized to transact business in this state;

(d) A statement of the change or changes being made;

(e) In the event the change or changes include a name change to a name that does not meet the requirements of RCW 23B.15.060, a fictitious name for use in Washington, and a copy of the resolution of the board of directors, certified by the corporation's secretary, adopting the fictitious name; and

(f) A copy of the document filed in the state or country of incorporation showing that jurisdiction's "filed" stamp. [1991 c 72 § 38; 1989 c 165 § 172.]

23B.15.050 Effect of certificate of authority. (1) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this title.

(2) A foreign corporation holding a valid certificate of authority shall have no greater rights and privileges than a domestic corporation of like character. Except as otherwise provided by this title, a foreign corporation is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of like character.

(3) Except as otherwise provided in *chapter 23B.19 RCW, this title does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state. [1989 c 165 § 173.]

***Reviser's note:** The reference to "sections 202 through 205 of this act" has been translated to "chapter 23B.19 RCW," dealing with significant business transactions. A literal translation would be "RCW 23B.900.010 through 23B.900.040" which appears to be erroneous.

23B.15.060 Corporate name of foreign corporation.

(1) No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(a) Contains the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "Ltd.,"

(b) Does not contain language stating or implying that the corporation is organized for a purpose other than that permitted by RCW 23B.03.010 and its articles of incorporation;

(c) Does not contain any of the following words or phrases: "Bank," "banking," "banker," "trust," "cooperative," or any combination of the words "industrial" and "loan," or any combination of any two or more words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(d) Except as authorized by subsections (3) and (4) of this section, is distinguishable upon the records of the secretary of state from:

(i) The corporate name of a corporation incorporated or authorized to transact business in this state;

(ii) A corporate name reserved or registered under RCW 23B.04.020 or 23B.04.030;

(iii) The fictitious name adopted pursuant to subsection (2) of this section by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(iv) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state; and

(v) The name or reserved name of a foreign or domestic limited partnership formed or registered under chapter 25.10 RCW.

(2) If the corporate name of a foreign corporation does not satisfy the requirements of subsection (1) of this section, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:

(a) May add the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," to its corporate name for use in this state; or

(b) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the secretary of state for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(3) A foreign corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1)(d) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other corporation, holder, or limited partnership consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) Has merged with the other corporation; or

(b) Has been formed by reorganization of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of subsection (1) of this section, it may not transact business in this state under the changed name until it adopts a name satisfying such requirements and obtains an amended certificate of authority under RCW 23B.15.040. [1989 c 165 § 174.]

23B.15.070 Registered office and registered agent of foreign corporation. (1) Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

(a) A registered office which may be, but need not be, the same as its place of business in this state. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, building address, or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in the same city as the registered office to be used in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made.

(b) A registered agent, who may be:

(i) An individual who resides in this state and whose business office is identical with the registered office;

(ii) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(iii) A foreign corporation or foreign not-for-profit corporation authorized to transact business or conduct affairs in this state whose business office is identical with the registered office.

(2) A registered agent shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records. [1989 c 165 § 175.]

23B.15.080 Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(a) Its name;

(b) If the current registered office is to be changed, the street address of its new registered office;

(c) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(d) That, after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change. [1989 c 165 § 176.]

23B.15.090 Resignation of registered agent of foreign corporation. (1) The registered agent of a foreign corporation may resign as agent by signing and delivering to the secretary of state for filing a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall mail a copy of the statement to the foreign corporation at its principal office address shown in its most recent annual report, or in the application for certificate of authority if no annual report has been filed.

(3) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed. [1989 c 165 § 177.]

23B.15.100 Service on foreign corporation. (1) The registered agent appointed by a foreign corporation authorized to transact business in this state shall be an agent of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(2) The secretary of state shall be an agent of a foreign corporation upon whom any process, notice, or demand may be served, if:

(a) The corporation is authorized to transact business in this state, and it fails to appoint or maintain a registered agent in this state, or its registered agent cannot with reasonable diligence be found at the registered office;

(b) The corporation's authority to transact business in this state has been revoked under RCW 23B.15.310; or

(c) The corporation has been authorized to transact business in this state and has withdrawn under RCW 23B.15.200.

(3) Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the corporation department of the secretary of state's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the secretary of the corporation at its principal office as shown on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.

(4) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, and shall record therein the time of such service and the secretary of state's action with reference thereto.

(5) This section does not limit or affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [1989 c 165 § 178.]

23B.15.200 Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must be accompanied by a copy of a revenue clearance certificate issued pursuant to RCW 82.32.260, and must set forth:

(a) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) That it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under (c) of this subsection; and

(e) A commitment to notify the secretary of state in the future of any change in its mailing address.

(3) After the withdrawal of the corporation is effective, service of process on the secretary of state under RCW 23B.15.100 is service on the foreign corporation. [1989 c 165 § 179.]

23B.15.300 Revocation—Grounds. The secretary of state may revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its completed initial report or annual report to the secretary of state when it is due;

(2) The foreign corporation does not pay any license fees or penalties, imposed by this title, when they become due;

(3) The foreign corporation is without a registered agent or registered office in this state;

(4) The foreign corporation does not inform the secretary of state under RCW 23B.15.080 or 23B.15.090 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(6) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger. [1991 c 72 § 39; 1990 c 178 § 9; 1989 c 165 § 180.]

Effective date—1990 c 178: See note following RCW 23B.01.220.

23B.15.310 Revocation—Procedure and effect. (1) If the secretary of state determines that one or more grounds exist under RCW 23B.15.300 for revocation of a certificate of authority, the secretary of state shall give the foreign corporation written notice of the determination by first-class mail, postage prepaid.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is effective, the secretary of state shall revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and mail a copy to the foreign corporation.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under RCW 23B.15.100 is service on the foreign corporation.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation. [1989 c 165 § 181.]

Chapter 23B.16

RECORDS AND REPORTS

Sections

23B.16.010	Corporate records.
23B.16.020	Inspection of records by shareholders.
23B.16.030	Scope of inspection right.
23B.16.040	Court-ordered inspection.
23B.16.200	Financial statements for shareholders.
23B.16.220	Initial and annual reports for secretary of state.

23B.16.010 Corporate records. (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors exercising the authority of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders; in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office:

(a) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Its bylaws or restated bylaws and all amendments to them currently in effect;

(c) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;

(d) The financial statements described in RCW 23B.16.200(1), for the past three years;

(e) All written communications to shareholders generally within the past three years;

(f) A list of the names and business addresses of its current directors and officers; and

(g) Its initial report or most recent annual report delivered to the secretary of state under RCW 23B.16.220. [1991 c 72 § 40; 1989 c 165 § 182.]

23B.16.020 Inspection of records by shareholders.

(1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in RCW 23B.16.010(5) if the shareholder gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) of this section and gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while exercising the authority of the board of directors, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection (1) of this section;

(b) Accounting records of the corporation; and

(c) The record of shareholders.

(3) A shareholder may inspect and copy the records described in subsection (2) of this section only if:

(a) The shareholder's demand is made in good faith and for a proper purpose;

(b) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(c) The records are directly connected with the shareholder's purpose.

(4) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section does not affect:

(a) The right of a shareholder to inspect records under RCW 23B.07.200 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) The power of a court, independently of this title, to compel the production of corporate records for examination.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf. [1989 c 165 § 183.]

23B.16.030 Scope of inspection right. (1) A shareholder's agent or attorney has the same inspection and copying rights as the shareholder.

(2) The right to copy records under *RCW 23B.16.020 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means, including copies in electronic or other nonwritten form if the shareholder so requests.

(3) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any records provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records.

(4) The corporation may comply with a shareholder's demand to inspect the record of shareholders under RCW 23B.16.020(2)(c) by providing the shareholder with a list of its shareholders that was compiled no earlier than the date of the shareholder's demand. [1989 c 165 § 184.]

*Reviser's note: The reference to "section 184 of this act" has been translated to "RCW 23B.16.020." A literal translation would be "RCW 23B.16.030" which is the section above and appears to be erroneous.

23B.16.040 Court-ordered inspection. (1) If a corporation does not allow a shareholder who complies with RCW 23B.16.020(1) to inspect and copy any records required by that subsection to be available for inspection, the superior court of the county where the corporation's principal office, or, if none in this state, its registered office, is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

(2) If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record, the shareholder who complies with RCW 23B.16.020 (2) and (3) may apply to the superior court of the county where the corporation's principal office, or, if none in this state, its registered office, is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

(3) If the court orders inspection and copying of the records demanded, it shall also order the corporation to pay the shareholder's costs, including reasonable counsel fees, incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

(4) If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder. [1989 c 165 § 185.]

23B.16.200 Financial statements for shareholders.

(1) Not later than four months after the close of each fiscal year, and in any event prior to the annual meeting of shareholders, each corporation shall prepare (a) a balance sheet showing in reasonable detail the financial condition of the corporation as of the close of its fiscal year, and (b) an income statement showing the results of its operation during its fiscal year. Such statements may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate. If financial statements are prepared by the corporation for any purpose on the basis of generally accepted accounting principles, the annual statements must also be prepared, and disclose that they are

prepared, on that basis. If financial statements are prepared only on a basis other than generally accepted accounting principles, they must be prepared, and disclose that they are prepared, on the same basis as other reports and statements prepared by the corporation for the use of others.

(2) Upon written request, the corporation shall promptly mail to any shareholder a copy of the most recent balance sheet and income statement. If prepared for other purposes, the corporation shall also furnish upon written request a statement of sources and applications of funds, and a statement of changes in shareholders' equity, for the most recent fiscal year.

(3) If the annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(a) Stating the person's reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(b) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the basis used for statements prepared for the preceding year.

(4) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf. [1989 c 165 § 186.]

23B.16.220 Initial and annual reports for secretary of state. (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing initial and annual reports that set forth:

(a) The name of the corporation and the state or country under whose law it is incorporated;

(b) The street address of its registered office and the name of its registered agent at that office in this state;

(c) In the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated;

(d) The address of the principal place of business of the corporation in this state;

(e) The names and addresses of its directors, if the corporation has dispensed with or limited the authority of its board of directors pursuant to RCW 23B.08.010, in an agreement authorized under RCW 23B.07.320, or analogous authority, the names and addresses of persons who will perform some or all of the duties of the board of directors;

(f) A brief description of the nature of its business; and

(g) The names and addresses of its chairperson of the board of directors, if any, president, secretary, and treasurer, or of individuals, however designated, performing the functions of such officers.

(2) Information in an initial report or an annual report must be current as of the date the report is executed on behalf of the corporation.

(3) A corporation's initial report must be delivered to the secretary of state within one hundred twenty days of the date on which the articles of incorporation for a domestic corporation were filed, or on which a foreign corporation's

certificate of authority was filed. Subsequent annual reports must be delivered to the secretary of state on, or prior to, the date on which the domestic or foreign corporation is required to pay its annual corporate license fee, and at such additional times as the corporation elects. [1993 c 290 § 5; 1991 c 72 § 41; 1989 c 165 § 187.]

Chapter 23B.17

MISCELLANEOUS PROVISIONS

Sections

- 23B.17.010 Application to existing corporations.
23B.17.030 Limitation on liability of directors—Indemnification.

23B.17.010 Application to existing corporations. (1) Unless otherwise provided, this title applies to all domestic corporations in existence on July 1, 1990, that were incorporated under any general statute of this state providing for incorporation of corporations for profit.

(2) Unless otherwise provided, a foreign corporation authorized to transact business in this state on July 1, 1990, is subject to this title but is not required to obtain a new certificate of authority to transact business under this title. [1989 c 165 § 188.]

23B.17.030 Limitation on liability of directors—Indemnification. The provisions of RCW 23B.08.320 and 23B.08.500 through 23B.08.600 shall apply to any corporation, other than a municipal corporation, incorporated under the laws of the state of Washington. [1989 c 165 § 190.]

Chapter 23B.18

NONADMITTED ORGANIZATIONS

Sections

- 23B.18.010 Ownership and enforcement of notes secured by real estate mortgages.
23B.18.020 Mortgage foreclosure.
23B.18.030 Transacting business.
23B.18.040 Service of process.
23B.18.050 Service of process—Procedure.
23B.18.060 Venue.

23B.18.010 Ownership and enforcement of notes secured by real estate mortgages. Any corporation, bank, trust company, mutual savings bank, savings and loan association, national banking association, or other corporation or association organized and existing under the laws of the United States or under the laws of any state or territory of the United States other than the state of Washington, including, without restriction of the generality of the foregoing description, employee pension fund organizations, charitable foundations, trust funds, or other funds, foundations or trusts engaged in the investment of moneys, and trustees of such organizations, foundations, funds or trusts, and which are not admitted to conduct business in the state of Washington under the provisions of this title, and which are not otherwise specifically authorized to transact business in this state, herein collectively referred to as "nonadmitted organizations," may purchase, acquire, hold, sell, assign, transfer, and enforce notes secured by real estate mortgages

covering real property situated in this state and the security interests thereby provided, and may make commitments to purchase or acquire such notes so secured. [1989 c 165 § 191.]

23B.18.020 Mortgage foreclosure. Such nonadmitted organizations shall have the right to foreclose such mortgages under the laws of this state or to receive voluntary conveyance in lieu of foreclosure, and in the course of such foreclosure or of such receipt of conveyance in lieu of foreclosure, to acquire the mortgaged property, and to hold and own such property and to dispose thereof. Such nonadmitted organizations however, shall not be allowed to hold, own, and operate said property for a period exceeding five years. In the event said nonadmitted organizations do hold, own, and operate said property for a period in excess of five years, it shall be forthwith required to appoint an agent as required by RCW 23B.15.070 for foreign corporations doing business in this state. [1989 c 165 § 192.]

23B.18.030 Transacting business. The activities authorized by RCW 23B.18.010 and 23B.18.020 by such nonadmitted organizations shall not constitute "transacting business" within the meaning of chapter 23B.15 RCW. [1989 c 165 § 193.]

23B.18.040 Service of process. In any action in law or equity commenced by the obligor or obligors, it, his, her, or their assignee or assignees against the said nonadmitted organizations on the said notes secured by said real estate mortgages purchased by said nonadmitted organizations, service of all legal process may be had by serving the secretary of state of the state of Washington. [1989 c 165 § 194.]

23B.18.050 Service of process—Procedure. Duplicate copies of legal process against said nonadmitted organizations shall be served upon the secretary of state by registered mail. At the time of service the plaintiff shall pay to the secretary of state twenty-five dollars taxable as costs in the action and shall also furnish the secretary of state the home office address of said nonadmitted organization. The secretary of state shall forthwith send one of the copies of process by certified mail to the said nonadmitted organization to its home office. The secretary of state shall keep a record of the day, month, and year of service upon the secretary of state of all legal process. No proceedings shall be had against the nonadmitted organization nor shall it be required to appear, plead, or answer until the expiration of forty days after the date of service upon the secretary of state. [1989 c 165 § 195.]

23B.18.060 Venue. Suit upon causes of action arising against the said nonadmitted organizations shall be brought in the county where the property is situated which is the subject of the mortgage purchased by the said nonadmitted organizations. If the property covered by the said mortgage is situated in more than one county, venue may be had in any of said counties where the property lies. [1989 c 165 § 196.]

Chapter 23B.19

SIGNIFICANT BUSINESS TRANSACTIONS

Sections

- 23B.19.010 Legislative findings—Intent.
 23B.19.020 Definitions.
 23B.19.030 Transaction excluded from chapter—Inadvertent acquisition.
 23B.19.040 Approval of significant business transaction required—
 Violation.
 23B.19.050 Provisions of chapter additional to other requirements.

23B.19.010 Legislative findings—Intent. The legislature finds that:

(1) Corporations that offer employment and health, retirement, and other benefits to citizens of the state of Washington are vital to the economy of this state and the well-being of all of its citizens;

(2) The welfare of the employees of these corporations is of paramount interest and concern to this state;

(3) Many businesses in this state rely on these corporations to purchase goods and services;

(4) Hostile or unfriendly attempts to gain control of or influence otherwise publicly held corporations can cause corporate management to dissipate a corporation's assets in an effort to resist the takeover by selling or distributing cash or assets, redeeming stock, or taking other steps to increase the short-term gain to shareholders and to dissipate energies required for strategic planning, market development, capital investment decisions, assessment of technologies, and evaluation of competitive challenges that can damage the long-term interests of shareholders and the economic health of the state by reducing or eliminating the ability to finance investments in research and development, new products, facilities and equipment, and by undermining the planning process for those purposes;

(5) Hostile or unfriendly attempts to gain control or influence otherwise publicly held corporations are often highly leveraged pursuant to financing arrangements which assume that an acquirer will promptly obtain access to an acquired corporation's cash or assets and use them, or the proceeds of their sale, to repay acquisition indebtedness;

(6) Hostile or unfriendly attempts to gain control of or influence otherwise publicly held corporations can harm the economy of the state by weakening corporate performance, and causing unemployment, plant closings, reduced charitable donations, declining population base, reduced income to fee-supported local government services, reduced tax base, and reduced income to other businesses; and

(7) The state has a substantial and legitimate interest in regulating domestic corporations and those foreign corporations that have their most significant business contacts with this state and in regulating hostile or unfriendly attempts to gain control of or influence otherwise publicly held domestic corporations and those foreign corporations that employ a large number of citizens of the state, pay significant taxes, and have a substantial economic base in the state.

The legislature intends this chapter to balance the substantial and legitimate interests of the state in domestic corporations and those foreign corporations that employ a large number of citizens of the state and that have a substantial economic base in the state with: The interests of citizens of other states who own shares of such corporations;

the interests of the state of incorporation of such foreign corporations in regulating the internal affairs of corporations incorporated in that state; and the interests of promoting interstate commerce. To this effect, the legislature intends to regulate certain transactions between publicly held corporations and acquiring persons that will tend to harm the long-term health of domestic corporations and of foreign corporations that have their principal executive office and a majority of their assets in this state and that employ a large number of citizens of this state. [1989 c 165 § 197.]

23B.19.020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Acquiring person" means a person or group of persons, other than the target corporation or a subsidiary of the target corporation, who beneficially owns ten percent or more of the outstanding voting shares of the target corporation. The term "acquiring person" does not include a person who (a) beneficially owned ten percent or more of the outstanding voting shares of the target corporation on March 23, 1988; (b) acquires its shares by gift, inheritance, or in a transaction in which no consideration is exchanged; (c) exceeds the ten percent threshold as a result of action taken solely by the target corporation, such as redemption of shares, unless that person, by its own action, acquires additional shares of the target corporation; (d) beneficially was the owner of ten percent or more of the outstanding voting shares prior to the time the target corporation had a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act; or (e) beneficially was the owner of ten percent or more of the outstanding voting shares prior to the time the target corporation amended its articles of incorporation to provide that the corporation shall be subject to the provisions of this chapter. An agent, bank, broker, nominee, or trustee for another person, if the other person is not an acquiring person, who acts in good faith and not for the purpose of circumventing this chapter, is not an acquiring person. For the purpose of determining whether a person is an acquiring person, the number of voting shares of the target corporation that are outstanding shall include shares beneficially owned by the person through application of subsection (4) of this section, but shall not include any other unissued voting shares of the target corporation which may be issuable pursuant to any agreement, arrangement, or understanding; or upon exercise of conversion rights, warrants, or options; or otherwise.

(2) "Affiliate" means a person who directly or indirectly controls, or is controlled by, or is under common control with, a person.

(3) "Announcement date," when used in reference to any significant business transaction, means the date of the first public announcement of the final, definitive proposal for such a significant business transaction.

(4) "Associate" means (a) a domestic or foreign corporation or organization of which a person is an officer, director, member, or partner or in which a person performs a similar function; (b) a direct or indirect beneficial owner of ten percent or more of any class of equity securities of a person; (c) a trust or estate in which a person has a beneficial interest or as to which a person serves as trustee or in a

similar fiduciary capacity; and (d) the spouse or a parent or sibling of a person or a child, grandchild, sibling, parent, or spouse of any thereof, of a person or an individual having the same home as a person.

(5) "Beneficial ownership," when used with respect to any shares, means ownership by a person:

(a) Who, individually or with or through any of its affiliates or associates, beneficially owns such shares, directly or indirectly; or

(b) Who, individually or with or through any of its affiliates or associates, has (i) the right to acquire the shares, whether the right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement, or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise. A person is not the beneficial owner of shares tendered pursuant to a tender or exchange offer made by the person or any of the person's affiliates or associates until the tendered shares are accepted for purchase or exchange; or (ii) the right to vote the shares pursuant to any agreement, arrangement, or understanding, whether or not in writing. A person is not the beneficial owner of any shares under (b)(ii) of this subsection if the agreement, arrangement, or understanding to vote the shares arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the exchange act and is not then reportable on schedule 13D under the exchange act, or any comparable or successor report; or

(c) Who has any agreement, arrangement, or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, except voting pursuant to a revocable proxy or consent as described in (b)(ii) of this subsection, or disposing of the shares with any other person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the shares.

(6) "Common shares" means any shares other than preferred shares.

(7) "Consummation date," with respect to any significant business transaction, means the date of consummation of such a significant business transaction, or, in the case of a significant business transaction as to which a shareholder vote is taken, the later of the business day prior to the vote or twenty days prior to the date of consummation of such a significant business transaction.

(8) "Control," "controlling," "controlled by," and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract, or otherwise. A person's beneficial ownership of ten percent or more of a domestic or foreign corporation's outstanding voting shares shall create a rebuttable presumption that such person has control of such corporation. However, a person does not have control of a domestic or foreign corporation if the person holds voting shares, in good faith and not for the purpose of circumventing this chapter, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control of such corporation.

(9) "Domestic corporation" means an issuer of voting shares which is organized under chapter 23B.02 RCW or any predecessor provision.

(10) "Exchange act" means the federal securities exchange act of 1934, as amended.

(11) "Market value," in the case of property other than cash or shares, means the fair market value of the property on the date in question as determined by the board of directors of the target corporation in good faith.

(12) "Person" means an individual, domestic or foreign corporation, partnership, trust, unincorporated association, or other entity; an affiliate or associate of any such person; or any two or more persons acting as a partnership, syndicate, or other group for the purpose of acquiring, holding, or dispersing of securities of a domestic or foreign corporation.

(13) "Preferred shares" means any class or series of shares of a target corporation which under the bylaws or articles of incorporation of such a corporation is entitled to receive payment of dividends prior to any payment of dividends on some other class or series of shares, or is entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation to receive payment or distribution of a preferential amount before any payments or distributions are received by some other class or series of shares.

(14) "Shares" means any:

(a) Shares or similar security, any certificate of interest, any participation in any profit sharing agreement, any voting trust certificate, or any certificate of deposit for shares; and

(b) Security convertible, with or without consideration, into shares, or any warrant, call, or other option or privilege of buying shares without being bound to do so, or any other security carrying any right to acquire, subscribe to, or purchase shares.

(15) "Significant business transaction" means:

(a) A merger, share exchange, or consolidation of a target corporation or a subsidiary of a target corporation with (i) an acquiring person, or (ii) any other domestic or foreign corporation which is, or after the merger, share exchange, or consolidation would be, an affiliate or associate of the acquiring person;

(b) A sale, lease, exchange, mortgage, pledge, transfer, or other disposition or encumbrance, whether in one transaction or a series of transactions, to or with an acquiring person or an affiliate or associate of an acquiring person of assets of a target corporation or a subsidiary of a target corporation (i) having an aggregate market value equal to five percent or more of the aggregate market value of all the assets, determined on a consolidated basis, of the target corporation, (ii) having an aggregate market value equal to five percent or more of the aggregate market value of all the outstanding shares of the target corporation, or (iii) representing five percent or more of the earning power or net income, determined on a consolidated basis, of the target corporation;

(c) The termination, while the corporation has an acquiring person and as a result of the acquiring person's acquisition of ten percent or more of the shares of the corporation, of five percent or more of the employees of the target corporation or its subsidiaries employed in this state, whether at one time or over the five-year period following the share acquisition time. For the purposes of (c) of this subsection,

a termination other than an employee's death or disability or bona fide voluntary retirement, transfer, resignation, termination for cause under applicable common law principles, or leave of absence shall be presumed to be a termination resulting from the acquiring person's acquisition of shares, which presumption is rebuttable. A bona fide voluntary transfer of employees between the target corporation and its subsidiaries or between its subsidiaries is not a termination for the purposes of (c) of this subsection;

(d) The issuance, transfer, or redemption by a target corporation or a subsidiary of a target corporation, whether in one transaction or a series of transactions, of shares or of options, warrants, or rights to acquire shares of a target corporation or a subsidiary of a target corporation to or beneficially owned by an acquiring person or an affiliate or associate of an acquiring person except pursuant to the exercise of warrants or rights to purchase shares offered, or a dividend, distribution, or redemption paid or made pro rata to, all shareholders or holders of options, warrants, or rights to acquire shares of the target corporation, and except for involuntary redemptions permitted by the target corporation's charter or by the law of this state or the state of incorporation;

(e) The liquidation or dissolution of a target corporation proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person;

(f) A reclassification of securities, including, without limitation, any shares split, shares dividend, or other distribution of shares in respect of stock, or any reverse shares split, or recapitalization of a target corporation, or a merger or consolidation of a target corporation with a subsidiary of the target corporation, or any other transaction, whether or not with or into or otherwise involving an acquiring person, proposed by, or pursuant to an agreement, arrangement, or understanding, whether or not in writing, with an acquiring person or an affiliate or associate of an acquiring person, that has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of a class or series of voting shares or securities convertible into voting shares of a target corporation or a subsidiary of the target corporation that is directly or indirectly owned by an acquiring person or an affiliate or associate of an acquiring person, except as a result of immaterial changes due to fractional share adjustments; or

(g) A receipt by an acquiring person or an affiliate or associate of an acquiring person of the benefit, directly or indirectly, except proportionately as a shareholder of a target corporation, of loans, advances, guarantees, pledges, or other financial assistance or tax credits or other tax advantages provided by or through a target corporation.

(16) "Share acquisition time" means the time at which a person first becomes an acquiring person of a target corporation.

(17) "Subsidiary" means a domestic or foreign corporation that has a majority of its outstanding voting shares owned, directly or indirectly, by another domestic or foreign corporation.

(18) "Tangible assets" means tangible real and personal property of all kinds. It shall also include leasehold interests in tangible real and personal property.

(19) "Target corporation" means:

(a) Every domestic corporation, if:

(i) The corporation has a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act; or

(ii) The corporation's articles of incorporation have been amended to provide that such a corporation shall be subject to the provisions of this chapter, if the corporation did not have a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act on the effective date of that amendment; and

(b) Every foreign corporation required to have a certificate of authority to transact business in this state pursuant to chapter 23B.15 RCW, if:

(i) The corporation has a class of voting shares registered with the securities and exchange commission pursuant to section 12 or 15 of the exchange act;

(ii) The corporation's principal executive office is located in the state;

(iii) The corporation has: (A) More than ten percent of its shareholders of record resident in the state; or (B) more than ten percent of its shares owned of record by state residents; or (C) one thousand or more shareholders of record resident in the state;

(iv) A majority of the corporation's employees, together with those of its subsidiaries, are residents of the state or the corporation, together with its subsidiaries, employs more than one thousand residents of the state; and

(v) A majority of the corporation's tangible assets, together with those of its subsidiaries, measured by market value, are located in the state or the corporation, together with its subsidiaries, has more than fifty million dollars' worth of tangible assets located in the state.

For purposes of this subsection, the record date for determining the percentages and numbers of shareholders and shares shall be the last shareholder record date before the event requiring that the determination be made. A shareholder record date shall be determined pursuant to the comparable provision to RCW 23B.07.070 of the law of the state in which a foreign corporation is incorporated. If a shareholder record date has not been fixed by the board of directors within the preceding four months, the determination shall be made as of the end of the corporation's most recent fiscal quarter.

The residence of each shareholder is presumed to be the address appearing in the records of the corporation. Shares held of record by brokers or nominees shall be disregarded for purposes of calculating the percentages and numbers specified in this subsection. Shares of a corporation allocated to the account of an employee or former employee or beneficiaries of employees or former employees of a corporation and held in a plan that is qualified under section 401(a) of the federal internal revenue code of 1986, as amended, and is a defined contribution plan within the meaning of section 414(i) of the code shall be deemed, for the purposes of this subsection, to be held of record by the employee to whose account such shares are allocated.

A domestic or foreign corporation shall be deemed to be a target corporation if the domestic or foreign corporation's failure to satisfy the requirements of this subsection is caused by the action of, or is the result of a proposal by, an

acquiring person or affiliate or associate of an acquiring person.

(20) "Voting shares" means shares of a corporation entitled to vote generally in the election of directors. [1996 c 155 § 1; 1989 c 165 § 198.]

23B.19.030 Transaction excluded from chapter—Inadvertent acquisition. This chapter does not apply to a significant business transaction of a target corporation with an acquiring person of the target corporation which became an acquiring person inadvertently, if the acquiring person (1) as soon as practicable, divests itself of a sufficient amount of the voting shares of the target corporation so that it no longer is the beneficial owner, directly or indirectly, of ten percent or more of the outstanding voting shares of the target corporation, and (2) would not at any time within the five-year period preceding the announcement date of the significant business transaction have been an acquiring person but for the inadvertent acquisition. [1996 c 155 § 2; 1989 c 165 § 199.]

23B.19.040 Approval of significant business transaction required—Violation. (1)(a) Notwithstanding anything to the contrary contained in this title, except under subsection (2) of this section and RCW 23B.19.030, a target corporation shall not engage in any significant business transaction for a period of five years following the acquiring person's share acquisition time unless the significant business transaction or the purchase of shares made by the acquiring person is approved prior to the acquiring person's share acquisition time by a majority of the members of the board of directors of the target corporation.

(b) If a good faith proposal for a significant business transaction is made in writing to the board of directors of the target corporation prior to the significant business transaction or prior to the share acquisition time, the board of directors shall respond in writing, within thirty days or such shorter period, if any, as may be required by the exchange act setting forth its reasons for its decision regarding the proposal. If a good faith proposal to purchase shares is made in writing to the board of directors of the target corporation, the board of directors, unless it responds affirmatively in writing within thirty days or a shorter period, if any, as may be required by the exchange act shall be deemed to have disapproved such share purchase.

(2) Notwithstanding anything to the contrary contained in this title, except under subsection (1) of this section and RCW 23B.19.030, a target corporation shall not engage at any time in any significant business transaction with any acquiring person of such a corporation other than a significant business transaction that meets all of the following conditions:

(a) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding common shares of such a target corporation in a significant business transaction is at least equal to the higher of the following:

(i) The highest per share price paid by such an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of five percent or more of the out-

standing voting shares of a target corporation, for any shares of common shares of the same class or series acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the earliest date, up to the amount of the interest; and

(ii) The market value per share of common shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the date, up to the amount of the interest.

(b) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common shares, of the target corporation is at least equal to the highest of the following, whether or not the acquiring person has previously acquired any shares of such a class or series of shares:

(i) The highest per share price paid by an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting shares of a resident domestic corporation, for any shares of the same class or series of shares acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the earliest date, up to the amount of the interest;

(ii) The highest preferential amount per share to which the holders of shares of the same class or series of shares are entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation, plus the aggregate amount of any dividends declared or due as to which the holders are entitled prior to payment of dividends on some other class or series of shares, unless the aggregate amount of the dividends is included in the preferential amount; and

(iii) The market value per share of the same class or series of shares on the announcement date with respect to a significant business transaction or on the date of the acquir-

ing person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the date, up to the amount of the interest.

(c) The consideration to be received by holders of a particular class or series of outstanding shares, including common shares, of the target corporation in a business combination is in cash or in the same form as the acquiring person has used to acquire the largest number of shares of the same class or series of shares previously acquired by the person, and the consideration shall be distributed promptly.

(3) Subsection (2) of this section does not apply to a target corporation that on June 6, 1996, had a provision in its articles of incorporation, adopted under *RCW 23B.17.020(3)(d), expressly electing not to be covered under *RCW 23B.17.020, which is repealed by section 6, chapter 155, Laws of 1996.

(4) A significant business transaction that is made in violation of subsection (1) or (2) of this section and that is not exempt under RCW 23B.19.030 is void. [1996 c 155 § 3; 1989 c 165 § 200.]

*Reviser's note: RCW 23B.17.020 was repealed by 1996 c 155 § 6.

23B.19.050 Provisions of chapter additional to other requirements. The requirements imposed by this chapter are to be in addition to, and not in lieu of, requirements imposed on a transaction by any provision in the articles of incorporation or the bylaws of the target corporation, or otherwise. [1989 c 165 § 201.]

Chapter 23B.900 CONSTRUCTION

Sections

23B.900.010 Savings provisions—1989 c 165.
23B.900.020 Severability—1989 c 165.
23B.900.030 Repealer—1989 c 165.
23B.900.040 Effective date—1989 c 165.
23B.900.050 Section headings—1989 c 165.

23B.900.010 Savings provisions—1989 c 165. (1) Except as provided in subsection (2) of this section, the repeal of a statute by this title does not affect:

(a) The operation of the statute or any action taken under it before its repeal;

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(c) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal; or

(d) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute repealed by this title is reduced by this title, the

penalty or punishment if not already imposed shall be imposed in accordance with this title. [1989 c 165 § 202.]

23B.900.020 Severability—1989 c 165. If any provision of this title or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the title that can be given effect without the invalid provision or application, and to this end the provisions of the title are severable. [1989 c 165 § 203.]

23B.900.030 Repealer—1989 c 165. See 1989 c 165 § 204.

23B.900.040 Effective date—1989 c 165. This title shall take effect July 1, 1990. [1989 c 165 § 205.]

23B.900.050 Section headings—1989 c 165. Section headings as used in this title do not constitute any part of the law. [1989 c 165 § 206.]

Title 24

CORPORATIONS AND ASSOCIATIONS (NONPROFIT)

Chapters

- 24.03** Washington nonprofit corporation act.
- 24.06** Nonprofit miscellaneous and mutual corporations act.
- 24.12** Corporations sole.
- 24.20** Fraternal societies.
- 24.24** Building corporations composed of fraternal society members.
- 24.28** Granges.
- 24.34** Agricultural processing and marketing associations.
- 24.36** Fish marketing act.
- 24.40** Tax reform act of 1969, state implementation—Not for profit corporations.
- 24.44** Uniform management of institutional funds act.
- 24.46** Foreign trade zones.

Acknowledgment form, corporations: RCW 64.08.070.

Actions by and against public corporations: RCW 4.08.110, 4.08.120.

Constitutional provisions, generally: State Constitution Art. 12.

Consumer loan act: Chapter 31.04 RCW.

Contribution of corporate funds, public, charitable, etc., purposes: RCW 23B.03.020(2)(o).

Crimes relating to corporations: Chapter 9.24 RCW.

Criminal procedure: RCW 10.01.070 through 10.01.100.

Dentistry, practice or solicitation prohibited: RCW 18.32.675.

Doing business without license, gross misdemeanor: RCW 9.24.040.

Eminent domain by corporations: Chapter 8.20 RCW.

False statements, penalty for filing: RCW 43.07.210.

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generally: RCW 23B.16.220 and chapters 23B.01 and 23B.15 RCW.

nonadmitted, powers relative to secured interests: Chapter 23B.18 RCW.

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Chapter 24.03

WASHINGTON NONPROFIT CORPORATION ACT

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- 24.03.010 Applicability.
- 24.03.015 Purposes.
- 24.03.017 Corporation may elect to have chapter apply to it—Procedure.
- 24.03.020 Incorporators.
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- 24.03.027 Filing false statements—Penalty.
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- 24.03.040 Defense of ultra vires.
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- 24.03.900 Short title.
- 24.03.905 Savings—1967 c 235.
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- 24.03.915 Notice to existing corporations.
- 24.03.920 Repealer—Exception.
- 24.03.925 Effective date—1967 c 235.

Organization of condominium unit owners' association: RCW 64.34.300.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

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

(1) "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation not for profit organized under laws other than the laws of this state.

(3) "Not for profit corporation" or "nonprofit corporation" means a corporation no part of the income of which is distributable to its members, directors or officers.

(4) "Articles of incorporation" and "articles" mean the original articles of incorporation and all amendments thereto, and includes articles of merger and restated articles.

(5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

(6) "Member" means an individual or entity having membership rights in a corporation in accordance with the provisions of its articles or incorporation or bylaws.

(7) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated in the articles or bylaws.

(8) "Insolvent" means inability of a corporation to pay debts as they become due in the usual course of its affairs.

(9) "Duplicate originals" means two copies, original or otherwise, each with original signatures, or one original with original signatures and one copy thereof.

(10) "Conforms to law" as used in connection with duties of the secretary of state in reviewing documents for filing under this chapter, means the secretary of state has determined that the document complies as to form with the applicable requirements of this chapter.

(11) "Effective date" means, in connection with a document filing made by the secretary of state, the date which is shown by affixing a "filed" stamp on the documents. When a document is received for filing by the secretary of state in a form which complies with the requirements of this chapter and which would entitle the document to be filed immediately upon receipt, but the secretary of state's approval action occurs subsequent to the date of receipt, the secretary of state's filing date shall relate back to the date on which the secretary of state first received the document in acceptable form. An applicant may request a specific effective date no more than thirty days later than the receipt date which might otherwise be applied as the effective date.

(12) "Executed by an officer of the corporation," or words of similar import, means that any document signed by such person shall be and is signed by that person under penalties of perjury and in an official and authorized capacity on behalf of the corporation or person making the document submission with the secretary of state.

(13) "An officer of the corporation" means, in connection with the execution of documents submitted for filing with the secretary of state, the president, a vice president, the secretary, or the treasurer of the corporation.

(14) "Public benefit not for profit corporation" or "public benefit nonprofit corporation" means a corporation no part of the income of which is distributable to its members, directors, or officers and that holds a current tax exempt status as provided under 26 U.S.C. Sec. 501(c)(3) or is specifically exempted from the requirement to apply for its

tax exempt status under 26 U.S.C. Sec. 501(c)(3). [1989 c 291 § 3; 1986 c 240 § 1; 1982 c 35 § 72; 1967 c 235 § 2.]

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.010 Applicability. The provisions of this chapter relating to domestic corporations shall apply to:

- (1) All corporations organized hereunder; and
- (2) All not for profit corporations heretofore organized under any act hereby repealed, for a purpose or purposes for which a corporation might be organized under this chapter; and
- (3) Any corporation to which this chapter does not otherwise apply, which is authorized to elect, and does elect, in accordance with the provisions of this chapter, as now or hereafter amended, to have the provisions of this chapter apply to it.

The provisions of this chapter relating to foreign corporations shall apply to all foreign not for profit corporations conducting affairs in this state for a purpose or purposes for which a corporation might be organized under this chapter. [1971 ex.s. c 53 § 1; 1967 c 235 § 3.]

Repealer—Savings—1967 c 235: See RCW 24.03.920, 24.03.905.

24.03.015 Purposes. Corporations may be organized under this chapter for any lawful purpose or purposes, including, without being limited to, any one or more of the following purposes: Charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial or trade association; but labor unions, cooperative organizations, and organizations subject to any of the provisions of the banking or insurance laws of this state may not be organized under this chapter: PROVIDED, That any not for profit corporation heretofore organized under any act hereby repealed and existing for the purpose of providing health care services as defined in RCW 48.44.010(1) or 48.46.020(1), as now or hereafter amended, shall continue to be organized under this chapter. [1986 c 240 § 2; 1983 c 106 § 22; 1967 c 235 § 4.]

Repealer—Savings—1967 c 235: See RCW 24.03.920, 24.03.905.

Fish marketing act: Chapter 24.36 RCW.

Granges: Chapter 24.28 RCW.

Insurance: Title 48 RCW.

Labor unions: Chapter 49.36 RCW.

24.03.017 Corporation may elect to have chapter apply to it—Procedure. Any corporation organized under any act of the state of Washington for any one or more of the purposes for which a corporation may be organized under this chapter and for no purpose other than those permitted by this chapter, and to which this chapter does not otherwise apply, may elect to have this chapter and the provisions thereof apply to such corporation. Such corporation may so elect by having a resolution to do so adopted by the governing body of such corporation and by delivering to the secretary of state a statement of election in accordance with this section. Such statement of election shall be

executed in duplicate by the corporation by an officer of the corporation, and shall set forth:

- (1) The name of the corporation;
- (2) The act which created the corporation or pursuant to which it was organized;
- (3) That the governing body of the corporation has elected to have this chapter and the provisions thereof apply to said corporation.

Duplicate originals of such statement of election shall be delivered to the secretary of state. If the secretary of state finds that the statement of election conforms to law, the secretary of state shall, when fees in the same amount as required by this chapter for filing articles of incorporation have been paid, endorse on each of such duplicates the word "filed" and the effective date of the filing thereof, shall file one of such duplicate originals, and shall issue a certificate of elective coverage to which the other duplicate original shall be affixed.

The certificate of elective coverage together with the duplicate original affixed thereto by the secretary of state shall be returned to the corporation or its representative. Upon the filing of the statement of elective coverage, the provisions of this chapter shall apply to said corporation which thereafter shall be subject to and shall have the benefits of this chapter and the provisions thereof as they exist on the date of filing such statement of election and as they may be amended from time to time thereafter, including, without limiting the generality of the foregoing, the power to amend its charter or articles of incorporation, whether or not created by special act of the legislature, delete provisions therefrom and add provisions thereto in any manner and to any extent it may choose to do from time to time so long as its amended articles shall not be inconsistent with the provisions of this chapter. [1982 c 35 § 73; 1971 ex.s. c 53 § 2.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.020 Incorporators. One or more persons of the age of eighteen years or more, or a domestic or foreign, profit or nonprofit, corporation, may act as incorporator or incorporators of a corporation by signing and delivering to the secretary of state articles of incorporation for such corporation. [1986 c 240 § 3; 1982 c 35 § 74; 1967 c 235 § 5.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.025 Articles of incorporation. The articles of incorporation shall set forth:

- (1) The name of the corporation.
- (2) The period of duration, which may be perpetual or for a stated number of years.
- (3) The purpose or purposes for which the corporation is organized.
- (4) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including provisions regarding:
 - (a) Distribution of assets on dissolution or final liquidation;

(b) The definition, limitation, and regulation of the powers of the corporation, the directors, and the members, if any;

(c) Eliminating or limiting the personal liability of a director to the corporation or its members, if any, for monetary damages for conduct as a director: **PROVIDED**, That such provision shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision may eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective; and

(d) Any provision which under this title is required or permitted to be set forth in the bylaws.

(5) The address of its initial registered office, including street and number, and the name of its initial registered agent at such address.

(6) The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors.

(7) The name and address of each incorporator.

(8) The name of any person or corporations to whom net assets are to be distributed in the event the corporation is dissolved.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling. [1987 c 212 § 703; 1982 c 35 § 75; 1967 c 235 § 6.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Amending articles of incorporation: RCW 24.03.160 through 24.03.180.

Bylaws: RCW 24.03.070.

24.03.027 Filing false statements—Penalty. See RCW 43.07.210.

24.03.030 Limitations. A corporation subject to this chapter:

- (1) Shall not have or issue shares of stock;
- (2) Shall not make any disbursement of income to its members, directors or officers;
- (3) Shall not loan money or credit to its officers or directors;
- (4) May pay compensation in a reasonable amount to its members, directors or officers for services rendered;
- (5) May confer benefits upon its members in conformity with its purposes; and
- (6) Upon dissolution or final liquidation may make distributions to its members as permitted by this chapter, and no such payment, benefit or distribution shall be deemed to

be a dividend or a distribution of income. [1986 c 240 § 4; 1967 c 235 § 7.]

24.03.035 General powers. Each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(4) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(6) To lend money or credit to its employees other than its officers and directors.

(7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

(8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(10) To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country.

(11) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(12) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(13) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities.

(14) To indemnify any director or officer or former director or officer or other person in the manner and to the extent provided in RCW 23B.08.500 through 23B.08.600, as now existing or hereafter amended.

(15) To make guarantees respecting the contracts, securities, or obligations of any person (including, but not limited to, any member, any affiliated or unaffiliated individual, domestic or foreign, profit or not for profit, corporation, partnership, association, joint venture or trust) if such guarantee may reasonably be expected to benefit, directly or indirectly, the guarantor corporation. As to the enforceability of the guarantee, the decision of the board of directors that the guarantee may be reasonably expected to benefit, directly or indirectly, the guarantor corporation shall be binding in respect to the issue of benefit to the guarantor corporation.

(16) To pay pensions and establish pension plans, pension trusts, and other benefit plans for any or all of its directors, officers, and employees.

(17) To be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other enterprise.

(18) To be a trustee of a charitable trust, to administer a charitable trust and to act as executor in relation to any charitable bequest or devise to the corporation. This subsection shall not be construed as conferring authority to engage in the general business of trusts nor in the business of trust banking.

(19) To cease its corporate activities and surrender its corporate franchise.

(20) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized. [1991 c 72 § 42; 1986 c 240 § 5; 1967 c 235 § 8.]

Unauthorized assumption of corporate power: RCW 24.03.470.

24.03.040 Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the officers or directors of the corporation for exceeding their authority.

(3) In a proceeding by the attorney general, as provided in this chapter, to dissolve the corporation, or in a proceed-

ing by the attorney general to enjoin the corporation from performing unauthorized acts, or in any other proceeding by the attorney general. [1967 c 235 § 9.]

Dissolution: RCW 24.03.220 through 24.03.270.

24.03.043 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

24.03.045 Corporate name. The corporate name:

(1) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(2) Shall not be the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any act of this state, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, any foreign or domestic limited liability company on file with the secretary of state, any domestic or foreign limited partnership on file with the secretary, or a limited partnership existing under chapter 25.10 RCW, or a corporate name reserved or registered as permitted by the laws of this state. This subsection shall not apply if the applicant files with the secretary of state either of the following: (a) The written consent of the other corporation, limited liability company, limited partnership, or holder of a reserved name to use the same or deceptively similar name and one or more words are added or deleted to make the name distinguishable from the other name as determined by the secretary of state, or (b) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this state.

(3) Shall be transliterated into letters of the English alphabet, if it is not in English.

(4) Shall not include or end with "incorporated," "company," "corporation," "partnership," "limited partnership," or "Ltd.," or any abbreviation thereof, but may use "club," "league," "association," "services," "committee," "fund," "society," "foundation," ".", a nonprofit corporation," or any name of like import.

(5) May only include the term "public benefit" or names of like import if the corporation has been designated as a public benefit nonprofit corporation by the secretary in accordance with this chapter. [1994 c 211 § 1305; 1989 c 291 § 10; 1987 c 55 § 39; 1986 c 240 § 6; 1982 c 35 § 76; 1967 c 235 § 10.]

Effective date—Severability—1994 c 211: See RCW 25.15.900 and 25.15.902.

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Corporate name of foreign corporation: RCW 24.03.315.

24.03.046 Reservation of exclusive right to use a corporate name. The exclusive right to the use of a corporate name may be reserved by:

(1) Any person intending to organize a corporation under this title.

(2) Any domestic corporation intending to change its name.

(3) Any foreign corporation intending to make application for a certificate of authority to transact business in this state.

(4) Any foreign corporation authorized to transact business in this state and intending to change its name.

(5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by or on behalf of the applicant. If the secretary of state finds that the name is available for corporate use, the secretary of state shall reserve the same for the exclusive use of the applicant for a period of one hundred and eighty days. Such reservation shall be limited to one filing.

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state, a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee. [1993 c 356 § 1; 1982 c 35 § 77.]

Effective date—1993 c 356: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 356 § 25.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.047 Registration of corporate name. Any corporation, organized and existing under the laws of any state or territory of the United States may register its corporate name under this title, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, the name of any foreign corporation authorized to transact business in this state, the name of any domestic limited liability company organized under the laws of this state, the name of any foreign limited liability company authorized to transact business in this state, the name of any limited partnership on file with the secretary, or any corporate name reserved or registered under this title.

Such registration shall be made by:

(1) Filing with the secretary of state: (a) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or country under the laws of which it is incorporated, [and] the date of its incorporation, and (b) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or country or by such other official as may have custody of the records pertaining to corporations, and

(2) Paying to the secretary of state the applicable registration fee.

The registration shall be effective until the close of the calendar year in which the application for registration is filed. [1994 c 211 § 1306; 1993 c 356 § 2; 1987 c 55 § 40; 1986 c 240 § 7; 1982 c 35 § 78.]

Effective date—Severability—1994 c 211: See RCW 25.15.900 and 25.15.902.

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.048 Renewal of registration of corporate name. A corporation which has in effect a registration of its corporate name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying the applicable fee. A renewal application may be filed between the first day of October and the thirty-first day of December in each year, and shall extend the registration for the following calendar year. [1986 c 240 § 8; 1982 c 35 § 79.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.050 Registered office and registered agent. Each corporation shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its principal office. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, having an office identical with such registered office. A registered agent shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state.

No Washington corporation or foreign corporation authorized to conduct affairs in this state may be permitted to maintain any action in any court in this state until the corporation complies with the requirements of this section. [1986 c 240 § 9; 1982 c 35 § 80; 1969 ex.s. c 163 § 1; 1967 c 235 § 11.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.055 Change of registered office or registered agent. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state in the form prescribed by the secretary of state a statement setting forth:

(1) The name of the corporation.

(2) If the current registered office is to be changed, the street address to which the registered office is to be changed.

(3) If the current registered agent is to be changed, the name of the new registered agent.

(4) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

Such statement shall be executed by the corporation by an officer of the corporation, and delivered to the secretary of state, together with a written consent of the registered agent to his or its appointment, if applicable. If the secretary of state finds that such statement conforms to the provisions of this chapter, the secretary of state shall endorse thereon the word "Filed," and the month, day, and year of the filing thereof, and file the statement. The change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective upon filing unless a later date is specified.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation in care of an officer, who is not the resigning registered agent, at the address of such officer as shown by the most recent annual report of the corporation. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

If a registered agent changes the agent's business address to another place within the state, the agent may change such address and the address of the registered office of any corporation of which the agent is a registered agent, by filing a statement as required by this section except that it need be signed only by the registered agent, it need not be responsive to subsection (3) of this section, and it must recite that a copy of the statement has been mailed to the secretary of the corporation. [1993 c 356 § 3; 1986 c 240 § 10; 1982 c 35 § 81; 1967 c 235 § 12.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.060 Service of process on corporation. The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a corporation shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the corporation department of

the secretary of state's office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, the secretary of state shall immediately cause one of the copies thereof to be forwarded by certified mail, addressed to the secretary of the corporation as shown on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon the secretary of state under this section, and shall record therein the time of such service and the secretary of state's action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [1986 c 240 § 11; 1982 c 35 § 82; 1967 c 235 § 13.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.065 Members. A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. Unless otherwise specified in the articles of incorporation or the bylaws, an individual, domestic or foreign profit or nonprofit corporation, a general or limited partnership, an association or other entity may be a member of a corporation. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein. [1986 c 240 § 12; 1967 c 235 § 14.]

24.03.070 Bylaws. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation. The board may adopt emergency bylaws in the manner provided by RCW 23B.02.070. [1991 c 72 § 43; 1986 c 240 § 13; 1967 c 235 § 15.]

24.03.075 Meetings of members. Meetings of members may be held at such place, either within or without this state, as may be stated in or fixed in accordance with the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this state.

An annual meeting of the members shall be held at such time as may be stated in or fixed in accordance with the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

Except as may be otherwise restricted by the articles of incorporation or the bylaws, members of the corporation may participate in a meeting of members by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting. [1986 c 240 § 14; 1967 c 235 § 16.]

24.03.080 Notice of members' meetings. Written or printed notice stating the place, day and hour of the annual meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. Notice of regular meetings other than annual shall be made by providing each member with the adopted schedule of regular meetings for the ensuing year at any time after the annual meeting and ten days prior to the next succeeding regular meeting and at any time when requested by a member or by such other notice as may be prescribed by the bylaws. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid. [1969 ex.s. c 115 § 1; 1967 c 235 § 17.]

Waiver of notice: RCW 24.03.460.

24.03.085 Voting. The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

A member may vote in person or, if so authorized by the articles of incorporation or the bylaws, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates. [1969 ex.s. c 115 § 2; 1967 c 235 § 18.]

Greater voting requirements: RCW 24.03.455.

24.03.090 Quorum. The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this chapter, the articles of incorporation or the bylaws. [1967 c 235 § 19.]

Greater voting requirements: RCW 24.03.455.

24.03.095 Board of directors. The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors. [1967 c 235 § 20.]

24.03.100 Number and election or appointment of directors. The board of directors of a corporation shall consist of one or more individuals. The number of directors shall be fixed by or in the manner provided in the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of incorporation or the bylaws, but a decrease shall not have the effect of shortening the term of any incumbent director. In the absence of a bylaw providing for the number of directors, the number shall be the same as that provided for in the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. Directors may be divided into classes and the terms of office and manner of election or appointment need not be uniform. Each director shall hold office for the term for which the director is elected or appointed and until the director's successor shall have been selected and qualified. [1986 c 240 § 15; 1967 c 235 § 21.]

24.03.103 Removal of directors. The bylaws or articles of incorporation may contain a procedure for removal of directors. If the articles of incorporation or bylaws provide for the election of any director or directors by members, then in the absence of any provision regarding removal of directors:

(1) Any director elected by members may be removed, with or without cause, by two-thirds of the votes cast by members having voting rights with regard to the election of

any director, represented in person or by proxy at a meeting of members at which a quorum is present;

(2) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against that director's removal would be sufficient to elect that director if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he or she is a part; and

(3) Whenever the members of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the members of that class and not to the vote of the members as a whole. [1986 c 240 § 16.]

24.03.105 Vacancies. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining board of directors even though less than a quorum is present unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office. [1986 c 240 § 17; 1967 c 235 § 22.]

24.03.110 Quorum of directors. A majority of the number of directors fixed by, or in the manner provided in the bylaws, or in the absence of a bylaw fixing or providing for the number of directors, then of the number fixed by or in the manner provided in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this chapter, the articles of incorporation or the bylaws. [1986 c 240 § 18; 1967 c 235 § 23.]

Greater voting requirements: RCW 24.03.455.

24.03.113 Assent presumed—Procedures for dissent or abstention. A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless the director's dissent or abstention shall be entered in the minutes of the meeting or unless the director shall file his or her written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent or abstention by registered mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent or abstain shall not apply to a director who voted in favor of such action. [1986 c 240 § 19.]

24.03.115 Committees. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation: PROVIDED, That no such committee shall have the authority of the board of directors in reference to amending, altering or repealing the bylaws; electing, appointing or removing any member of any such committee or any director or officer of the corporation; amending the articles of incorporation; adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, or exchange of all or substantially all of the property and assets of the corporation not in the ordinary course of business; authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; adopting a plan for the distribution of the assets of the corporation; or amending, altering or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director of any responsibility imposed upon it or him by law. [1986 c 240 § 20; 1967 c 235 § 24.]

24.03.120 Place and notice of directors' meetings. Meetings of the board of directors, regular or special, may be held either within or without this state.

Regular meetings of the board of directors or of any committee designated by the board of directors may be held with or without notice as prescribed in the bylaws. Special meeting of the board of directors or any committee designated by the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director or a committee member at a meeting shall constitute a waiver of notice of such meeting, except where a director or a committee member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors or any committee designated by the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated by the board of directors may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting. [1986 c 240 § 21; 1967 c 235 § 25.]

Waiver of notice: RCW 24.03.460.

24.03.125 Officers. The officers of a corporation shall consist of a president, one or more vice presidents, a

secretary, and a treasurer, each of whom shall be elected or appointed at such time and in such manner and for such terms as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the articles or bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary. Such other officers and assistant officers or agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the articles or bylaws.

The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws. [1986 c 240 § 22; 1967 c 235 § 26.]

24.03.127 Duties of a director. A director shall perform the duties of a director, including the duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner such director believes to be in the best interests of the corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the corporation whom the director believes to be reliable and competent in the matter presented;

(2) Counsel, public accountants, or other persons as to matters which the director believes to be within such person's professional or expert competence; or

(3) A committee of the board upon which the director does not serve, duly designated in accordance with a provision in the articles of incorporation or bylaws, as to matters within its designated authority, which committee the director believes to merit confidence; so long as, in any such case, the director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted. [1986 c 240 § 23.]

24.03.130 Removal of officers. Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights. [1967 c 235 § 27.]

24.03.135 Records. Each corporation shall keep at its registered office, its principal office in this state, or at its secretary's office if in this state, the following:

(1) Current articles and bylaws;

(2) A record of members, including names, addresses, and classes of membership, if any;

(3) Correct and adequate records of accounts and finances;

(4) A record of officers' and directors' names and addresses;

(5) Minutes of the proceedings of the members, if any, the board, and any minutes which may be maintained by committees of the board. Records may be written, or electronic if capable of being converted to writing.

The records shall be open at any reasonable time to inspection by any member of more than three months standing or a representative of more than five percent of the membership.

Cost of inspecting or copying shall be borne by such member except for costs for copies of articles or bylaws. Any such member must have a purpose for inspection reasonably related to membership interests. Use or sale of members' lists by such member if obtained by inspection is prohibited.

The superior court of the corporation's or such member's residence may order inspection and may appoint independent inspectors. Such member shall pay inspection costs unless the court orders otherwise. [1986 c 240 § 24; 1967 c 235 § 28.]

24.03.140 Loans to directors and officers prohibited. No loans shall be made by a corporation to its directors or officers. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof. [1967 c 235 § 29.]

24.03.145 Filing of articles of incorporation. Duplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, the secretary of state shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed" and the effective date of the filing thereof.

(2) File one of such duplicate originals.

(3) Issue a certificate of incorporation to which the other duplicate original shall be affixed.

The certificate of incorporation together with the duplicate original of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative. [1982 c 35 § 83; 1967 c 235 § 30.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.150 Effect of filing the articles of incorporation. Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the state in

a proceeding to cancel or revoke the certificate of incorporation or for involuntary or administrative dissolution. [1986 c 240 § 25; 1982 c 35 § 84; 1967 c 235 § 31.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.155 Organization meetings. After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the directors named in the articles of incorporation, for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The directors calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting. Any action permitted to be taken at the organization meeting of the directors may be taken without a meeting if each director signs an instrument stating the action so taken. [1986 c 240 § 26; 1967 c 235 § 32.]

24.03.160 Right to amend articles of incorporation. A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this chapter. [1967 c 235 § 33.]

24.03.165 Procedure to amend articles of incorporation. Amendments to the articles of incorporation shall be made in the following manner:

(1) Where there are members having voting rights, with regard to the question, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, with regard to the question, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Any number of amendments may be submitted and voted upon at any one meeting. [1986 c 240 § 27; 1967 c 235 § 34.]

24.03.170 Articles of amendment. The articles of amendment shall be executed in duplicate by the corporation by an officer of the corporation, and shall set forth:

- (1) The name of the corporation.
- (2) The amendment so adopted.

(3) Where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was

present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(4) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office. [1982 c 35 § 85; 1967 c 235 § 35.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.175 Filing of articles of amendment. Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, the secretary of state shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the effective date of the filing thereof.

(2) File one of such duplicate originals.

(3) Issue a certificate of amendment to which the other duplicate original shall be affixed.

The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative. [1982 c 35 § 86; 1967 c 235 § 36.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

Fees: RCW 24.03.405, 24.03.410.

24.03.180 Effect of filing of articles of amendment. Upon the filing of the articles of amendment by the secretary of state, or on such later date, not more than thirty days subsequent to the filing thereof by the secretary of state, as may be provided in the articles of amendment, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending action to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason. [1986 c 240 § 28; 1982 c 35 § 87; 1967 c 235 § 37.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.183 Restated articles of incorporation. A domestic corporation may at any time restate its articles of incorporation by a resolution adopted by the board of directors. A corporation may amend and restate in one resolution, but may not present the amendments and restatement for filing by the secretary in a single document. Separate articles of amendment, under RCW 24.03.165 and articles of restatement, under this section, must be presented

notwithstanding the corporation's adoption of a single resolution of amendment and restatement.

Upon the adoption of the resolution, restated articles of incorporation shall be executed in duplicate by the corporation by one of its officers. The restated articles shall set forth all of the operative provisions of the articles of incorporation together with a statement that the restated articles of incorporation correctly set forth without change the provisions of the articles of incorporation as amended and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

Duplicate originals of the restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to law, the secretary of state shall, when all fees required by this title have been paid:

(1) Endorse on each duplicate original the word "Filed" and the date of the filing thereof;

(2) File one duplicate original; and

(3) Issue a restated certificate of incorporation, to which the other duplicate original shall be affixed.

The restated certificate of incorporation, together with the duplicate original of the restated articles of incorporation affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Upon the filing of the restated articles of incorporation by the secretary of state, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto. [1986 c 240 § 29; 1982 c 35 § 88.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.185 Procedure for merger. Any two or more domestic corporations subject to this chapter may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

Each corporation shall adopt a plan of merger setting forth:

(1) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.

(2) The terms and conditions of the proposed merger.

(3) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(4) Such other provisions with respect to the proposed merger as are deemed necessary or desirable. [1986 c 240 § 30; 1967 c 235 § 38.]

24.03.190 Procedure for consolidation. Any two or more domestic corporations subject to this chapter may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

Each corporation shall adopt a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate, and the name of the new corporation into which they

propose to consolidate, which is hereinafter designated as the new corporation.

(2) The terms and conditions of the proposed consolidation.

(3) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

(4) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. [1986 c 240 § 31; 1967 c 235 § 39.]

24.03.195 Approval of merger or consolidation. A plan of merger or consolidation shall be adopted in the following manner:

(1) Where the members of any merging or consolidating corporation have voting rights with regard to the question, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast.

(2) Where any merging or consolidating corporation has no members, or no members having voting rights with regard to the question, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. [1986 c 240 § 32; 1967 c 235 § 40.]

24.03.200 Articles of merger or consolidation. (1) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by an officer of each corporation, and shall set forth:

(a) The plan of merger or the plan of consolidation;

(b) Where the members of any merging or consolidating corporation have voting rights, then as to each such corporation (i) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (ii) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(c) Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

(2) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, the secretary of state shall, when all fees have been paid as in this chapter prescribed:

- (a) Endorse on each of such duplicate originals the word "Filed," and the date of the filing thereof;
- (b) File one of such duplicate originals; and
- (c) Issue a certificate of merger or a certificate of consolidation to which the other duplicate original shall be affixed.

The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative. [1986 c 240 § 33; 1982 c 35 § 89; 1967 c 235 § 41.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.205 Merger or consolidation—When effective.

A merger or consolidation shall become effective upon the filing of the articles of merger or articles of consolidation with the secretary of state, or on such later date, not more than thirty days after the filing thereof with the secretary of state, as shall be provided for in the plan. [1986 c 240 § 34; 1982 c 35 § 90; 1967 c 235 § 42.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.207 Merger or consolidation of domestic and foreign corporation. One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

(1) Each domestic corporation shall comply with the provisions of this title with respect to the merger or consolidation as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(2) If the surviving or new corporation in a merger or consolidation is to be governed by the laws of any state other than this state, it shall comply with the provisions of this title with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

(a) An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to the merger or consolidation and in any proceeding for the enforcement of the rights, if any, of a member of any such domestic corporation against the surviving or new corporation; and

(b) An irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding.

The effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or

new corporation is to be governed by the laws of any state other than this state, the effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except as the laws of the other state provide otherwise.

(3) At any time prior to the effective date of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provision therefor, if any, set forth in the plan of merger or consolidation. In the event the merger or consolidation is abandoned, the parties thereto shall execute a notice of abandonment in triplicate signed by an officer for each corporation signing the notice. If the secretary of state finds the notice conforms to law, the secretary of state shall:

(a) Endorse on each of the originals the word "Filed" and the date of the filing;

(b) File one of the triplicate originals in the secretary of state's office; and

(c) Issue the other triplicate originals to the respective parties or their representatives. [1986 c 240 § 35; 1982 c 35 § 91.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.210 Effect of merger or consolidation. When such merger or consolidation has been affected:

(1) The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation. [1967 c 235 § 43.]

24.03.215 Sale, lease, exchange, or other disposition of assets not in the ordinary course of business. A sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a corporation, if not in the ordinary course of business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(1) Where there are members having voting rights with regard to the question, the board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this chapter for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(2) Where there are no members, or no members having voting rights with regard to the question, a sale, lease, exchange, or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office. [1986 c 240 § 36; 1967 c 235 § 44.]

24.03.217 Sale, lease, exchange, or disposition of assets in course of business—Mortgage and pledge of assets. The sale, lease, exchange or other disposition of all, or substantially all, the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or not in the usual course of business may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares,

obligations, or other securities of any other corporation, domestic or foreign, as shall be authorized by its board of directors. In any such case, no other authorization or consent of any member shall be required. [1986 c 240 § 37.]

24.03.220 Voluntary dissolution. A corporation may dissolve and wind up its affairs in the following manner:

(1) Where there are members having voting rights with regard to the question, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having such voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights with regard to the question, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation shall cease to conduct its affairs except in so far as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, to the attorney general with respect to assets subject to RCW 24.03.225(3), and to the department of revenue, and shall proceed to collect its assets and apply and distribute them as provided in this chapter. [1986 c 240 § 38; 1982 c 35 § 92; 1967 c 235 § 45.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.225 Distribution of assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation,

pursuant to a plan of distribution adopted as provided in this chapter;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

(5) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in this chapter. [1967 c 235 § 46.]

24.03.230 Plan of distribution. A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office.

If the plan of distribution includes assets received and held by the corporation subject to limitations described in subsection (3) of RCW 24.03.225, notice of the adoption of the proposed plan shall be submitted to the attorney general by registered or certified mail directed to him at his office in Olympia, at least twenty days prior to the meeting at which the proposed plan is to be adopted. No plan for the distribution of such assets may be adopted without the approval of the attorney general, or the approval of a court of competent jurisdiction in a proceeding to which the attorney general is made a party. In the event that an objection is not filed within twenty days after the date of mailing, his approval shall be deemed to have been given. [1969 ex.s. c 115 § 3; 1967 c 235 § 47.]

24.03.235 Revocation of voluntary dissolution proceedings. A corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and

directing that the question of such revocation be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation may thereupon again conduct its affairs. [1967 c 235 § 48.]

Notice of members' meetings: RCW 24.03.080.

24.03.240 Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation shall have been paid and discharged, or adequate provision shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed in duplicate by the corporation by an officer of the corporation and shall set forth:

(1) The name of the corporation.

(2) Where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (b) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.

(3) Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office.

(4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.

(5) A copy of a revenue clearance certificate issued pursuant to chapter 82.32 RCW.

(6) That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this chapter.

(7) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which

may be entered against it in any pending suit. [1993 c 356 § 4; 1982 c 35 § 93; 1967 c 235 § 49.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.245 Filing of articles of dissolution. Duplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, the secretary of state shall, when all requirements have been met as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the effective date of the filing thereof.

(2) File one of such duplicate originals.

(3) Issue a certificate of dissolution to which the other duplicate original shall be affixed.

The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation. Upon the filing of such articles of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this chapter. [1982 c 35 § 94; 1967 c 235 § 50.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.250 Involuntary dissolution. A corporation may be dissolved involuntarily by a decree of the superior court in an action filed by the attorney general when it is established that:

(1) The corporation procured its articles of incorporation through fraud; or

(2) The corporation has continued to exceed or abuse the authority conferred upon it by law. [1969 ex.s. c 163 § 2; 1967 c 235 § 51.]

Filing annual or biennial report: RCW 24.03.400.

24.03.255 Notification to attorney general. The secretary of state shall certify, from time to time, the names of all corporations which have given cause for dissolution as provided in RCW 24.03.250, together with the facts pertinent thereto. Whenever the secretary of state shall certify the name of a corporation to the attorney general as having given any cause for dissolution, the secretary of state shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the attorney general shall file an action in the name of the state against such corporation for its dissolution. [1982 c 35 § 95; 1969 ex.s. c 163 § 3; 1967 c 235 § 52.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.260 Venue and process. Every action for the involuntary dissolution of a corporation shall be commenced by the attorney general either in the superior court of the county in which the registered office of the corporation is situated, or in the superior court of Thurston county.

Summons shall issue and be served as in other civil actions. If process is returned not found, the attorney general shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. The attorney general may include in one notice the names of any number of corporations against which actions are then pending in the same court. The attorney general shall cause a copy of such notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the attorney general of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice. [1967 c 235 § 53.]

24.03.265 Jurisdiction of court to liquidate assets and affairs of corporation. Superior courts shall have full power to liquidate the assets and affairs of a corporation:

(1) In an action by a member, director, or the attorney general when it is made to appear:

(a) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(b) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(c) That the corporate assets are being misapplied or wasted; or

(d) That the corporation is unable to carry out its purposes.

(2) In an action by a creditor:

(a) When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(b) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(3) Upon application by a corporation to have its dissolution continued under the supervision of the court.

(4) When an action has been filed by the attorney general to dissolve a corporation under the provisions of this chapter and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

Proceedings under subsections (1), (2), or (3) of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally. [1986 c 240 § 39; 1967 c 235 § 54.]

24.03.270 Procedure in liquidation of corporation by court. In proceedings to liquidate the assets and affairs of a corporation the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

The assets of the corporation or the proceeds resulting from the sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(1) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

(5) Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter, or where no plan of distribution has been adopted, as the court may direct.

The court shall have power to allow, from time to time, as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corpora-

tion. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated. [1967 c 235 § 55.]

24.03.275 Qualification of receivers—Bond. A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require. [1967 c 235 § 56.]

24.03.280 Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and affairs of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. [1967 c 235 § 57.]

24.03.285 Discontinuance of liquidation proceedings. The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. [1967 c 235 § 58.]

24.03.290 Decree of involuntary dissolution. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. [1967 c 235 § 59.]

24.03.295 Filing of decree of dissolution. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the secretary of state. No fee shall be charged by the clerk for issuance or by the secretary of state for the filing thereof. [1986 c 240 § 40; 1967 c 235 § 60.]

24.03.300 Survival of remedy after dissolution—Extension of duration of corporation. The dissolution of a corporation either (1) by the filing and issuance of a certificate of dissolution, voluntary or administrative, by the secretary of state, or (2) by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in this chapter, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years after expiration so as to extend its period of duration. If, during the period of dissolution, another person or corporation has reserved or adopted a corporate name which is identical to or deceptively similar to the dissolved corporation's name, the corporation extending its period of duration shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles of incorporation accordingly. The corporation shall also pay to the state all fees and penalties which would otherwise have been due if the corporate charter had not expired, plus a reinstatement fee as provided in this chapter. [1986 c 240 § 41; 1982 c 35 § 96; 1967 c 235 § 61.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.302 Administrative dissolution—Grounds—Notice—Reinstatement—Fee set by rule—Corporate name—Survival of actions. A corporation shall be administratively dissolved by the secretary of state upon the conditions prescribed in this section when the corporation:

- (1) Has failed to file or complete its annual report within the time required by law; or
- (2) Has failed for thirty days to appoint or maintain a registered agent in this state; or
- (3) Has failed for thirty days, after change of its registered agent or registered office, to file in the office of the secretary of state a statement of such change.

A corporation shall not be dissolved under this section unless the secretary of state has given the corporation not less than sixty days' notice of its delinquency or omission, by first class mail, postage prepaid, addressed to the registered office, or, if there is no registered office, to the last known address of any officer or director as shown by the records of the secretary of state, and unless the corporation has failed to correct the omission or delinquency before expiration of the sixty-day period.

When a corporation has given cause for dissolution under this section, and has failed to correct the delinquency or omission as provided in this section, the secretary of the state shall dissolve the corporation by issuing a certificate of administrative dissolution containing a statement that the

corporation has been dissolved and the date and reason for which it was dissolved. The original certificate of administrative dissolution shall be filed in the records of the secretary of state, and a copy of the certificate shall forthwith be mailed to the corporation at its registered office or, if there is no registered office, to the last known address of the corporation or any officer, director, or incorporator of the corporation, as shown by the records of the secretary of state. Upon the filing of the certificate of administrative dissolution, the existence of the corporation shall cease, except as otherwise provided in this chapter, and its name shall be available to and may be adopted by another corporation after the dissolution.

Any notice provided by the secretary of state under this section shall be designed to clearly identify and warn the recipient of the contents thereof. A delinquency notice shall provide a succinct and readable description of the delinquency or omission, the date on which dissolution will occur, and the action necessary to cure the delinquency or omission prior to dissolution.

A corporation which has been dissolved by operation of this section may be reinstated within a period of three years following its administrative dissolution if it completes and files a current annual report for the reinstatement year or if it appoints or maintains a registered agent, or if it files with the secretary of state a required statement of change of registered agent or registered office and in addition, if it pays a reinstatement fee as set by rule by the secretary plus the full amount of all annual fees that would have been assessed for the years of administrative dissolution had the corporation been in active status, including the reinstatement year plus any penalties established by rule by the secretary of state. If, during the period of dissolution, another person or corporation has reserved or adopted a corporate name which is identical to or deceptively similar to the dissolved corporation's name, the dissolved corporation seeking reinstatement shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles of incorporation accordingly. When a corporation has been dissolved by operation of this section, remedies available to or against it shall survive in the manner provided in RCW 24.03.300 and the directors of the corporation shall hold the title to the property of the corporation as trustees for the benefit of its creditors and members. [1994 c 287 § 8; 1993 c 356 § 5; 1987 c 117 § 3; 1986 c 240 § 42; 1982 c 35 § 97; 1971 ex.s. c 128 § 1; 1969 ex.s. c 163 § 9.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.303 Reinstatement under certain circumstances—Request for relief. The secretary of state may, where exigent or mitigating circumstances are presented, reinstate to full active status any corporation previously in good standing which would otherwise be penalized or lose its active status. Any corporation desiring to seek relief under this section shall, within fifteen days of discovery by corporate officials of the missed filing or lapse, notify the secretary of state in writing. The notification shall include the name and mailing address of the corporation, the

corporate officer to whom correspondence should be sent, and a statement under oath by a responsible corporate officer, setting forth the nature of the missed filing or lapse, the circumstances giving rise to the missed filing or lapse, and the relief sought. Upon receipt of the notice, the secretary of state shall investigate the circumstances of the missed filing or lapse. If the secretary of state is satisfied that sufficient exigent or mitigating circumstances exist, that the corporation has demonstrated good faith and a reasonable attempt to comply with the applicable corporate license statutes of this state, that disproportionate harm would occur to the corporation if relief were not granted, and that relief would not be contrary to the public interest expressed in this title, the secretary may issue an order reinstating the corporation and specifying any terms and conditions of the relief. Reinstatement may relate back to the date of lapse or dissolution. If the secretary of state determines the request does not comply with the requirements for relief, the secretary shall issue an order denying the requested relief and stating the reasons for the denial. Any denial of relief by the secretary of state is final and is not appealable. The secretary of state shall keep records of all requests for relief and the disposition of the requests. The secretary of state shall annually report to the legislature the number of relief requests received in the preceding year and a summary of the secretary's disposition of the requests. [1987 c 117 § 6.]

24.03.305 Admission of foreign corporation. No foreign corporation shall have the right to conduct affairs in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in this state any affairs which a corporation organized under this chapter is not permitted to conduct. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

Without excluding other activities which may not constitute conducting affairs in this state, a foreign corporation shall not be considered to be conducting affairs in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

- (1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.
- (2) Holding meetings of its directors or members or carrying on other activities concerning its internal affairs.
- (3) Maintaining bank accounts.
- (4) Creating evidences of debt, mortgages or liens on real or personal property.
- (5) Securing or collecting debts due to it or enforcing any rights in property securing the same.
- (6) Effecting sales through independent contractors.
- (7) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders

require acceptance without this state before becoming binding contracts.

(8) Creating as borrower or lender, or acquiring, indebtedness or mortgages or other security interests in real or personal property.

(9) Securing or collecting debts or enforcing any rights in property securing the same.

(10) Transacting any business in interstate commerce.

(11) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

(12) Operating an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW and in accordance with RCW 24.03.307. [1993 c 181 § 12; 1986 c 240 § 43; 1967 c 235 § 62.]

24.03.307 Foreign degree-granting institution branch campus—Acts not deemed transacting business in state. In addition to those acts that are specified in RCW 24.03.305 (1) through (11), a foreign degree-granting institution that establishes an approved branch campus in the state under chapter 28B.90 RCW shall not be deemed to transact business in the state solely because it:

(1) Owns and controls an incorporated branch campus in this state;

(2) Pays the expenses of tuition, or room and board charged by the incorporated branch campus for its students enrolled at the branch campus or contributes to the capital thereof; or

(3) Provides personnel who furnish assistance and counsel to its students while in the state but who have no authority to enter into any transactions for or on behalf of the foreign degree-granting institution. [1993 c 181 § 6.]

24.03.310 Powers of foreign corporation. A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authorization is issued; and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character. [1967 c 235 § 63.]

24.03.315 Corporate name of foreign corporation—Fictitious name. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation complies with the provisions of RCW 24.03.045. However, a foreign corporation applying for a certificate of authority may file with the secretary of state a resolution of its board of directors adopting a fictitious name for use in transacting business in this state, if the fictitious name complies with RCW 24.03.045. [1982 c 35 § 98; 1967 c 235 § 64.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Registration of corporate name: RCW 24.03.047.

Reservation of exclusive right to use a corporate name: RCW 24.03.046.

24.03.320 Change of name by foreign corporation.

Whenever a foreign corporation which is authorized to conduct affairs in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in this state until it has changed its name to a name which is available to it under the laws of this state or has otherwise complied with the provisions of this chapter. [1986 c 240 § 44; 1967 c 235 § 65.]

24.03.325 Application for certificate of authority.

A foreign corporation, in order to procure a certificate of authority to conduct affairs in this state, shall make application therefor to the secretary of state, which application shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) If the name of the corporation contains the word "corporation," "company," "incorporated," or "limited," or contains an abbreviation of one of such words, then the name of the corporation which it elects for use in this state.

(3) The date of incorporation and the period of duration of the corporation.

(4) The address of the principal office of the corporation.

(5) A statement that a registered agent has been appointed and the name and address of such agent, and that a registered office exists and the address of such registered office is identical to that of the registered agent.

(6) The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this state.

(7) The names and respective addresses of the directors and officers of the corporation.

(8) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this state.

The application shall be made in the form prescribed by the secretary of state and shall be executed in duplicate by the corporation by one of its officers.

The application shall be accompanied by a certificate of good standing which has been issued no more than sixty days before the date of filing of the application for a certificate of authority to do business in this state and has been certified to by the proper officer of the state or country under the laws of which the corporation is incorporated. [1986 c 240 § 45; 1967 c 235 § 66.]

24.03.330 Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state.

If the secretary of state finds that such application conforms to law, the secretary of state shall, when all fees have been paid as in this chapter prescribed:

(1) Endorse on each of such documents the word "Filed," and the date of the filing thereof.

(2) File one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto.

(3) Issue a certificate of authority to conduct affairs in this state to which the other duplicate original application shall be affixed.

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative. [1986 c 240 § 46; 1982 c 35 § 99; 1969 ex.s. c 163 § 4; 1967 c 235 § 67.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.335 Effect of certificate of authority. Upon the filing of the application for certificate of authority by the secretary of state, the corporation shall be authorized to conduct affairs in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this chapter. [1982 c 35 § 100; 1967 c 235 § 68.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.340 Registered office and registered agent of foreign corporation. Each foreign corporation authorized to conduct affairs in this state shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its principal office. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, having an office identical with such registered office. A registered agent shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state.

No foreign corporation authorized to transact business in this state may be permitted to maintain any action in any court in this state until the corporation complies with the requirements of this section. [1982 c 35 § 101; 1967 c 235 § 69.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.03.345 Change of registered office or registered agent of foreign corporation. A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state in a form approved by the secretary of state a statement setting forth:

- (1) The name of the corporation.
- (2) If the current registered office is to be changed, the street address to which the registered office is to be changed.
- (3) If the current registered agent is to be changed, the name of the new registered agent.
- (4) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

Such statement shall be executed by the corporation by an officer of the corporation, and delivered to the secretary of state, together with a written consent of the registered agent to his or its appointment, if applicable. If the secretary of state finds that such statement conforms to the provisions of this chapter, the secretary of state shall endorse thereon the word "Filed," and the month, day, and year of the filing thereof, and file the statement. The change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective upon filing unless a later date is specified.

Any registered agent in this state appointed by a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state who shall forthwith mail a copy thereof to the secretary of the foreign corporation at its principal office as shown by its most recent annual report. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

If a registered agent changes his business address to another place within the state, the registered agent may change such address and the address of the registered office of any corporation of which the registered agent is a registered agent by filing a statement as required by this section, except that it need be signed only by the registered agent, it need not be responsive to subsection (3) of this section, and it must recite that a copy of the statement has been mailed to the corporation. [1993 c 356 § 6; 1986 c 240 § 47; 1982 c 35 § 102; 1967 c 235 § 70.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.350 Service on foreign corporation. The registered agent so appointed by a foreign corporation authorized to conduct affairs in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a foreign corporation authorized to conduct affairs in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served.

Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the corporation department of the secretary of state's office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, the secretary of state shall immediately cause one of such copies thereof to be forwarded by certified mail, addressed to the secretary of the corporation as shown on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon the secretary of state under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [1986 c 240 § 48; 1982 c 35 § 103; 1967 c 235 § 71.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.360 Merger of foreign corporation authorized to conduct affairs in this state. Whenever a foreign corporation authorized to conduct affairs in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state. [1986 c 240 § 49; 1967 c 235 § 73.]

Purposes: RCW 24.03.015.

24.03.365 Amended certificate of authority. A foreign corporation authorized to conduct affairs in this state shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority. [1967 c 235 § 74.]

24.03.370 Withdrawal of foreign corporation. A foreign corporation authorized to conduct affairs in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated.

(2) That the corporation is not conducting affairs in this state.

(3) That the corporation surrenders its authority to conduct affairs in this state.

(4) That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct affairs in this state may thereafter be made on such corporation by service thereof on the secretary of state.

(5) A copy of a revenue clearance certificate issued pursuant to chapter 82.32 RCW.

(6) A post office address to which the secretary of state may mail a copy of any process against the corporation that may be served on the secretary of state.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by an officer of the corporation, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee. [1993 c 356 § 7; 1982 c 35 § 104; 1967 c 235 § 75.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.375 Filing of application for withdrawal.

Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, the secretary of state shall, when all requirements have been met as in this chapter prescribed:

(1) Endorse on each of such duplicate originals the word "Filed," and the effective date of the filing thereof.

(2) File one of such duplicate originals.

(3) Issue a certificate of withdrawal to which the other duplicate original shall be affixed.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the filing of such application of withdrawal, the authority of the corporation to conduct affairs in this state shall cease. [1982 c 35 § 105; 1967 c 235 § 76.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Fees: RCW 24.03.405.

24.03.380 Revocation of certificate of authority—

Notice. (1) The certificate of authority of a foreign corporation to conduct affairs in this state shall be revoked by the secretary of state upon the conditions prescribed in this section when:

(a) The corporation has failed to file its annual report within the time required by this chapter, or has failed to pay any fees or penalties prescribed by this chapter when they have become due and payable; or

(b) The corporation has failed for thirty days to appoint and maintain a registered agent in this state as required by this chapter; or

(c) The corporation has failed, for thirty days after change of its registered agent or registered office, to file in the office of the secretary of state a statement of such change as required by this chapter; or

(d) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(e) A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(2) Prior to revoking a certificate of authority under subsection (1) of this section, the secretary of state shall give the corporation written notice of the corporation's delinquency or omission by first class mail, postage prepaid, addressed to the corporation's registered agent. If, according to the records of the secretary of state, the corporation does not have a registered agent, the notice may be given by mail addressed to the corporation at its last known address or at the address of any officer or director of the corporation, as shown by the records of the secretary of state. Notice is deemed to have been given five days after the date deposited in the United States mail, correctly addressed, and with correct postage affixed. The notice shall inform the corporation that its certificate of authority shall be revoked at the expiration of sixty days following the date the notice had been deemed to have been given, unless it corrects the delinquency or omission within the sixty-day period.

(3) Any notice provided by the secretary of state under this section shall be designed to clearly identify and warn the recipient of the contents thereof. A delinquency notice shall provide a succinct and readable description of the delinquency or omission, the date on which dissolution will occur, and the action necessary to cure the delinquency or omission prior to dissolution.

(4) The attorney general may take such action regarding revocation of a certificate of authority as is provided by RCW 24.03.250 for the dissolution of a domestic corporation. The procedures of RCW 24.03.250 shall apply to any action under this section. The clerk of any superior court entering a decree of revocation of a certificate of authority shall file a certified copy, without cost or filing fee, with the office of the secretary of state. [1986 c 240 § 50; 1982 c 35 § 106; 1967 c 235 § 77.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.385 Issuance of certificate of revocation.

Upon revoking any certificate of authority under RCW 24.03.380, the secretary of state shall:

(1) Issue a certificate of revocation in duplicate.

(2) File one of such certificates in the secretary of state's office.

(3) Mail the other duplicate certificate to such corporation at its registered office in this state or, if there is no registered office in this state, to the corporation at the last known address of any officer or director of the corporation, as shown by the records of the secretary of state.

Upon the filing of such certificate of revocation, the authority of the corporation to conduct affairs in this state

shall cease. [1986 c 240 § 51; 1982 c 35 § 107; 1967 c 235 § 78.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.386 Foreign corporations—Application for reinstatement. (1) A corporation revoked under RCW 24.03.380 may apply to the secretary of state for reinstatement within three years after the effective date of revocation. An application filed within such three-year period may be amended or supplemented and any such amendment or supplement shall be effective as of the date of original filing. The application filed under this section shall be filed under and by authority of an officer of the corporation.

(2) The application shall:

(a) State the name of the corporation and, if applicable, the name the corporation had elected to use in this state at the time of revocation, and the effective date of its revocation;

(b) Provide an explanation to show that the grounds for revocation either did not exist or have been eliminated;

(c) State the name of the corporation at the time of reinstatement and, if applicable, the name the corporation elects to use in this state at the time of reinstatement which may be reserved under RCW 24.03.046;

(d) Appoint a registered agent and state the registered office address under RCW 24.03.340; and

(e) Be accompanied by payment of applicable fees and penalties.

(3) If the secretary of state determines that the application conforms to law, and that all applicable fees have been paid, the secretary of state shall cancel the certificate of revocation, prepare and file a certificate of reinstatement, and mail a copy of the certificate of reinstatement to the corporation.

(4) Reinstatement under this section relates back to and takes effect as of the date of revocation. The corporate authority shall be deemed to have continued without interruption from that date.

(5) In the event the application for reinstatement states a corporate name which the secretary of state finds to be contrary to the requirements of RCW 24.03.046, the application, amended application, or supplemental application shall be amended to adopt another corporate name which is in compliance with RCW 24.03.046. In the event the reinstatement application so adopts a new corporate name for use in Washington, the application for authority shall be deemed to have been amended to change the corporation's name to the name so adopted for use in Washington, effective as of the effective date of the certificate of reinstatement. [1993 c 356 § 8; 1987 c 117 § 1; 1986 c 240 § 57.]

Effective date—1993 c 356: See note following RCW 24.03.046.

24.03.388 Foreign corporations—Fees for application for reinstatement—Filing current annual report—Penalties established by rule. (1) An application processing fee as provided in RCW 24.03.405 shall be charged for an application for reinstatement under RCW 24.03.386.

(2) An application processing fee as provided in RCW 24.03.405 shall be charged for each amendment or supplement to an application for reinstatement.

(3) The corporation seeking reinstatement shall file a current annual report and pay the full amount of all annual corporation fees which would have been assessed for the years of the period of administrative revocation, had the corporation been in active status, including the reinstatement year, plus any penalties as established by rule by the secretary. [1994 c 287 § 9; 1993 c 356 § 9; 1991 c 223 § 3; 1987 c 117 § 2; 1986 c 240 § 58.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Effective date—1991 c 223: See note following RCW 24.03.405.

24.03.390 Conducting affairs without certificate of authority. No foreign corporation which is conducting affairs in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the conduct of affairs by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state.

A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this chapter and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section. [1986 c 240 § 52; 1967 c 235 § 79.]

24.03.395 Annual report of domestic and foreign corporations—Biennial filing may be authorized. Each domestic corporation, and each foreign corporation authorized to conduct affairs in this state, shall file, within the time prescribed by this chapter, an annual report in the form prescribed by the secretary of state. The secretary may by rule provide that a biennial filing meets this requirement. The report shall set forth:

(1) The name of the corporation and the state or country under the laws of which it is incorporated;

(2) The address of the registered office of the corporation in this state including street and number and the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its principal office;

(3) A brief statement of the character of the affairs which the corporation is actually conducting, or, in the case of a foreign corporation, which the corporation is actually conducting in this state;

(4) The names and respective addresses of the directors and officers of the corporation; and

(5) The corporation's unified business identifier number.

The information shall be given as of the date of the execution of the report. It shall be executed by the corporation by an officer of the corporation, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

The secretary of state may provide that correction or updating of information appearing on previous annual or biennial filings is sufficient to constitute the current filing. [1993 c 356 § 10; 1989 c 291 § 2; 1987 c 117 § 4; 1986 c 240 § 53; 1982 c 35 § 108; 1967 c 235 § 80.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.400 Filing of annual or biennial report of domestic and foreign corporations—Notice—Reporting dates. Not less than thirty days prior to a corporation's renewal date, or by December 1 of each year for a nonstaggered renewal, the secretary of state shall mail to each domestic and foreign corporation, by first class mail addressed to its registered office, a notice that its annual or biennial report must be filed as required by this chapter, and stating that if it fails to file its annual or biennial report it shall be dissolved or its certificate of authority revoked, as the case may be. Failure of the secretary of state to mail any such notice shall not relieve a corporation from its obligation to file the annual or biennial reports required by this chapter.

Such report of a domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the first day of March of each year, or on an annual or biennial renewal date as the secretary of state may establish. The secretary of state may adopt rules to establish biennial reporting dates and to stagger reporting dates.

If the secretary of state finds that such report substantially conforms to the requirements of this chapter, the secretary of state shall file the same. [1993 c 356 § 11; 1986 c 240 § 54; 1982 c 35 § 109; 1973 c 90 § 1; 1967 c 235 § 81.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.405 Fees for filing documents and issuing certificates. (1) The secretary of state shall charge and collect for:

(a) Filing articles of incorporation, thirty dollars.

(b) Filing an annual report of a domestic or foreign corporation, ten dollars.

(c) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state, thirty dollars.

(2) The secretary of state shall establish by rule, fees for the following:

(a) An application for reinstatement under RCW 24.03.386.

(b) Filing articles of amendment or restatement or an amendment or supplement to an application for reinstatement.

(c) Filing articles of merger or consolidation.

(d) Filing a statement of change of address of registered office or change of registered agent, or revocation, resignation, or any combination of these. A separate fee for filing such statement shall not be charged if the statement appears in an amendment to articles of incorporation or in conjunction with the filing of the annual report.

(e) Filing articles of dissolution, no fee.

(f) Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state.

(g) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, no fee.

(h) Filing a certificate by a foreign corporation of the appointment of a registered agent. A separate fee for filing such certificate shall not be charged if the statement appears in conjunction with the filing of the annual report.

(i) Filing a certificate of election adopting the provisions of chapter 24.03 RCW.

(j) Filing an application to reserve a corporate name.

(k) Filing a notice of transfer of a reserved corporate name.

(l) Filing a name registration.

(m) Filing any other statement or report authorized for filing under this chapter.

(3) Fees shall be adjusted by rule only in an amount that does not exceed the average biennial increase in the cost of providing service. This shall be determined in a biennial [biennial] cost study performed by the secretary. [1993 c 269 § 5; 1991 c 223 § 1; 1987 c 117 § 5; 1986 c 240 § 55; 1982 c 35 § 110; 1981 c 230 § 5; 1969 ex.s. c 163 § 5; 1967 c 235 § 82.]

Effective date—1993 c 269: See note following RCW 23.86.070.

Effective date—1991 c 223: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect on July 1, 1991." [1991 c 223 § 4.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.410 Miscellaneous fees. The secretary of state shall establish fees by rule and collect:

(1) For furnishing a certified copy of any charter document or any other document, instrument, or paper relating to a corporation.

(2) For furnishing a certificate, under seal, attesting to the status of a corporation or any other certificate.

(3) For furnishing copies of any document, instrument or paper relating to a corporation.

(4) At the time of any service of process on him or her as registered agent of a corporation an amount that may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action. [1993 c 269 § 6; 1982 c 35 § 111; 1979 ex.s. c 133 § 2; 1969 ex.s. c 163 § 6; 1967 c 235 § 83.]

Effective date—1993 c 269: See note following RCW 23.86.070.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Deposit of certain fees recovered under this section in secretary of state's revolving fund: RCW 43.07.130.

24.03.415 Disposition of fees. Any money received by the secretary of state under the provisions of this chapter shall be by him paid into the state treasury as provided by law. [1967 c 235 § 84.]

State officers—Daily remittance of moneys to treasury: RCW 43.01.050.

24.03.417 Fees for services by secretary of state. See RCW 43.07.120.

24.03.420 Penalties imposed upon corporation. Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this chapter interrogatories propounded by the secretary of state in accordance with the provisions of this chapter, shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding five hundred dollars. [1969 ex.s. c 163 § 7; 1967 c 235 § 85.]

Filing of annual or biennial report of domestic and foreign corporations: RCW 24.03.400.

24.03.425 Penalties imposed upon directors and officers. Each director and officer of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories propounded to him by the secretary of state in accordance with the provisions of this chapter, or who signs any articles, statement, report, application or other document filed with the secretary of state which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a misdemeanor, and upon conviction thereof may be fined in any amount not exceeding five hundred dollars. [1967 c 235 § 86.]

24.03.430 Interrogatories by secretary of state. The secretary of state may propound to any corporation, domestic or foreign, subject to the provisions of this chapter, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable the secretary of state to ascertain whether such corporation has complied with all the provisions of this chapter applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the secretary of state, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, secretary or assistant secretary thereof. The secretary of state need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this chapter. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter. [1982 c 35 § 112; 1967 c 235 § 87.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.435 Confidential nature of information disclosed by interrogatories. Interrogatories propounded by the secretary of state and the answers thereto shall not be open to public inspection nor shall the secretary of state disclose any facts or information obtained therefrom except in so far as the secretary of state's official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this state. [1982 c 35 § 113; 1967 c 235 § 88.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.440 Power and authority of secretary of state. The secretary of state shall have the power and authority reasonably necessary for the efficient and effective administration of this chapter, including the adoption of rules under chapter 34.05 RCW. [1982 c 35 § 114; 1967 c 235 § 89.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Power and authority of secretary of state: RCW 23B.01.210 and 23B.01.300.

24.03.445 Appeal from disapproval of secretary of state. If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by this chapter to be approved by the secretary of state before the same shall be filed in his or her office, the secretary of state shall give written notice of disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. Within thirty days from such disapproval such person or corporation may appeal to the superior court pursuant to the provisions of the administrative procedure act, chapter 34.05 RCW. [1986 c 240 § 56; 1982 c 35 § 115; 1967 c 235 § 90.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.450 Certificates and certified copies to be received in evidence. All certificates issued by the secretary of state in accordance with the provisions of this chapter, and all copies of documents filed in the office of the secretary of state in accordance with the provisions of this chapter when certified by the secretary of state under the seal of the state, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated. [1982 c 35 § 116; 1967 c 235 § 91.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.03.455 Greater voting requirements. Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or directors, as the case may be, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control. [1967 c 235 § 92.]

24.03.460 Waiver of notice. Whenever any notice is required to be given to any member or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. [1967 c 235 § 93.]

24.03.465 Action by members or directors without a meeting. Any action required by this chapter to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be.

Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the secretary of state under this chapter. [1967 c 235 § 94.]

24.03.470 Unauthorized assumption of corporate powers. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. [1967 c 235 § 95.]

24.03.480 Postsecondary education loans—Interest rates. A nonprofit corporation may charge interest upon any loan made under a program to finance postsecondary education at any rate or rates of interest which are permitted by state or federal law to be charged by any state or federally chartered bank, savings and loan association, or credit union. [1989 c 166 § 1.]

24.03.490 Public benefit nonprofit corporation designation established. There is hereby established the special designation "public benefit not for profit corporation" or "public benefit nonprofit corporation." A corporation may be designated as a public benefit nonprofit corporation if it meets the following requirements:

(1) The corporation complies with the provisions of this chapter; and

(2) The corporation holds a current tax exempt status as provided under 26 U.S.C. Sec. 501(c)(3) or is not required to apply for its tax exempt status under 26 U.S.C. Sec. 501(c)(3). [1989 c 291 § 4.]

Finding—1989 c 291: "The legislature finds that it is in the public interest to increase the level of accountability to the public of nonprofit corporations through improved reporting, increased consistency between state and federal statutes, and a clear definition of those nonprofit corpora-

tions that may hold themselves out as operating to benefit the public." [1989 c 291 § 1.]

Severability—1989 c 291: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 291 § 12.]

24.03.500 Public benefit nonprofit corporations—Temporary designation. A temporary designation as a public benefit nonprofit corporation may be provided to a corporation that has applied for tax exempt status under 26 U.S.C. Sec. 501(c)(3). The temporary designation is valid for up to one year and may be renewed at the discretion of the secretary. [1989 c 291 § 5.]

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

24.03.510 Public benefit nonprofit corporations—Application. The secretary shall develop an application process for new and existing corporations to apply for public benefit nonprofit corporation status. [1989 c 291 § 6.]

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

24.03.520 Public benefit nonprofit corporations—Renewal. The designation "public benefit nonprofit corporation" shall be renewed annually. The secretary may schedule renewals in conjunction with existing corporate renewals. [1989 c 291 § 7.]

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

24.03.530 Public benefit nonprofit corporations—Fees. The secretary may establish fees to cover the cost of renewals. [1989 c 291 § 8.]

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

24.03.540 Public benefit nonprofit corporations—Removal of status. The secretary may remove a corporation's public benefit nonprofit corporation designation if it does not comply with the provisions of this chapter or does not maintain its exempt status under 26 U.S.C. Sec. 501(c)(3). The secretary in removing a corporation's public benefit nonprofit corporation status shall comply with administrative procedures provided by this chapter. [1989 c 291 § 9.]

Finding—Severability—1989 c 291: See notes following RCW 24.03.490.

24.03.900 Short title. This chapter shall be known and may be cited as the "Washington nonprofit corporation act." [1967 c 235 § 1.]

24.03.905 Savings—1967 c 235. Any corporation existing on the date when this chapter takes effect shall continue to exist as a corporation despite any provision of this chapter changing the requirements for forming a corporation or repealing or amending the law under which it was formed. The provisions of this chapter shall, however, apply prospectively to the fullest extent permitted by the Constitutions of the United States and the state of Washing-

ton to all existing corporations organized under any general act of the territory or the state of Washington providing for the organization of corporations for a purpose or purposes for which a corporation might be organized under this chapter. The repeal of any prior act or part thereof by this chapter shall not affect any right accrued or any liability or penalty incurred, under the provisions of such act, prior to the repeal thereof. The repeal of a prior act or acts by this chapter shall not affect any existing corporation organized for a purpose or purposes other than those for which a corporation might be organized under this chapter. [1967 c 235 § 96.]

24.03.910 Severability—1967 c 235. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this chapter, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this chapter, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this chapter so adjudged to be invalid or unconstitutional. [1967 c 235 § 97.]

24.03.915 Notice to existing corporations. (1) The secretary of state shall notify all existing nonprofit corporations thirty days prior to the effective date of this chapter, that in the event they fail to appoint a registered agent as provided in *this 1969 amendatory act within ninety days following the effective date of *this 1969 amendatory act, they shall thereupon cease to exist.

(2) If the notification provided under subsection (1) of this section, from the secretary of state to any corporation was or has been returned unclaimed or undeliverable, the secretary of state shall proceed to dissolve the corporation by striking the name of such corporation from the records of active corporations.

(3) Corporations dissolved under subsection (2) of this section may be reinstated at any time within three years of the dissolution action by the secretary of state. The corporation shall be reinstated by filing a request for reinstatement, by appointment of a registered agent and designation of a registered office as required by this chapter, and by filing an annual report for the reinstatement year. No fees may be charged for reinstatements under this section. If, during the period of dissolution, another person or corporation has reserved or adopted a corporate name which is identical to or deceptively similar to the dissolved corporation's name, the corporation seeking reinstatement shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles of incorporation accordingly. [1982 c 35 § 117; 1969 ex.s. c 163 § 8; 1967 c 235 § 98.]

***Reviser's note:** "this 1969 amendatory act" consists of RCW 24.03.302 and the 1969 amendments to RCW 24.03.050, 24.03.250, 24.03.255, 24.03.330, 24.03.405, 24.03.410, 24.03.420, 24.03.915.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Effective date—1969 ex.s. c 163: August 11, 1969, see preface to 1969 session laws.

Effective date—1967 c 235: See RCW 24.03.925.

24.03.920 Repealer—Exception. The following acts or parts of acts, except insofar as may be applicable to the (1996 Ed.)

rights, powers and duties of persons and corporations not subject to the provisions of this chapter, are hereby repealed:

- (1) Chapter 110, Laws of 1961;
- (2) Section 6, chapter 12, Laws of 1959;
- (3) Section 3, chapter 263, Laws of 1959;
- (4) Chapter 32, Laws of 1955;
- (5) Chapter 121, Laws of 1953;
- (6) Chapter 249, Laws of 1947;
- (7) Chapter 122, Laws of 1943;
- (8) Chapter 89, Laws of 1933;
- (9) Section 2, chapter 63, Laws of 1925 extraordinary session;
- (10) Chapter 8, Laws of 1923;
- (11) Chapter 75, Laws of 1907;
- (12) Chapter 134, Laws of 1907;
- (13) Chapter 125, Laws of 1905;
- (14) Page 24, chapter XIX (19), Laws of 1895;
- (15) Page 348, chapter CXXXV (135), Laws of 1895;
- (16) Chapter CLVIII (158), Laws of 1895;
- (17) Section 1, page 86, Laws of 1886;
- (18) Sections 2450 through 2454, Code of 1881;
- (19) Pages 409 through 411, Laws of 1873;
- (20) Pages 341 and 342, Laws of 1869;
- (21) Pages 67 and 68, Laws of 1866; and
- (22) RCW sections 24.01.010, 24.04.010 through 24.04.170, 24.08.010 through 24.08.900, and 24.16.010 through 24.16.140. [1967 c 235 § 100.]

24.03.925 Effective date—1967 c 235. This chapter shall become effective July 1, 1969. [1967 c 235 § 99.]

Chapter 24.06

NONPROFIT MISCELLANEOUS AND MUTUAL CORPORATIONS ACT

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

- (1) "Corporation" or "domestic corporation" means a mutual corporation or miscellaneous corporation subject to the provisions of this chapter, except a foreign corporation.
- (2) "Foreign corporation" means a mutual or miscellaneous corporation or other corporation organized under laws other than the laws of this state which would be subject to the provisions of this chapter if organized under the laws of this state.
- (3) "Mutual corporation" means a corporation organized to accomplish one or more of its purposes on a mutual basis for members and other persons.
- (4) "Miscellaneous corporation" means any corporation which is organized for a purpose or in a manner not provided for by the Washington business corporation act or by the Washington nonprofit corporation act, and which is not required to be organized under other laws of this state.
- (5) "Articles of incorporation" includes the original articles of incorporation and all amendments thereto, and includes articles of merger.
- (6) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.
- (7) "Member" means one having membership rights in a corporation in accordance with provisions of its articles of incorporation or bylaws.
- (8) "Stock" or "share" means the units into which the proprietary interests of a corporation are divided in a corporation organized with stock.

(9) "Stockholder" or "shareholder" means one who is a holder of record of one or more shares in a corporation organized with stock.

(10) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.

(11) "Insolvent" means inability of a corporation to pay debts as they become due in the usual course of its affairs.

(12) "Duplicate originals" means two copies, original or otherwise, each with original signatures, or one original with original signatures and one copy thereof.

(13) "Conforms to law" as used in connection with duties of the secretary of state in reviewing documents for filing under this chapter, means the secretary of state has determined the document complies as to form with the applicable requirements of this chapter.

(14) "Effective date" means, in connection with a document filing made by the secretary of state, the date which is shown by affixing a "filed" stamp on the documents. When a document is received for filing by the secretary of state in a form which complies with the requirements of this chapter and which would entitle the document to be filed immediately upon receipt, but the secretary of state's approval action occurs subsequent to the date of receipt, the secretary of state's filing date shall relate back to the date on which the secretary of state first received the document in acceptable form. An applicant may request a specific effective date no more than thirty days later than the receipt date which might otherwise be applied as the effective date.

(15) "Executed by an officer of the corporation," or words of similar import, means that any document signed by such person shall be and is signed by that person under penalties of perjury and in an official and authorized capacity on behalf of the corporation or person making the document submission with the secretary of state.

(16) "An officer of the corporation" means, in connection with the execution of documents submitted for filing with the secretary of state, the president, a vice president, the secretary, or the treasurer of the corporation. [1982 c 35 § 118; 1969 ex.s. c 120 § 1.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.010 Application of chapter. The provisions of this chapter relating to domestic corporations shall apply to:

(1) All corporations organized hereunder; and

(2) All corporations which were heretofore organized under any act repealed by the Washington nonprofit corporation act and which are not organized for a purpose or in a manner provided for by said act.

The provisions of this chapter relating to foreign corporations shall apply to all foreign corporations conducting affairs in this state for a purpose or purposes for which a corporation might be organized under this chapter. [1969 ex.s. c 120 § 2.]

24.06.015 Purposes. Corporations may be organized under this chapter for any lawful purpose including but not limited to mutual, social, cooperative, fraternal, beneficial, service, labor organization, and other purposes; but excluding

purposes which by law are restricted to corporations organized under other statutes. [1969 ex.s. c 120 § 3.]

Labor unions: Chapter 49.36 RCW.

24.06.020 Incorporators. One or more individuals, partnerships, corporations or governmental bodies or agencies may incorporate a corporation by signing and delivering articles of incorporation in duplicate to the secretary of state. [1982 c 35 § 119; 1969 ex.s. c 120 § 4.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.025 Articles of incorporation. The articles of incorporation shall set forth:

(1) The name of the corporation.

(2) The period of duration, which may be perpetual or for a stated number of years.

(3) The purpose or purposes for which the corporation is organized.

(4) The qualifications and the rights and responsibilities of the members and the manner of their election, appointment or admission to membership and termination of membership; and, if there is more than one class of members or if the members of any one class are not equal, the relative rights and responsibilities of each class or each member.

(5) If the corporation is to have capital stock:

(a) The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value;

(b) If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;

(c) If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(d) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation.

(6) If the corporation is to distribute surplus funds to its members, stockholders or other persons, provisions for determining the amount and time of the distribution.

(7) Provisions for distribution of assets on dissolution or final liquidation.

(8) Whether a dissenting shareholder or member shall be limited to a return of less than the fair value of his shares or membership.

(9) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation.

(10) The address of its initial registered office, including street and number, and the name of its initial registered agent at such address.

(11) The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors.

(12) The name and address of each incorporator.

(13) Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the association, including provisions regarding:

(a) Eliminating or limiting the personal liability of a director to the association or its members for monetary damages for conduct as a director: **PROVIDED**, That such provision shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision may eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective; and

(b) Any provision which under this title is required or permitted to be set forth in the bylaws.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling. [1987 c 212 § 708; 1982 c 35 § 120; 1969 ex.s. c 120 § 5.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.030 General powers. Each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

(4) To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, be trustee of, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.

(5) To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.

(6) To lend money to its employees.

(7) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations

of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

(8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.

(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(10) To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter, in any state, territory, district, or possession of the United States, or in any foreign country.

(11) To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.

(12) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.

(13) To establish and maintain reserve, equity, surplus or other funds, and to provide for the time, form and manner of distribution of such funds among members, shareholders or other persons with interests therein in accordance with the articles of incorporation.

(14) Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, scientific or educational purposes, and in time of war to make donations in aid of the United States and its war activities.

(15) To indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty: **PROVIDED**, That such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any bylaw, agreement, vote of board of directors or members, or otherwise.

(16) To cease its corporate activities and surrender its corporate franchise.

(17) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized and not inconsistent with the articles of incorporation or the provisions of this chapter. [1969 ex.s. c 120 § 6.]

Indemnification of agents, insurance: RCW 23B.08.320, 23B.08.500 through 23B.08.580, 23B.08.600, and 23B.17.030.

24.06.035 Nonprofit status—Members', officers' immunity from liability. A corporation subject to the provisions of this chapter shall not engage in any business,

trade, a vocation or profession for profit: PROVIDED, That nothing contained herein shall be construed to forbid such a corporation from accumulating reserve, equity, surplus or other funds through subscriptions, fees, dues or assessments, or from charges made its members or other persons for services rendered or supplies or benefits furnished, or from distributing its surplus funds to its members, stockholders or other persons in accordance with the provisions of the articles of incorporation. A member of the board of directors or an officer of such a corporation shall have the same immunity from liability as is granted in RCW 4.24.264. [1987 c 212 § 709; 1969 ex.s. c 120 § 7.]

24.06.040 Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) In a proceeding by a member, shareholder or a director against the corporation to enjoin the doing or continuation of unauthorized acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract: PROVIDED, That anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members or shareholder in a representative suit, against the officers or directors of the corporation for exceeding their authority.

(3) In a proceeding by the attorney general, as provided in this chapter, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from performing unauthorized acts, or in any other proceeding by the attorney general. [1969 ex.s. c 120 § 8.]

24.06.043 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

24.06.045 Corporate name. The corporate name:

(1) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.

(2) Shall not be the same as, or deceptively similar to, the name of any corporation existing under any act of this state, or any foreign corporation authorized to transact business or conduct affairs in this state under any act of this state, or the name of any limited liability company organized or authorized to transact business under any act of this state,

the name of a domestic or foreign limited partnership on file with the secretary, or a corporate name reserved or registered as permitted by the laws of this state. This subsection shall not apply if the applicant files with the secretary of state either of the following: (a) The written consent of the other corporation, limited liability company, limited partnership, or holder of a reserved name to use the same or deceptively similar name and one or more words are added or deleted to make the name distinguishable from the other name as determined by the secretary of state, or (b) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this state.

(3) Shall be transliterated into letters of the English alphabet if it is not in English.

(4) The name of any corporation formed under this section shall not include nor end with "incorporated", "company", or "corporation" or any abbreviation thereof, but may use "club", "league", "association", "services", "committee", "fund", "society", "foundation", ".", a nonprofit mutual corporation", or any name of like import. [1995 c 337 § 22; 1994 c 211 § 1307; 1987 c 55 § 41; 1982 c 35 § 121; 1973 c 113 § 1; 1969 ex.s. c 120 § 9.]

Effective date—1995 c 337: See note following RCW 25.04.700.

Effective date—Severability—1994 c 211: See RCW 25.15.900 and 25.15.902.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Corporate name of foreign corporation: RCW 24.06.350.

24.06.046 Reservation of exclusive right to use corporate name. The exclusive right to the use of a corporate name may be reserved by:

(1) Any person intending to organize a corporation under this title.

(2) Any domestic corporation intending to change its name.

(3) Any foreign corporation intending to make application for a certificate of authority to transact business in this state.

(4) Any foreign corporation authorized to transact business in this state and intending to change its name.

(5) Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by or on behalf of the applicant. If the secretary of state finds that the name is available for corporate use, the secretary of state shall reserve the same for the exclusive use of the applicant for a period of one hundred and eighty days. Such reservation shall be limited to one filing.

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state, a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee. [1993 c 356 § 13; 1982 c 35 § 122.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.047 Registration of corporate name. Any corporation, organization and existing under the laws of any state or territory of the United States may register its corporate name under this title, provided its corporate name is not the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state, or the name of any foreign corporation authorized to transact business in this state, the name of any domestic limited liability company organized under the laws of this state, or the name of any foreign limited liability company authorized to transact business in this state, the name of any domestic or foreign limited partnership on file with the secretary, or any corporate name reserved or registered under this title.

Such registration shall be made by:

(1) Filing with the secretary of state: (a) An application for registration executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or country under the laws of which it is incorporated, and the date of its incorporation, and (b) a certificate setting forth that such corporation is in good standing under the laws of the state or country wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations, and

(2) Paying to the secretary of state the applicable annual registration fee.

The registration shall be effective until the close of the calendar year in which the application for registration is filed. [1994 c 211 § 1308; 1993 c 356 § 14; 1987 c 55 § 42; 1982 c 35 § 123.]

Effective date—Severability—1994 c 211: See RCW 25.15.900 and 25.15.902.

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.048 Renewal of registration of corporate name. A corporation which has in effect a registration of its corporate name, may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying a fee of ten dollars. A renewal application may be filed between the first day of October and the thirty-first day of December in each year, and shall extend the registration for the following calendar year. [1982 c 35 § 124.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.050 Registered office and registered agent. Each domestic corporation and foreign corporation authorized to do business in this state shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its principal office. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route

address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation existing under any act of this state or a foreign corporation authorized to transact business or conduct affairs in this state under any act of this state having an office identical with such registered office. The resident agent and registered office shall be designated by duly adopted resolution of the board of directors; and a statement of such designation, executed by an officer of the corporation, shall be filed with the secretary of state. A registered agent shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state.

No Washington corporation or foreign corporation authorized to transact business in this state may be permitted to maintain any action in any court in this state until the corporation complies with the requirements of this section. [1993 c 356 § 15; 1982 c 35 § 125; 1969 ex.s. c 120 § 10.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.055 Change of registered office or registered agent. A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement in the form prescribed by the secretary of state setting forth:

(1) The name of the corporation.

(2) If the address of its registered office is to be changed, the address to which the registered office is to be changed, including street and number.

(3) If the current registered agent is to be changed, the name of its successor registered agent.

(4) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

Such statement shall be executed by the corporation by an officer of the corporation, and delivered to the secretary of state, together with a written consent of the registered office to his or its appointment, if applicable. If the secretary of state finds that such statement conforms to the provisions of this chapter, the secretary of state shall file such statement, and upon such filing, the change of address of the registered office, or the appointment of a new regis-

tered agent, or both, as the case may be, shall become effective.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation in care of an officer, who is not the resigning registered agent, at the address of such officer as shown by the most recent annual report of the corporation. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state. [1993 c 356 § 16; 1982 c 35 § 126; 1969 ex.s. c 120 § 11.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.060 Service of process on corporation. The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a corporation shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the corporation department of his or her office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, the secretary of state shall immediately cause one of the copies thereof to be forwarded by certified mail, addressed to the corporation at its registered office. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon the secretary of state under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [1982 c 35 § 127; 1969 ex.s. c 120 § 12.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.065 Members. A corporation may have one or more classes of members. The designation of such class or classes, the manner of election, appointment or admission to membership, and the qualifications, responsibilities and rights of the members of each class shall be set forth in the articles of incorporation. A corporation may issue certificates evidencing membership therein. Certificates may be assigned by a member and reacquired by the corporation under such provisions, rules and regulations as may be prescribed in the articles of incorporation. Membership may be terminated under such provisions, rules and regulations as

may be prescribed in the articles of incorporation or bylaws. [1969 ex.s. c 120 § 13.]

24.06.070 Shares—Issuance—Payment—Subscription agreements. (1) Each corporation which is organized with capital stock shall have the power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this chapter.

(2) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(a) Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof.

(b) Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends.

(c) Having preference over any other members or class or classes of shares as to the payment of dividends.

(d) Having preference in the assets of the corporation over any other members or class or classes of shares upon the voluntary or involuntary liquidation of the corporation.

(3) The consideration for the issuance of shares may be paid in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be deemed to be fully paid and nonassessable.

Neither promissory notes nor future services shall constitute payment or part payment, for shares of a corporation.

In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

(4) A subscription for shares of a corporation to be organized shall be in writing and be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty

working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post office address known to the corporation, with postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative. [1969 ex.s. c 120 § 14.]

24.06.075 Shares—Consideration, fixing. (1) Shares having a par value may be issued for such consideration expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board of directors.

(2) Shares without par value shall be issued for such consideration expressed in dollars as may be fixed from time to time by the board of directors. [1969 ex.s. c 120 § 15.]

24.06.080 Shares—Certificates. The shares of a corporation shall be represented by certificates signed by the president or vice president and the secretary or an assistant secretary of the corporation, and may be sealed with the seal of the corporation or a facsimile thereof. The signatures of the president or vice president and the secretary or assistant secretary upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

Each certificate representing shares shall state upon the face thereof:

(1) That the corporation is organized under the laws of this state.

(2) The name of the person to whom issued.

(3) The number and class of shares, and the designation of the series, if any, which such certificate represents.

(4) The par value of each share represented by such certificate, or a statement that the shares are without par value.

No certificate shall be issued for any share until such share is fully paid. [1969 ex.s. c 120 § 16.]

24.06.085 Liability of shareholders, subscribers, assignees, executors, trustees, etc. A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable.

No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder. [1969 ex.s. c 120 § 17.]

24.06.090 Preemptive share acquisition rights. The preemptive right of a shareholder to acquire unissued shares of a corporation may be limited or denied to the extent provided in the articles of incorporation. [1969 ex.s. c 120 § 18.]

24.06.095 Bylaws. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation: PROVIDED, That where the bylaws of an existing corporation prohibit voting by mail or by proxy or attorney-in-fact, and the quorum required by its bylaws for election of directors or transaction of other business has not been obtained at a shareholders' or members' meeting, for a period which includes at least two consecutive annual meeting dates, the board of directors shall have power to amend such bylaws to thereafter authorize voting by mail or by proxy or attorney-in-fact. [1970 ex.s. c 78 § 1; 1969 ex.s. c 120 § 19.]

24.06.100 Meetings of members and shareholders. Meetings of members and/or shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this state.

An annual meeting of the members and shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the members or shareholders may be called by the president or by the board of directors.

Special meetings of the members or shareholders may also be called by such other officers or persons or number or proportion of members or shareholders as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members or shareholders entitled to call a meeting, a special meeting of members or shareholders may be called by persons having one-twentieth of the votes entitled to be cast at such meeting. [1969 ex.s. c 120 § 20.]

24.06.105 Notice of meetings. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member or shareholder entitled to vote at such meeting. If provided in the articles of incorporation, notice of regular meetings other than annual may be made by providing each member with the adopted schedule of regular meetings for the ensuing year at any time after the annual meeting and ten days prior to a regular meeting and at any time when requested by a member or by such other notice as may be prescribed by the bylaws. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member or shareholder at his address as it appears on the records of the corporation, with postage thereon prepaid. [1969 ex.s. c 120 § 21.]

24.06.110 Voting. The right of a class or classes of members or shareholders to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation. Unless so limited, enlarged or denied, each member and each outstanding share of each class shall be entitled to one vote on each matter submitted to a vote of members or shareholders. No member of a class may acquire any interest which will entitle him to a greater vote than any other member of the same class.

A member or shareholder may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by mail or by proxy executed in writing by the member or shareholder or by his duly authorized attorney-in-fact: PROVIDED, That no proxy shall be valid for more than eleven months from the date of its execution unless otherwise specified in the proxy.

The articles of incorporation may provide that whenever proposals or directors or officers are to be voted upon, such vote may be taken by mail if the name of each candidate and the text of each proposal to be so voted upon are set forth in a writing accompanying or contained in the notice of meeting. Persons voting by mail shall be deemed present for all purposes of quorum, count of votes and percentages of total voting power voting.

The articles of incorporation or the bylaws may provide that in all elections for directors every person entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates. [1969 ex.s. c 120 § 22.]

24.06.115 Quorum. The articles of incorporation or the bylaws may provide the number or percentage of votes which members or shareholders are entitled to cast in person, by mail, or by proxy, which shall constitute a quorum at meetings of shareholders or members. However, in no event shall a quorum be less than one-fourth of the votes which members or shareholders are entitled to cast in person, by mail, or by proxy, at a meeting considering the adoption of a proposal which is required by the provisions of this chapter to be adopted by at least two-thirds of the votes which members or shareholders present at the meeting in person or by mail or represented by proxy are entitled to cast. In all other matters and in the absence of any provision in the articles of incorporation or bylaws, a quorum shall consist of one-fourth of the votes which members or shareholders are entitled to cast in person, by mail, or by proxy at the meeting. On any proposal on which a class of shareholders or members is entitled to vote as a class, a quorum of the class entitled to vote as such class must also be present in person, by mail, or represented by proxy. [1969 ex.s. c 120 § 23.]

24.06.120 Class voting. A class of members or shareholders shall be entitled to vote as a class upon any proposition, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the proposition would increase or decrease the rights, qualifications, limitations, responsibilities or preferences of the class as related to any other class. [1969 ex.s. c 120 § 24.]

24.06.125 Board of directors. The affairs of the corporation shall be managed by a board of directors. Directors need not be residents of this state or members or shareholders of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors. [1969 ex.s. c 120 § 25.]

24.06.130 Number and election of directors. The number of directors of a corporation shall be not less than three and shall be fixed by the bylaws: PROVIDED, That the number of the first board of directors shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation. [1969 ex.s. c 120 § 26.]

24.06.135 Vacancies. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner. A director elected or appointed, as the case may be, to fill a vacancy, shall be elected or appointed for the unexpired term of his predecessor in office. [1969 ex.s. c 120 § 27.]

24.06.140 Quorum of directors. A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws: PROVIDED, That a quorum shall never consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this chapter, the articles of incorporation, or the bylaws. [1969 ex.s. c 120 § 28.]

24.06.145 Committees. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation, or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation: PROVIDED, That no such committee shall have the authority of the board of directors in reference to:

- (1) Amending, altering or repealing the bylaws;
- (2) Electing, appointing, or removing any member of any such committee or any director or officer of the corporation;
- (3) Amending the articles of incorporation;
- (4) Adopting a plan of merger or a plan of consolidation with another corporation;
- (5) Authorizing the sale, lease, exchange, or mortgage, of all or substantially all of the property and assets of the corporation;
- (6) Authorizing the voluntary dissolution of the corporation or revoking proceedings therefor; or
- (7) Amending, altering or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered or repealed by such committee.

The designation and appointment of any such committee and the delegation thereto of authority shall not operate to

relieve the board of directors, or any individual director of any responsibility imposed upon it or him by law. [1969 ex.s. c 120 § 29.]

24.06.150 Directors' meetings. Meetings of the board of directors, regular or special, may be held either within or without this state, and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting. [1969 ex.s. c 120 § 30.]

24.06.155 Officers. The officers of a corporation shall consist of a president, one or more vice presidents, a secretary, a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws. [1969 ex.s. c 120 § 31.]

24.06.160 Books and records. Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, shareholders, board of directors, and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in this state a record of the names and addresses of its members and shareholders entitled to vote. All books and records of a corporation may be inspected by any member or shareholder, or his agent or attorney, for any proper purpose at any reasonable time. [1969 ex.s. c 120 § 32.]

24.06.165 Loans to directors or officers. No loans exceeding or more favorable than those which are customarily made to members or shareholders shall be made by a corporation to its directors or officers. The directors of a corporation who vote for or assent to the making of a loan in violation of this section to a director or officer of the corporation, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof. [1969 ex.s. c 120 § 33.]

24.06.170 Filing of articles of incorporation. Duplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state

finds that the articles of incorporation conform to law, he or she shall, when all fees have been paid as in this chapter prescribed:

- (1) Endorse on each of such originals the word "filed" and the effective date of the filing thereof.
- (2) File one of such originals in his or her office.
- (3) Issue a certificate of incorporation to which he or she shall affix one of such originals.

The certificate of incorporation together with the original of the articles of incorporation affixed thereto by the secretary of state shall be returned to the incorporators or their representatives and shall be retained by the corporation. [1982 c 35 § 128; 1981 c 302 § 5; 1969 ex.s. c 120 § 34.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 302: See note following RCW 19.76.100.

24.06.175 Effect of filing of articles of incorporation. Upon the filing of the articles of incorporation, the corporate existence shall begin, and the certificate of incorporation shall, except as against the state in a proceeding to cancel or revoke the certificate of incorporation, be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter. [1982 c 35 § 129; 1969 ex.s. c 120 § 35.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.180 Organization meeting. After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

A first meeting of the members and shareholders may be held at the call of the directors, or a majority of them, upon at least three days' notice, for such purposes as shall be stated in the notice of the meeting. [1969 ex.s. c 120 § 36.]

24.06.185 Right to amend articles of incorporation. A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this chapter. [1969 ex.s. c 120 § 37.]

24.06.190 Procedure to amend articles of incorporation. Amendments to the articles of incorporation shall be made in the following manner:

The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members and shareholders, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby

shall be given to each member and shareholder entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members and shareholders. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members or shareholders present in person or by mail at such meeting or represented by proxy are entitled to cast: PROVIDED, That when any class of shares or members is entitled to vote thereon by class, the proposed amendment must receive at least two-thirds of the votes of the members or shareholders of each class entitled to vote thereon as a class, who are present in person, by mail, or represented by proxy at such meeting.

Any number of amendments may be submitted and voted upon at any one meeting. [1969 ex.s. c 120 § 38.]

24.06.195 Articles of amendment. The articles of amendment shall be executed in duplicate originals by the corporation by an officer of the corporation, and shall set forth:

- (1) The name of the corporation.
- (2) Any amendment so adopted.

(3) A statement setting forth the date of the meeting of members and shareholders at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members or shareholders of the corporation, and of each class entitled to vote thereon as a class, present at such meeting in person, by mail, or represented by proxy were entitled to cast, or a statement that such amendment was adopted by a consent in writing signed by all members and shareholders entitled to vote with respect thereto. [1982 c 35 § 130; 1981 c 302 § 6; 1969 ex.s. c 120 § 39.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 302: See note following RCW 19.76.100.

24.06.200 Filing of articles of amendment—Procedure. Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he or she shall, when all fees have been paid as prescribed in this chapter:

- (1) Endorse on each of such originals the word "filed", and the effective date of the filing thereof.
- (2) File one of such originals in his or her office.
- (3) Issue a certificate of amendment to which he or she shall affix one of such originals.

The certificate of amendment, together with the other duplicate original of the articles of amendment affixed thereto by the secretary of state shall be returned to the corporation or its representative and shall be retained by the corporation. [1982 c 35 § 131; 1981 c 302 § 7; 1969 ex.s. c 120 § 40.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 302: See note following RCW 19.76.100.

24.06.205 When amendment becomes effective—Existing actions and rights not affected. Upon the filing of the articles of amendment by the secretary of state, the

amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, nor any pending action to which such corporation shall be a party, nor the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason. [1982 c 35 § 132; 1969 ex.s. c 120 § 41.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.207 Restated articles of incorporation. A domestic corporation may at any time restate its articles of incorporation as theretofore amended, by a resolution adopted by the board of directors.

Upon the adoption of the resolution, restated articles of incorporation shall be executed in duplicate by the corporation by one of its officers and shall set forth all of the operative provisions of the articles of incorporation as theretofore amended together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

Duplicate originals of the restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to law, the secretary of state shall, when all fees required by this title have been paid:

- (1) Endorse on each duplicate original the word "Filed" and the effective date of the filing thereof;
- (2) File one duplicate original; and
- (3) Issue a restated certificate of incorporation, to which the other duplicate original shall be affixed.

The restated certificate of incorporation, together with the duplicate original of the restated articles of incorporation affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Upon the filing of the restated articles of incorporation by the secretary of state, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto. [1982 c 35 § 133.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.210 Procedure for merger. Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

Each corporation shall adopt a plan of merger setting forth:

- (1) The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.
- (2) The terms and conditions of the proposed merger.

(3) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.

(4) Such other provisions with respect to the proposed merger as are deemed necessary or desirable. [1969 ex.s. c 120 § 42.]

24.06.215 Procedure for consolidation. Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

Each corporation shall adopt a plan of consolidation setting forth:

(1) The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

(2) The terms and conditions of the proposed consolidation.

(3) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter.

(4) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. [1969 ex.s. c 120 § 43.]

24.06.220 Approval of merger or consolidation. A plan of merger or consolidation shall be adopted in the following manner:

The board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members or shareholders which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member and shareholder within the time and in the manner provided in this chapter for the giving of notice of meetings of members and shareholders. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members and shareholders present in person or by mail at each such meeting or represented by proxy are entitled to cast: PROVIDED, That when any class of shares or members is entitled to vote thereon as a class, the proposed amendment must receive at least two-thirds of the votes of the members or shareholders of each class entitled to vote thereon as a class, who are present in person, by mail, or represented by proxy at such meeting.

After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation. [1969 ex.s. c 120 § 44.]

24.06.225 Articles of merger or consolidation. (1) Upon approval, articles of merger or articles of consolidation shall be executed in duplicate originals by each corporation, by an officer of each corporation, and shall set forth:

- (a) The plan of merger or the plan of consolidation;
- (b) A statement setting forth the date of the meeting of members or shareholders at which the plan was adopted, that a quorum was present at such meeting, and that such plan

received at least two-thirds of the votes which members and shareholders of the corporation and of each class entitled to vote thereon as a class, present at such meeting in person or by mail or represented by proxy were entitled to cast, or a statement that such amendment was adopted by a consent in writing signed by all members;

(2) Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he or she shall, when all fees have been paid as prescribed in this chapter:

(a) Endorse on each of such originals the word "filed", and the effective date of the filing thereof;

(b) File one of such originals in his or her office;

(c) Issue a certificate of merger or a certificate of consolidation to which he or she shall affix one of such originals.

The certificate of merger or certificate of consolidation, together with the original of the articles of merger or articles of consolidation affixed thereto by the secretary of state shall be returned to the surviving or new corporation, as the case may be, or its representative, and shall be retained by the corporation. [1982 c 35 § 134; 1981 c 302 § 8; 1969 ex.s. c 120 § 45.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 302: See note following RCW 19.76.100.

24.06.230 Merger or consolidation—When effected.

Upon the filing of articles of merger, or the articles of consolidation by the secretary of state, the merger or consolidation shall be effected. [1982 c 35 § 135; 1969 ex.s. c 120 § 46.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.233 Merger or consolidation of domestic and foreign corporation—Participation in an exchange. One or more foreign corporations and one or more domestic corporations may be merged or consolidated or participate in an exchange in the following manner, if such merger, consolidation, or exchange is permitted by the laws of the state under which each such foreign corporation is organized:

(1) Each domestic corporation shall comply with the provisions of this title with respect to the merger, consolidation, or exchange, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(2) If the surviving or new corporation in a merger or consolidation is to be governed by the laws of any state other than this state, it shall comply with the provisions of this title with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

(a) An agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights, if any, of a dissenting shareholder

of any such domestic corporation against the surviving or new corporation;

(b) An irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and

(c) An agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this title with respect to the rights of dissenting shareholders.

The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.

(3) At any time prior to the effective date of the articles of merger, consolidation, or exchange, the merger, consolidation, or exchange, may be abandoned pursuant to provision therefor, if any, set forth in the plan of merger, consolidation or exchange. In the event the merger, consolidation, or exchange is abandoned, the parties thereto shall execute a notice of abandonment in triplicate signed by an officer for each corporation signing the notice. If the secretary of state finds the notice conforms to law, the secretary of state shall:

(a) Endorse on each of the originals the word "Filed" and the effective date of the filing thereof;

(b) File one of the triplicate originals in the secretary of state's office; and

(c) Issue the other triplicate originals to the respective parties or their representatives. [1982 c 35 § 136.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.235 Effect of merger or consolidation. When such merger or consolidation has been effected:

(1) The several corporations party to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations party to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) The surviving or new corporation shall have all the rights, privileges, immunities and powers, and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(4) The surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, whether of a public or a private nature, of each of the merging or consolidating corporations; all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and no title to any real

estate, or any interest therein, vested in any of such corporations shall not revert nor be in any way impaired by reason of such merger or consolidation.

(5) The surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. No rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation. [1969 ex.s. c 120 § 47.]

24.06.240 Sale, lease, exchange, etc., of property and assets. A sale, lease, exchange, or other disposition of all or substantially all of the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending a sale, lease, exchange, or other disposition and directing that it be submitted to a vote at a meeting of members or shareholders which may be either an annual or a special meeting.

(2) Written or printed notice stating that the purpose or one of the purposes of such meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property and assets of the corporation shall be given to each member and shareholder within the time and in the manner provided by this chapter for the giving of notice of meetings of members and shareholders.

(3) At such meeting the members may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor.

(4) Such authorization shall require at least two-thirds of the votes which members and shareholders present at such meetings in person, by mail, or represented by proxy are entitled to cast: PROVIDED, That even after such authorization by a vote of members or shareholders, the board of directors may, in its discretion, without further action or approval by members, abandon such sale, lease, exchange, or other disposition of assets, subject only to the rights of third parties under any contracts relating thereto. [1969 ex.s. c 120 § 48.]

24.06.245 Right of member or shareholder to dissent. Any member or shareholder of a corporation shall have the right to dissent from any of the following corporate actions:

(1) Any plan of merger or consolidation to which the corporation is a party; or

(2) Any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution, but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within one year after the date of sale; or

(3) Any amendment to the articles of incorporation which changes voting or property rights of members or shareholders other than by changing the number of memberships or shares or classes of either thereof; or

(4) Any amendment to the articles of incorporation which reorganizes a corporation under the provisions of this chapter.

The provisions of this section shall not apply to the members or shareholders of the surviving corporation in a merger if such corporation is on the date of the filing of the articles of merger the owner of all the outstanding shares of the other corporations, domestic or foreign, which are parties to the merger, or if a vote of the members and shareholders of such corporation is not necessary to authorize such merger. [1969 ex.s. c 120 § 49.]

24.06.250 Exercise of right of dissent—Rights and liabilities. Any member or shareholder electing to exercise such right of dissent shall file with the corporation, prior to or at the meeting of members and shareholders at which such proposed corporate action is submitted to a vote, a written objection to such proposed corporate action. If such proposed corporate action be approved by the required vote and such member or shareholder shall not have voted in favor thereof, such member or shareholder may, within ten days after the date on which the vote was taken, or if a corporation is to be merged without a vote of its members and shareholders into another corporation, any other members or shareholders may, within fifteen days after the plan of such merger shall have been mailed to such members and shareholders, make written demand on the corporation, or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of such member's membership or of such shareholder's shares, and, if such proposed corporate action is effected, such corporation shall pay to such member, upon surrender of his membership certificate, if any, or to such shareholder, upon surrender of the certificate or certificates representing such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. Any member or shareholder failing to make demand within the ten day period shall be bound by the terms of the proposed corporate action. Any member or shareholder making such demand shall thereafter be entitled only to payment as in this

section provided and shall not be entitled to vote or to exercise any other rights of a member or shareholder.

No such demand shall be withdrawn unless the corporation shall consent thereto. The right of such member or shareholder to be paid the fair value of his shares shall cease and his status as a member or shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim, if:

(1) Such demand shall be withdrawn upon consent; or

(2) The proposed corporate action shall be abandoned or rescinded or the members or shareholders shall revoke the authority to effect such action; or

(3) In the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger; or

(4) No demand or petition for the determination of fair value by a court shall have been made or filed within the time provided by this section; or

(5) A court of competent jurisdiction shall determine that such member or shareholder is not entitled to the relief provided by this section.

Within ten days after such corporate action is effected, the corporation, or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting member or shareholder who has made demand as herein provided, and shall make a written offer to each such member or shareholder to pay for such shares or membership at a specified price deemed by such corporation to be the fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the corporation in which the member has his membership or the shares of which the dissenting shareholder holds, as of the latest available date and not more than twelve months prior to the making of such offer, and a profit and loss statement of such corporation for the twelve months' period ended on the date of such balance sheet.

If within thirty days after the date on which such corporate action was effected the fair value of such shares or membership is agreed upon between any such dissenting member or shareholder and the corporation, payment therefor shall be made within ninety days after the date on which such corporate action was effected, upon surrender of the membership certificate, if any, or upon surrender of the certificate or certificates representing such shares. Upon payment of the agreed value the dissenting member or shareholder shall cease to have any interest in such membership or shares.

If within such period of thirty days a dissenting member or shareholder and the corporation do not so agree, then the corporation, within thirty days after receipt of written demand from any dissenting member or shareholder given within sixty days after the date on which such corporate action was effected, shall, or at its election at any time within such period of sixty days may, file a petition in any court of competent jurisdiction in the county in this state where the registered office of the corporation is located praying that the fair value of such membership or shares be found and determined. If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, such

petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation shall fail to institute the proceeding as herein provided, any dissenting member or shareholder may do so in the name of the corporation. All dissenting members and shareholders, wherever residing, shall be made parties to the proceeding as an action against their memberships or shares quasi in rem. A copy of the petition shall be served on each dissenting member and shareholder who is a resident of this state and shall be served by registered or certified mail on each dissenting member or shareholder who is a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. All members and shareholders who are parties to the proceeding shall be entitled to judgment against the corporation for the amount of the fair value of their shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the corporation of the membership certificate, if any, or of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder or member shall cease to have any interest in such shares or membership.

The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment.

The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting members and shareholders who are parties to the proceeding to whom the corporation shall have made an offer to pay for membership or shares if the court shall find that the action of such members or shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but if the fair value of the memberships or shares as determined materially exceeds the amount which the corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to any member or shareholder who is a party to the proceeding such sum as the court may determine to be reasonable compensation to any expert or experts employed by the member or shareholder in the proceeding.

Within twenty days after demanding payment for his shares or membership, each member and shareholder demanding payment shall submit the certificate or certificates representing his membership or shares to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, shall otherwise direct. If membership or shares represented

by a certificate on which notation has been so made shall be transferred, each new certificate issued therefor shall bear a similar notation, together with the name of the original dissenting holder of such membership or shares, and a transferee of such membership or shares shall acquire by such transfer no rights in the corporation other than those which the original dissenting member or shareholder had after making demand for payment of the fair value thereof. [1969 ex.s. c 120 § 50.]

24.06.255 Limitation upon payment of fair value to dissenting member or shareholder. Notwithstanding any provision in this chapter for the payment of fair value to a dissenting member or shareholder, the articles of incorporation may provide that a dissenting member or shareholder shall be limited to a return of a lesser amount, but in no event shall a dissenting shareholder be limited to a return of less than the consideration paid to the corporation for the membership or shares which he holds unless the fair value of the membership or shares is less than the consideration paid to the corporation. [1969 ex.s. c 120 § 51.]

24.06.260 Voluntary dissolution. A corporation may dissolve and wind up its affairs in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members and shareholders which may be either an annual or a special meeting.

(2) Written or printed notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation shall be given to each member and shareholder within the time and in the manner provided in this chapter for the giving of notice of meetings of members and shareholders.

(3) A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members and shareholders present in person or by mail at such meeting or represented by proxy are entitled to cast.

Upon the adoption of such resolution by the members and shareholders, the corporation shall cease to conduct its affairs and, except insofar as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation and to the department of revenue, and shall proceed to collect its assets and to apply and distribute them as provided in RCW 24.06.265. [1982 c 35 § 137; 1969 ex.s. c 120 § 52.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.265 Distribution of assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision made therefor;

(2) Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned,

transferred, or conveyed in accordance with such requirements;

(3) Remaining assets, if any shall be distributed to the members, shareholders or others in accordance with the provisions of the articles of incorporation. [1969 ex.s. c 120 § 53.]

24.06.270 Revocation of voluntary dissolution proceedings. A corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke the action theretofore taken to dissolve the corporation, in the following manner:

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members or shareholders which may be either an annual or a special meeting.

(2) Written or printed notice stating that the purpose or one of the purposes of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each member and shareholder within the time and in the manner provided in this chapter for the giving of notice of meetings of members or shareholders.

(3) A resolution to revoke voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members and shareholders present in person or by mail at such meeting or represented by proxy are entitled to cast. [1969 ex.s. c 120 § 54.]

24.06.275 Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then after all debts, liabilities and obligations of the corporation shall have been paid and discharged, or adequate provision shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed in duplicate by the corporation, by an officer of the corporation; and such statement shall set forth:

(1) The name of the corporation.

(2) The date of the meeting of members or shareholders at which the resolution to dissolve was adopted, certifying that:

(a) A quorum was present at such meeting;

(b) Such resolution received at least two-thirds of the votes which members and shareholders present in person or by mail at such meeting or represented by proxy were entitled to cast or was adopted by a consent in writing signed by all members and shareholders;

(c) All debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(d) All the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this chapter;

(e) There are no suits pending against the corporation in any court or, if any suits are pending against it, that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered; and

(f) A copy of a revenue clearance certificate issued pursuant to chapter 82.32 RCW. [1993 c 356 § 17; 1982 c 35 § 138; 1969 ex.s. c 120 § 55.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.280 Filing of articles of dissolution. Duplicate originals of articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, he or she shall, when all requirements have been met as prescribed in this chapter:

(1) Endorse on each of such originals the word "filed", and the effective date of the filing thereof.

(2) File one of the originals in his or her office.

(3) Issue a certificate of dissolution which he or she shall affix to one of such originals.

The certificate of dissolution, together with the original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation and shall be retained with the corporation minutes.

Upon the filing of the articles of dissolution, the corporate existence shall cease, except for the purpose of determining such suits, other proceedings and appropriate corporate action by members, directors and officers as are authorized in this chapter. [1982 c 35 § 139; 1981 c 302 § 9; 1969 ex.s. c 120 § 56.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 302: See note following RCW 19.76.100.

24.06.285 Involuntary dissolution. A corporation may be dissolved by decree of the superior court in an action filed on petition of the attorney general upon a showing that:

(1) The corporation procured its articles of incorporation through fraud; or

(2) The corporation has continued to exceed or abuse the authority conferred upon it by law. [1982 c 35 § 140; 1969 ex.s. c 120 § 57.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.290 Proceedings for involuntary dissolution—Rights, duties, and remedies—Penalties—Fee set by rule.

Failure of the corporation to file its annual report within the time required shall not derogate from the rights of its creditors, or prevent the corporation from being sued and from defending lawsuits, nor shall it release the corporation from any of the duties or liabilities of a corporation under law.

A corporation shall be dissolved by the secretary of state upon the conditions prescribed in this section when the corporation:

(1) Has failed to file or complete its annual report within the time required by law;

(2) Has failed for thirty days to appoint or maintain a registered agent in this state; or

(3) Has failed for thirty days, after change of its registered agent or registered office, to file in the office of the secretary of state a statement of such change.

A corporation shall not be dissolved under this section unless the secretary of state has given the corporation not less than sixty days' notice of its delinquency or omission, by first class mail, postage prepaid, addressed to the registered office, or, if there is no registered office, to the last known address of any officer or director as shown by the records of the secretary of state, and unless the corporation has failed to correct the omission or delinquency before expiration of the sixty-day period.

When a corporation has given cause for dissolution under this section, and has failed to correct the delinquency or omission as provided in this section, the secretary of state shall dissolve the corporation by issuing a certificate of involuntary dissolution containing a statement that the corporation has been dissolved and the date and reason for which it was dissolved. The original certificate of involuntary dissolution shall be filed in the records of the secretary of state, and a copy of the certificate shall forthwith be mailed to the corporation at its registered office or, if there is no registered office, to the last known address of the corporation or any officer, director, or incorporator of the corporation, as shown by the records of the secretary of state. Upon the filing of the certificate of involuntary dissolution, the existence of the corporation shall cease, except as otherwise provided in this chapter, and its name shall be available to and may be adopted by another corporation after the dissolution.

A corporation which has been dissolved by operation of this section may be reinstated within a period of three years following its dissolution if it completes and files a current annual report for the current reinstatement year or it appoints or maintains a registered agent, or files a required statement of change of registered agent or registered office and in addition pays the reinstatement fee as set by rule by the secretary of state, plus the full amount of all annual fees that would have been assessed for the years of administrative dissolution had the corporation been in active status, including the reinstatement year plus any penalties as established by rule by the secretary of state. If during the period of dissolution another person or corporation has reserved or adopted a corporate name which is identical or deceptively similar to the dissolved corporation's name, the dissolved corporation seeking reinstatement shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles accordingly. When a corporation has been dissolved by operation of this section, remedies available to or against it shall survive in the manner provided by RCW 24.06.335 and thereafter the directors of the corporation shall hold title to the property of the corporation as trustees for the benefit of its creditors and shareholders. [1994 c 287 § 10; 1993 c 356 § 18; 1982 c 35 § 141; 1973 c 70 § 1; 1969 ex.s. c 120 § 58.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.295 Venue and process. Every action for the involuntary dissolution of a corporation shall be commenced by the attorney general either in the superior court of the county in which the registered office of the corporation is situated, or in the superior court of Thurston county.

Summons shall issue and be served as in other civil actions. If process is returned not found, the attorney general shall cause publication to be made as in other civil cases in a newspaper published in the county where the registered office of the corporation is situated, notifying the corporation of the pendency of such action, the title of the court, the title of the action, the date on or after which default may be entered, giving the corporation thirty days within which to appear, answer, and defend. The attorney general may include in one notice the names of any number of corporations against which actions are then pending in the same court. The attorney general shall cause a copy of such notice to be mailed by certified mail to the corporation at its registered office within ten days after the first publication thereof. The certificate of the attorney general of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned not found. Unless a corporation shall have been personally served with summons, no default shall be taken against it less than thirty days from the first publication of such notice. [1969 ex.s. c 120 § 59.]

24.06.300 Jurisdiction of court to liquidate assets and dissolve corporation. The superior court shall have full power to liquidate the assets and to provide for the dissolution of a corporation when:

(1) In any action by a member, shareholder or director it is made to appear that:

(a) The directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and that the members or shareholders are unable to break the deadlock; or

(b) The acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent; or

(c) The corporate assets are being misapplied or wasted; or

(d) The corporation is unable to carry out its purposes; or

(e) The shareholders have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors.

(2) In an action by a creditor:

(a) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied, and it is established that the corporation is insolvent; or

(b) The corporation has admitted in writing that the claim of the creditor is due and owing, and it is established that the corporation is insolvent.

(3) A corporation applies to have its dissolution continued under the supervision of the court.

(4) An action has been filed by the attorney general to dissolve the corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

Proceedings under subsections (1), (2) or (3) of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors, members or shareholders party to any such action or proceedings unless relief is sought against them personally. [1969 ex.s. c 120 § 60.]

24.06.305 Procedure in liquidation of corporation in court. (1) In proceedings to liquidate the assets and affairs of a corporation the court shall have the power to:

(a) Issue injunctions;

(b) Appoint a receiver or receivers pendente lite, with such powers and duties as the court may, from time to time, direct;

(c) Take such other proceedings as may be requisite to preserve the corporate assets wherever situated; and

(d) Carry on the affairs of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings, and to any other parties in interest designated by the court, the court may appoint a receiver with authority to collect the assets of the corporation. Such receiver shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such receiver shall state his powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(2) The assets of the corporation or the proceeds resulting from the sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(a) All costs and expenses of the court proceedings, and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision made therefor;

(b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;

(c) Remaining assets, if any, shall be distributed to the members, shareholders or others in accordance with the provisions of the articles of incorporation.

(3) The court shall have power to make periodic allowances, as expenses of the liquidation and compensation to the receivers and attorneys in the proceeding accrue, and to direct the payment thereof from the assets of the corporation or from the proceeds of any sale or disposition of such assets.

A receiver appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name, as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated. [1969 ex.s. c 120 § 61.]

24.06.310 Qualifications of receivers—Bond. A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which

corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require. [1969 ex.s. c 120 § 62.]

24.06.315 Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and affairs of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation. [1969 ex.s. c 120 § 63.]

24.06.320 Discontinuance of liquidation proceedings. The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. [1969 ex.s. c 120 § 64.]

24.06.325 Decree of involuntary dissolution. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the corporate existence shall cease. [1969 ex.s. c 120 § 65.]

24.06.330 Filing of decree of dissolution. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the court clerk to cause a certified copy of the decree to be filed with the secretary of state. No fee shall be charged by the secretary of state for the filing thereof. [1969 ex.s. c 120 § 66.]

24.06.335 Survival of remedies after dissolution. The dissolution of a corporation whether (1) by the filing and issuance of a certificate of dissolution, voluntary or involuntary, by the secretary of state, or (2) by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in this chapter, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation,

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its directors, officers, members, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years from the date of dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name and capacity. The members, shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect any remedy, right, or claim. If the corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during the two years following dissolution, in order to extend its period of duration. If, during the period of dissolution, another person or corporation has reserved or adopted a corporate name which is identical to or deceptively similar to the dissolved corporation's name, the corporation extending its period of duration shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles of incorporation accordingly. The corporation shall also pay to the state all fees and penalties which would otherwise have been due if the corporate charter had not expired, plus a reinstatement fee of twenty-five dollars. [1982 c 35 § 142; 1969 ex.s. c 120 § 67.]

Intent—Severability—Effective dates—Application—1982 c 35:
See notes following RCW 43.07.160.

24.06.340 Admission of foreign corporation. (1) No foreign corporation shall have the right to conduct affairs in this state until it shall have procured a certificate of authority from the secretary of state to do so. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in this state any affairs which a corporation organized under this chapter is not permitted to conduct: PROVIDED, That no foreign corporation shall be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state: PROVIDED FURTHER, That nothing in this chapter contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

(2) Without excluding other activities not constituting the conduct of affairs in this state, a foreign corporation shall, for purposes of this chapter, not be considered to be conducting affairs in this state by reason of carrying on in this state any one or more of the following activities:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof, or the settlement of claims or disputes.

(b) Holding meetings of its directors, members, or shareholders, or carrying on other activities concerning its internal affairs.

(c) Maintaining bank accounts.

(d) Creating evidences of debt, mortgages or liens on real or personal property.

(e) Securing or collecting debts due to it or enforcing any rights in property securing the same. [1969 ex.s. c 120 § 68.]

24.06.345 Powers and duties, etc., of foreign corporation. A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same but no greater rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authorization is issued, and shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character. [1969 ex.s. c 120 § 69.]

24.06.350 Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation complies with the provisions of RCW 24.06.045. However, a foreign corporation applying for a certificate of authority may file with the secretary of state a resolution of its board of directors adopting a fictitious name for use in transacting business in this state, if the fictitious name complies with RCW 24.06.045. [1982 c 35 § 143; 1969 ex.s. c 120 § 70.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Registration of corporate name: RCW 24.06.047.

Reservation of exclusive right to use corporate name: RCW 24.06.046.

24.06.355 Change of name by foreign corporation. Whenever a foreign corporation which is authorized to conduct affairs in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in this state until it has changed its name to a name which is available to it under the laws of this state. [1969 ex.s. c 120 § 71.]

24.06.360 Certificate of authority—Application for, contents. A foreign corporation, in order to procure a certificate of authority to conduct affairs in this state, shall make application therefor to the secretary of state, which application shall set forth:

- (1) The name of the corporation and the state or country under the laws of which it is incorporated.
- (2) The date of incorporation and the period of duration of the corporation.
- (3) The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.
- (4) The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at such address.
- (5) For the purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this state.
- (6) The names and respective addresses of the directors and officers of the corporation.
- (7) Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this state. [1989 c 307 § 38; 1982 c 45 § 2; 1969 ex.s. c 120 § 72.]

Legislative finding—1989 c 307: See note following RCW 23.86.007.

Application—1989 c 307: See RCW 23.86.900.

24.06.365 Filing of application for certificate of authority—Issuance. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state together with a certificate of good standing which has been issued within the previous sixty days and certified to by the proper officer of the state or county under the laws of which it is incorporated.

If the secretary of state finds that such application conforms to law, he or she shall, when all fees have been paid as prescribed in this chapter:

- (1) Endorse on each of such documents the word "filed", and the effective date thereof.
- (2) File in his or her office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto.
- (3) Issue a certificate of authority to conduct affairs in this state to which the other duplicate original application shall be affixed.

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative. [1982 c 35 § 144; 1969 ex.s. c 120 § 73.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.370 Effect of filing application for certificate of authority. Upon the filing of the application for certificate of authority by the secretary of state, the corporation shall be authorized to conduct affairs in this state for those purposes set forth in its application: PROVIDED, That the state may suspend or revoke such authority as provided in this chapter for revocation and suspension of domestic corporation franchises. [1982 c 35 § 145; 1969 ex.s. c 120 § 74.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.375 Registered office and registered agent of foreign corporation. Every foreign corporation authorized to conduct affairs in this state shall have and continuously maintain in this state:

- (1) A registered office which may but need not be the same as its principal office.
- (2) A registered agent, who may be:
 - (a) An individual resident of this state whose business office is identical with the registered office; or
 - (b) A domestic corporation organized under any law of this state; or
 - (c) A foreign corporation authorized under any law of this state to transact business or conduct affairs in this state, having an office identical with the registered office. [1969 ex.s. c 120 § 75.]

24.06.380 Change of registered office or registered agent of foreign corporation. A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent, or both, upon

filing in the office of the secretary of state in a form approved by the secretary of state a statement setting forth:

- (1) The name of the corporation.
- (2) If the address of the current registered office is to be changed, such new address.
- (3) If the current registered agent is to be changed, the name of the new registered agent.
- (4) That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.

Such statement shall be executed by the corporation, by an officer of the corporation, and delivered to the secretary of state, together with a written consent of the registered agent to his or its appointment, if applicable. If the secretary of state finds that such statement conforms to the provisions of this chapter, he or she shall file such statement in his or her office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

If a registered agent changes his or her business address to another place within the state, the registered agent may change such address and the address of the registered office of any corporation of which the registered agent is registered agent by filing a statement as required by this section, except that it need be signed only by the registered agent, it need not be responsive to subsection (3) of this section, and it shall recite that a copy of the statement has been mailed to the corporation. [1993 c 356 § 19; 1982 c 35 § 146; 1969 ex.s. c. 120 § 76.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.385 Resignation of registered agent. Any registered agent in this state appointed by a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the foreign corporation at its principal office in the state or country under the laws of which it is incorporated as shown by its most recent annual report. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state. [1969 ex.s. c 120 § 77.]

24.06.390 Service of process upon registered agent. The registered agent so appointed by a foreign corporation authorized to conduct affairs in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. [1969 ex.s. c 120 § 78.]

24.06.395 Service of process upon secretary of state. Whenever a foreign corporation authorized to conduct affairs in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service

on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the corporation department of the secretary of state's office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, the secretary of state shall immediately cause one of such copies thereof to be forwarded by certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon the secretary of state under this action, and shall record therein the time of such service and his or her action with reference thereto: **PROVIDED**, That nothing contained in this section shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law. [1982 c 35 § 147; 1969 ex.s. c 120 § 79.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.400 Amendment to articles of incorporation of foreign corporation. Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in this state are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly authenticated by the proper officer designated under the laws of the state or country in which it is incorporated: **PROVIDED**, That the filing thereof shall not of itself enlarge or alter the purpose or purposes for which such corporation is authorized to pursue in conducting its affairs in this state, nor authorize such corporation to conduct affairs in this state under any other name than the name set forth in its certificate of authority. [1969 ex.s. c 120 § 80.]

24.06.405 Merger of foreign corporation authorized to conduct affairs in this state. Whenever a foreign corporation authorized to conduct affairs in this state shall be a party to a statutory merger permitted by the laws of the state or country under which it is incorporated, and such corporation shall be the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly authenticated by the proper officer designated under the laws of the state or country in which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state. [1969 ex.s. c 120 § 81.]

24.06.410 Amended certificate of authority. A foreign corporation authorized to conduct affairs in this state shall apply for an amended certificate of authority in the event that it wishes to change its corporate name, or desires

to pursue in this state purposes other or additional to those set forth in its initial application for a certificate of authority.

The requirements with respect to the form and content of such application, the manner of its execution, the filing, the issuance of an amended certificate of authority, and the effect thereof shall be the same as in the case of an original application for a certificate of authority. [1969 ex.s. c 120 § 82.]

24.06.415 Withdrawal of foreign corporation. A foreign corporation authorized to conduct affairs in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, the foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

- (1) The name of the corporation and the state or country under whose laws it is incorporated.
- (2) A declaration that the corporation is not conducting affairs in this state.
- (3) A surrender of its authority to conduct affairs in this state.
- (4) A notice that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding, based upon any cause of action arising in this state during the time the corporation was authorized to conduct affairs in this state, may thereafter be made upon such corporation by service thereof on the secretary of state.
- (5) A copy of the revenue clearance certificate issued pursuant to chapter 82.32 RCW.
- (6) A post office address to which the secretary of state may mail a copy of any process that may be served on the secretary of state as agent for the corporation.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation, by one of the officers of the corporation, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee. [1993 c 356 § 20; 1982 c 35 § 148; 1969 ex.s. c 120 § 83.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.420 Filing of application for withdrawal—Issuance of certificate of withdrawal. Duplicate originals of an application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, the secretary of state shall, when all requirements have been met as prescribed in this chapter:

- (1) Endorse on each of such duplicate originals the word "filed", and the effective date of the filing thereof.
- (2) File one of such duplicate originals.
- (3) Issue a certificate of withdrawal to which the other duplicate original shall be fixed.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the filing of such application of

withdrawal, the authority of the corporation to conduct affairs in this state shall cease. [1982 c 35 § 149; 1969 ex.s. c 120 § 84.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.425 Revocation of certificate of authority. (1) The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

- (a) The corporation has failed to file its annual report within the time required by this chapter or has failed to pay any fees or penalties prescribed by this chapter as they become due and payable; or
- (b) The corporation has failed for thirty days to appoint and maintain a registered agent in this state as required by this chapter; or
- (c) The corporation has failed, for thirty days after change of its registered agent or registered office, to file in the office of the secretary of state a statement of such change as required by this chapter; or
- (d) The corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this chapter; or
- (e) The certificate of authority of the corporation was procured through fraud practiced upon the state; or
- (f) The corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or
- (g) A misrepresentation has been made as to any material matter in any application, report, affidavit, or other document, submitted by such corporation pursuant to this chapter.

(2) No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless the secretary of state shall have given the corporation not less than sixty days' notice thereof by first class mail addressed to its registered office in this state, or, if there is no registered office, to the last known address of any officer or director of the corporation as shown by the records of the secretary of state, and the corporation shall have failed prior to revocation to (a) file such annual report, (b) pay such fees or penalties, (c) file the required statement of change of registered agent or registered office, (d) file such articles of amendment or articles of merger, or (e) correct any delinquency, omission, or material misrepresentation in its application, report, affidavit, or other document. [1982 c 35 § 150; 1969 ex.s. c 120 § 85.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.430 Issuance and filing of certificate of revocation—Effect. Upon revoking any certificate of authority under RCW 24.06.425, the secretary of state shall:

- (1) Issue a certificate of revocation in duplicate.
- (2) File one of such certificates.
- (3) Mail to such corporation at its registered office in this state a notice of such revocation accompanied by one of the two certificates of revocation.

Upon filing of the certificate of revocation, the corporate authority to conduct affairs in this state shall cease. [1982 c 35 § 151; 1969 ex.s. c 120 § 86.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.433 Foreign corporations—Application for reinstatement. (1) A corporation revoked under RCW 24.06.425 may apply to the secretary of state for reinstatement within three years after the effective date of revocation. An application filed within such three-year period may be amended or supplemented and any such amendment or supplement shall be effective as of the date of original filing. The application filed under this section shall be filed under and by authority of an officer of the corporation.

(2) The application shall:

(a) State the name of the corporation and, if applicable, the name the corporation had elected to use in this state at the time of revocation, and the effective date of its revocation;

(b) Provide an explanation to show that the grounds for revocation either did not exist or have been eliminated;

(c) State the name of the corporation at the time of reinstatement and, if applicable, the name the corporation elects to use in this state at the time of reinstatement which may be reserved under RCW 24.06.046;

(d) Appoint a registered agent and state the registered office address under RCW 24.06.375; and

(e) Be accompanied by payment of applicable fees and penalties.

(3) If the secretary of state determines that the application conforms to law, and that all applicable fees have been paid, the secretary of state shall cancel the certificate of revocation, prepare and file a certificate of reinstatement, and mail a copy of the certificate of reinstatement to the corporation.

(4) Reinstatement under this section relates back to and takes effect as of the date of revocation. The corporate authority shall be deemed to have continued without interruption from that date.

(5) In the event the application for reinstatement states a corporate name that the secretary of state finds to be contrary to the requirements of RCW 24.06.046, the application, amended application, or supplemental application shall be amended to adopt another corporate name that is in compliance with RCW 24.06.046. In the event the reinstatement application so adopts a new corporate name for use in Washington, the application for authority shall be deemed to have been amended to change the corporation's name to the name so adopted for use in Washington, effective as of the effective date of the certificate of reinstatement. [1993 c 356 § 21.]

Effective date—1993 c 356: See note following RCW 24.03.046.

24.06.435 Conducting affairs without certificate of authority. No foreign corporation conducting affairs in this state without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of this state until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or

assignee of such corporation on any right, claim, or demand arising out of the conduct of affairs by such corporation in this state until a certificate of authority shall have been obtained by the corporation or by a valid corporation which has (1) acquired all or substantially all of its assets and (2) assumed all of its liabilities: **PROVIDED**, That the failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this state shall not impair the substantive validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state under such terms and conditions as a court may find just. [1969 ex.s. c 120 § 87.]

24.06.440 Annual or biennial report of domestic and foreign corporations. Each domestic corporation, and each foreign corporation authorized to conduct affairs in this state, shall file, within the time prescribed by this chapter, an annual or biennial report, established by the secretary of state by rule, in the form prescribed by the secretary of state setting forth:

(1) The name of the corporation and the state or country under whose laws it is incorporated.

(2) The address of the registered office of the corporation in this state, including street and number, the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under whose laws it is incorporated.

(3) A brief statement of the character of the affairs in which the corporation is engaged, or, in the case of a foreign corporation, engaged in this state.

(4) The names and respective addresses of the directors and officers of the corporation.

(5) The corporation's unified business identifier number.

The information shall be given as of the date of the execution of the report. It shall be executed by the corporation by an officer of the corporation, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee.

The secretary of state may by rule adopted under chapter 34.05 RCW provide that correction or updating of information appearing on previous annual or biennial filings is sufficient to constitute the current filing. [1993 c 356 § 22; 1982 c 35 § 152; 1969 ex.s. c 120 § 88.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.445 Filing of annual or biennial report of domestic and foreign corporations. An annual or biennial report of each domestic or foreign corporation shall be delivered to the secretary of state between the first day of January and the first day of March of each year or on such annual or biennial renewal date as the secretary of state may establish. The secretary of state may adopt rules to establish biennial reporting dates and to stagger reporting dates. Proof to the satisfaction of the secretary of state that the report was deposited in the United States mails, in a sealed envelope, properly addressed to the secretary of state, with postage prepaid thereon, prior to the corporation's annual or biennial

renewal date, shall be deemed compliance with this requirement.

If the secretary of state finds that a report substantially conforms to the requirements of this chapter, the secretary of state shall file the same.

Failure of the secretary of state to mail any such notice shall not relieve a corporation from its obligation to file the annual reports required by this chapter. [1993 c 356 § 23; 1982 c 35 § 153; 1973 c 146 § 1; 1969 ex.s. c 120 § 89.]

Effective date—1993 c 356: See note following RCW 24.03.046.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.450 Fees for filing documents and issuing certificates. (1) The secretary of state shall charge and collect for:

(a) Filing articles of incorporation, thirty dollars.

(b) Filing an annual report, ten dollars.

(c) Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state, thirty dollars.

(2) The secretary of state shall establish by rule, fees for the following:

(a) Filing articles of amendment or restatement.

(b) Filing articles of merger or consolidation.

(c) Filing a statement of change of address of registered office or change of registered agent, or revocation, resignation, or any combination of these. A separate fee for filing such statement shall not be charged if the statement appears in an amendment to the articles of incorporation or in conjunction with the annual report.

(d) Filing articles of dissolution, no fee.

(e) Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state.

(f) Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state.

(g) Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state.

(h) Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, no fee.

(i) Filing a certificate by a foreign corporation of the appointment of a registered agent. A separate fee for filing such certificate shall not be charged if the statement appears in an amendment to the articles of incorporation or in conjunction with the annual report.

(j) Filing a certificate by a foreign corporation of the revocation of the appointment of a registered agent. A separate fee for filing such certificate shall not be charged if the statement appears in an amendment to the articles of incorporation or in conjunction with the annual report.

(k) Filing an application to reserve a corporate name.

(l) Filing a notice of transfer of a reserved corporate name.

(m) Filing any other statement or report of a domestic or foreign corporation.

(3) Fees shall be adjusted by rule in an amount that does not exceed the average biennial increase in the cost of providing service. This shall be determined in a biennial

cost study performed by the secretary. [1993 c 269 § 7; 1991 c 223 § 2; 1982 c 35 § 154; 1981 c 230 § 6; 1973 c 70 § 2; 1969 ex.s. c 120 § 90.]

Effective date—1993 c 269: See note following RCW 23.86.070.

Effective date—1991 c 223: See note following RCW 24.03.405.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.455 Miscellaneous fees. The secretary of state shall establish by rule, fees for the following:

(1) For furnishing a certified copy of any charter document or any other document, instrument, or paper relating to a corporation;

(2) For furnishing a certificate, under seal, attesting to the status of a corporation; or any other certificate;

(3) For furnishing copies of any document, instrument, or paper relating to a corporation; and

(4) At the time of any service of process on the secretary of state as resident agent of any corporation. This amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action. [1993 c 269 § 8; 1982 c 35 § 155; 1979 ex.s. c 133 § 3; 1973 c 70 § 3; 1969 ex.s. c 120 § 91.]

Effective date—1993 c 269: See note following RCW 23.86.070.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Deposit of certain fees recovered under this section in secretary of state's revolving fund: RCW 43.07.130.

24.06.460 Disposition of fees. Any money received by the secretary of state under the provisions of this chapter shall be deposited forthwith into the state treasury as provided by law. [1982 c 35 § 156; 1969 ex.s. c 120 § 92.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.462 Fees for services by secretary of state. See RCW 43.07.120.

24.06.465 Penalties imposed upon corporation—Penalty established by secretary of state. Each corporation, domestic or foreign, which fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a penalty as established and assessed by the secretary of state.

Each corporation, domestic or foreign, which fails or refuses to answer truthfully and fully within the time prescribed by this chapter any interrogatories propounded by the secretary of state in accordance with the provisions of this chapter, shall be deemed to be guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not to exceed five hundred dollars on each count. [1994 c 287 § 11; 1969 ex.s. c 120 § 93.]

24.06.470 Penalties imposed upon directors and officers. Each director and officer of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this chapter, to answer truthfully and fully any interrogatories propounded to him by the secretary of state in accordance with the provisions of this chapter, or who signs any

articles, statement, report, application, or other document filed with the secretary of state, which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a misdemeanor, and upon conviction thereof shall be fined in an amount not to exceed five hundred dollars on each count. [1969 ex.s. c 120 § 94.]

24.06.475 Interrogatories by secretary of state. The secretary of state may propound to any corporation, domestic or foreign, subject to the provisions of this chapter, and to any officer or director thereof such interrogatories as may be reasonably necessary and proper to enable the secretary of state to ascertain whether such corporation has complied with all of the provisions of this chapter applicable to such corporation. All such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the secretary of state, and the answers thereto shall be full and complete, made in writing, and under oath. If such interrogatories are directed to an individual, they shall be answered personally by him, and if directed to the corporation they shall be answered by the president, a vice president, a secretary or any assistant secretary thereof. The secretary of state need not file any document to which such interrogatories relate until such interrogatories are answered as required by this section, and even not then if the answers thereto disclose that the document is not in conformity with the provisions of this chapter.

The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this chapter. [1982 c 35 § 157; 1969 ex.s. c 120 § 95.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.480 Confidential nature of information disclosed by interrogatories. Interrogatories propounded by the secretary of state and the answers thereto shall not be open to public inspection, nor shall the secretary of state disclose any facts or information obtained therefrom unless (1) his or her official duty may require that the same be made public, or (2) such interrogatories or the answers thereto are required for use in evidence in any criminal proceedings or other action by the state. [1982 c 35 § 158; 1969 ex.s. c 120 § 96.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.485 Power and authority of secretary of state. The secretary of state shall have all power and authority reasonably necessary for the efficient and effective administration of this chapter, including the adoption of rules under chapter 34.05 RCW. [1982 c 35 § 159; 1969 ex.s. c 120 § 97.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Power and authority of secretary of state: RCW 23B.01.210 and 23B.01.300.

24.06.490 Appeal from secretary of state's actions.

(1) If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the secretary of state before the same shall be filed in his or her office, the secretary of state shall, within ten days after the delivery of such document to him or her, give written notice of disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. The person or corporation may apply to the superior court of the county in which the registered office of such corporation is situated, or is proposed, in the document, by filing a petition with the clerk of such court setting forth a copy of the articles or other document tendered to the secretary of state, together with a copy of the written disapproval thereof by the secretary of state; whereupon the matter shall be tried to the court on all questions of fact and law; and the court shall either sustain or overrule the action of the secretary of state.

(2) If the secretary of state shall revoke the certificate of authority to conduct affairs in this state of any foreign corporation, such foreign corporation may likewise apply to the superior court of the county where the registered office of such corporation in this state is situated, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to conduct affairs in this state and a copy of the notice of revocation given by the secretary of state; whereupon the matter shall be tried to the court on all questions of fact and law; and the court shall either sustain or overrule the action of the secretary of state.

(3) Appeals from all final orders and judgments entered by the superior court under this section, in the review of any ruling or decision of the secretary of state may be taken as in other civil actions. [1982 c 35 § 160; 1969 ex.s. c 120 § 98.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.495 Certificates and certified copies to be received in evidence. All certificates issued by the secretary of state in accordance with the provisions of this chapter, and all copies of documents filed in the office of the secretary of state in accordance with the provisions of this chapter when certified by the secretary of state under the seal of the state, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated. [1982 c 35 § 161; 1969 ex.s. c 120 § 99.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.500 Greater voting requirements. Whenever, with respect to any action to be taken by the members, shareholders or directors of a corporation, the articles of

incorporation require the vote or concurrence of a greater proportion of the members, shareholders or directors, as the case may be, than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control. [1969 ex.s. c 120 § 100.]

24.06.505 Waiver of notice. Whenever any notice is required to be given to any member, shareholder or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether made before or given after the time stated therein, shall be equivalent to the giving of such notice. [1969 ex.s. c 120 § 101.]

24.06.510 Action by members or directors without a meeting. Any action required by this chapter to be taken at a meeting of the members, shareholders or directors of a corporation, or any action which may be taken at a meeting of the members, shareholders or directors, may be taken without a meeting, if a consent in writing, setting forth the action so taken, is signed by all of the members and shareholders entitled to vote thereon, or by all of the directors, as the case may be, unless the articles or bylaws provide to the contrary.

Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the secretary of state. [1969 ex.s. c 120 § 102.]

24.06.515 Unauthorized assumption of corporate powers. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof. [1969 ex.s. c 120 § 103.]

24.06.520 Reinstatement and renewal of corporate existence—Fee. If the term of existence of a corporation which was organized under this chapter, or which has availed itself of the privileges thereby provided expires, such corporation shall have the right to renew within two years of the expiration of its term of existence. The corporation may renew the term of its existence for a definite period or perpetually and be reinstated under any name not then in use by or reserved for a domestic corporation organized under any act of this state or a foreign corporation authorized under any act of this state to transact business or conduct affairs in this state. To do so the directors, members and officers shall adopt amended articles of incorporation containing a certification that the purpose thereof is a reinstatement and renewal of the corporate existence. They shall proceed in accordance with the provisions of this chapter for the adoption and filing of amendments to articles of incorporation. Thereupon such corporation shall be reinstated and its corporate existence renewed as of the date on which its previous term of existence expired and all things done or omitted by it or by its officers, directors, agents and members before such reinstatement shall be as valid and have the same legal effect as if its previous term of existence had not expired.

A corporation reinstating under this section shall pay to the state all fees and penalties which would have been due if the corporate charter had not expired, plus a reinstatement fee established by the secretary of state by rule. [1993 c 269 § 9; 1982 c 35 § 162; 1969 ex.s. c 120 § 106.]

Effective date—1993 c 269: See note following RCW 23.86.070.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.525 Reorganization of corporations or associations in accordance with this chapter. Any corporation or association organized under any other statute may be reorganized under the provisions of this chapter by adopting and filing amendments to its articles of incorporation in accordance with the provisions of this chapter for amending articles of incorporation. The articles of incorporation as amended must conform to the requirements of this chapter, and shall state that the corporation accepts the benefits and will be bound by the provisions of this chapter. [1969 ex.s. c 120 § 107.]

24.06.600 Locally regulated utilities—Attachments to poles. (1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Locally regulated utility" means an [a] mutual corporation organized under this chapter for the purpose of providing utility service and not subject to rate or service regulation by the utilities and transportation commission.

(c) "Nondiscriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of persons approved for attachments.

(2) All rates, terms, and conditions made, demanded or received by a locally regulated utility for attachments to its poles must be just, reasonable, nondiscriminatory and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities. [1996 c 32 § 2.]

24.06.900 Short title. This chapter shall be known and may be cited as the "Nonprofit Miscellaneous and Mutual Corporation Act". [1982 c 35 § 163; 1969 ex.s. c 120 § 104.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.06.905 Existing liabilities not terminated—Continuation of corporate existence—Application of chapter. The enactment of this chapter shall not have the effect of terminating, or in any way modifying, any liability,

civil or criminal, which shall already be in existence at the date this chapter becomes effective; and any corporation existing under any prior law which expires on or before the date when this chapter takes effect shall continue its corporate existence: PROVIDED, That this chapter shall apply prospectively to all existing corporations which do not otherwise qualify under the provisions of Titles 23B and 24 RCW, to the extent permitted by the Constitution of this state and of the United States. [1991 c 72 § 44; 1969 ex.s. c 120 § 105.]

24.06.910 Severability—1969 ex.s. c 120. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected, and the effect of such invalidity shall be confined to the clause, sentence, paragraph, section or part of this chapter so held to be invalid. [1969 ex.s. c 120 § 108.]

24.06.915 Notice to existing corporations. (1) The secretary of state shall notify all existing miscellaneous and mutual corporations thirty days prior to the date this chapter becomes effective as to their requirements for filing an annual report.

(2) If the notification provided under subsection (1) of this section, from the secretary of state to any corporation was or has been returned unclaimed or undeliverable, the secretary of state shall proceed to dissolve the corporation by striking the name of such corporation from the records of active corporations.

(3) Corporations dissolved under subsection (2) of this section may be reinstated at any time within three years of the dissolution action by the secretary of state. The corporation shall be reinstated by filing a request for reinstatement, by appointment of a registered agent and designation of a registered office as required by this chapter, and by filing an annual report for the reinstatement year. No fees may be charged for reinstatements under this section. If, during the period of dissolution, another person or corporation has reserved or adopted a corporate name which is identical to or deceptively similar to the dissolved corporation's name, the corporation seeking reinstatement shall be required to adopt another name consistent with the requirements of this chapter and to amend its articles of incorporation accordingly. [1982 c 35 § 164; 1969 ex.s. c 120 § 109.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Effective date—1969 ex.s. c 120: See RCW 24.06.920.

24.06.920 Effective date—1969 ex.s. c 120. This chapter is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect July 1, 1969: PROVIDED, That no corporation existing on the effective date of this chapter shall be required to conform to the provisions of this chapter until July 1, 1971. [1969 ex.s. c 120 § 110.]

Chapter 24.12 CORPORATIONS SOLE

Sections

- 24.12.010 Corporations sole—Church and religious societies.
- 24.12.020 Corporate powers.
- 24.12.025 Indemnification of agents of any corporation authorized.
- 24.12.030 Filing articles—Property held in trust.
- 24.12.040 Existing corporations sole.
- 24.12.050 Fees for services by secretary of state.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

24.12.010 Corporations sole—Church and religious societies. Any person, being the bishop, overseer or presiding elder of any church or religious denomination in this state, may, in conformity with the constitution, canons, rules, regulations or discipline of such church or denomination, become a corporation sole, in the manner prescribed in this chapter, as nearly as may be; and, thereupon, said bishop, overseer or presiding elder, as the case may be, together with his successors in office or position, by his official designation, shall be held and deemed to be a body corporate, with all the rights and powers prescribed in the case of corporations aggregate; and with all the privileges provided by law for religious corporations. [1915 c 79 § 1; RRS § 3884.]

24.12.020 Corporate powers. Every corporation sole shall, for the purpose of the trust, have power to contract in the same manner and to the same extent as a natural person, and may sue and be sued, and may defend in all courts and places, in all matters and proceedings whatever, and shall have authority to borrow money and give promissory notes therefor, and to secure the payment of the same by mortgage or other lien upon property, real and personal; to buy, sell, lease, mortgage and in every way deal in real and personal property in the same manner as a natural person may, and without the order of any court; to receive bequests and devises for its own use or upon trusts, to the same extent as natural persons may; and to appoint attorneys in fact. [1915 c 79 § 2; RRS § 3885.]

24.12.025 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

24.12.030 Filing articles—Property held in trust. Articles of incorporation shall be filed in like manner as provided by law for corporations aggregate, and therein shall be set forth the facts authorizing such incorporation, and declare the manner in which any vacancy occurring in the incumbency of such bishop, overseer or presiding elder, as the case may be, is required by the constitution, canons, rules, regulations or discipline of such church or denomination to be filled, which statement shall be verified by affidavit, and for proof of the appointment or election of such bishop, overseer or presiding elder, as the case may be, or any succeeding incumbent of such corporation, it shall be sufficient to file with the secretary of state the original or a copy of his commission, or certificate, or letters of election or appointment, duly attested: PROVIDED, All property held in such official capacity by such bishop, overseer or

presiding elder, as the case may be, shall be in trust for the use, purpose, benefit and behoof of his religious denomination, society or church. [1981 c 302 § 10; 1915 c 79 § 3; RRS § 3886.]

Severability—1981 c 302: See note following RCW 19.76.100.

24.12.040 Existing corporations sole. Any corporation sole heretofore organized and existing under the laws of this state may elect to continue its existence under *this title [chapter] by filing a certificate to that effect, under its corporate seal and the hand of its incumbent, or by filing amended articles of incorporation, in the form, as near as may be, as provided for corporations aggregate, and from and after the filing of such certificate of amended articles, such corporation shall be entitled to the privileges and subject to the duties, liabilities and provisions in *this title [chapter] expressed. [1915 c 79 § 4; RRS § 3887.]

***Reviser's note:** The language "this title" appeared in chapter 79, Laws of 1915, an independent act, codified herein as chapter 24.12 RCW.

24.12.050 Fees for services by secretary of state. See RCW 43.07.120.

Chapter 24.20

FRATERNAL SOCIETIES

Sections

- 24.20.010 Incorporation—Articles.
- 24.20.020 Filing fee.
- 24.20.025 Fees for services by secretary of state.
- 24.20.030 Powers—Not subject to license fees.
- 24.20.035 Indemnification of agents of any corporation authorized.
- 24.20.040 Reincorporation.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

24.20.010 Incorporation—Articles. Any grand lodge, encampment, chapter or any subordinate lodge or body of Free and Accepted Masons, Independent Order of Odd Fellows, Knights of Pythias, or other fraternal society, desiring to incorporate, shall make articles of incorporation in duplicate, and file one of such articles in the office of the secretary of state; such articles shall be signed by the presiding officer and the secretary of such lodge, chapter or encampment, and attested by the seal thereof, and shall specify:

- (1) The name of such lodge or other society, and the place of holding its meetings;
- (2) the name of the grand body from which it derives its rights and powers as such lodge or society; or if it be a grand lodge, the manner in which its powers as such grand lodge are derived;
- (3) the names of the presiding officer and the secretary having the custody of the seal of such lodge or society;
- (4) what officers shall join in the execution of any contract by such lodge or society to give it force and effect in accordance with the usages of such lodges or society. [1981 c 302 § 11; 1925 ex.s. c 63 § 1; 1903 c 80 § 1; RRS § 3865. Cf. Code 1881 § 2452; 1873 p 410 § 3.]

Severability—1981 c 302: See note following RCW 19.76.100.

24.20.020 Filing fee. The secretary of state shall file such articles of incorporation in the secretary of state's office and issue a certificate of incorporation to any such lodge or other society upon the payment of the sum of twenty dollars. [1993 c 269 § 10; 1982 c 35 § 165; 1903 c 80 § 2; RRS § 3866.]

Effective date—1993 c 269: See note following RCW 23.86.070.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.20.025 Fees for services by secretary of state. See RCW 43.07.120.

24.20.030 Powers—Not subject to license fees. Such lodge or other society shall be a body politic and corporate with all the powers and incidents of a corporation upon its compliance with RCW 24.20.010 and 24.20.020: PROVIDED, HOWEVER, That such fraternal corporation shall not be subject to any license fee or other corporate tax of commercial corporations. [1903 c 80 § 3; RRS § 3867.]

24.20.035 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

24.20.040 Reincorporation. Any lodge or society, or the members thereof, having heretofore attempted to incorporate as a body under the provisions of an act entitled "An act to provide for the incorporation of associations for social, charitable and educational purposes," approved March 21st, 1895 [*chapter 24.16 RCW], such lodge or society may incorporate under its original corporate name by complying with the provisions of RCW 24.20.010 and 24.20.020: PROVIDED, That such lodge or society shall attach to and file with the articles of incorporation provided for in this chapter a certificate duly signed, executed and attested by the officers of the said corporation consenting to such reincorporation and waiving all rights of the original corporation to such corporate name. [1903 c 80 § 4; RRS § 3868.]

***Reviser's note:** "chapter 24.16 RCW" was repealed by the Washington Nonprofit Corporation Act, 1967 c 235, (chapter 24.03 RCW).

Chapter 24.24

BUILDING CORPORATIONS COMPOSED OF FRATERNAL SOCIETY MEMBERS

Sections

- 24.24.010 Who may incorporate—Filing fee.
- 24.24.015 Fees for services by secretary of state.
- 24.24.020 Articles—Contents.
- 24.24.030 Powers.
- 24.24.040 Membership certificates.
- 24.24.050 Bylaws.
- 24.24.060 Membership—Trustees—Elections.
- 24.24.070 Control of business—Officers.
- 24.24.080 Right of corporations under the statutes.
- 24.24.090 Certificates of capital stock.
- 24.24.100 Fees.
- 24.24.110 Exemption from ordinary corporate taxes.
- 24.24.120 Indemnification of agents of any corporation authorized.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

24.24.010 Who may incorporate—Filing fee. Any ten or more residents of this state who are members of any chartered body or of different chartered bodies of any fraternal order or society who shall desire to incorporate for the purpose of owning real or personal property or both real and personal property for the purpose and for the benefit of such bodies, may make and execute articles of incorporation, which shall be executed in duplicate, and shall be subscribed by each of the persons so associating themselves together: PROVIDED, That no lodge shall be incorporated contrary to the provisions of the laws and regulations of the order or society of which it is a constituent part. Such articles, at the election of the incorporators, may either provide for the issuing of capital stock or for incorporation as a society of corporation without shares of stock. One of such articles shall be filed in the office of the secretary of state, accompanied by a filing fee of twenty dollars, and the other of such articles shall be preserved in the records of the corporation. [1982 c 35 § 166; 1981 c 302 § 12; 1927 c 190 § 1; RRS § 3887-1.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

Severability—1981 c 302: See note following RCW 19.76.100.

24.24.015 Fees for services by secretary of state. See RCW 43.07.120.

24.24.020 Articles—Contents. The articles of incorporation shall set forth;

(1) The names of the persons so associating themselves together, their places of residence and the name and location of the lodge, chapter, or society to which they severally belong;

(2) The corporate name assumed by the corporation and the duration of the same if limited;

(3) The purpose of the association, which shall be to provide, maintain and operate a building or buildings to be used for fraternal and social purposes, and for the benefit of the several bodies represented in such association;

(4) The place where the corporation proposes to have its principal place of business;

(5) The amount of capital stock and the par value thereof per share, if it shall be organized as a joint stock company. [1927 c 190 § 2; RRS § 3887-2.]

24.24.030 Powers. Upon making and filing such articles of incorporation the persons subscribing the same and their successors in office and associates, by the name assumed in such articles, shall thereafter be deemed a body corporate, and may acquire and possess real and personal property and may erect and own suitable building or buildings to be used, in whole or in part, for meetings of fraternal bodies, and for all social and fraternal purposes of the several bodies represented in the membership of the corporation, and may exercise all other powers that may lawfully be exercised by other corporations organized under the general incorporation laws of Washington, including the power to borrow money, and for that purpose may issue its bonds and mortgage its property to secure the payment of such bonds. [1927 c 190 § 3; RRS § 3887-3.]

24.24.040 Membership certificates. If the corporation shall not be a joint stock company, then it may provide by its bylaws for issuing to the several bodies represented in its membership certificates of participation, which shall evidence the respective equitable interests of such bodies in the properties held by such corporation. [1927 c 190 § 4; RRS § 3887-4.]

24.24.050 Bylaws. Every such corporation shall have full power and authority to provide by its bylaws for the manner in which such certificates of participation of its certificates or shares of stock shall be held and represented, and may also in like manner provide, that its shares of stock shall not be transferred to, or be held or owned by any person, or by any corporation other than a chartered body of the order or society represented in its membership. [1927 c 190 § 5; RRS § 3887-5.]

24.24.060 Membership—Trustees—Elections. Every such corporation shall have power to provide by its bylaws for succession to its original membership and for new membership, and also for the election from its members of a board of trustees, or a board of directors, and to fix the number and term of office of such trustees or directors; PROVIDED, That there shall always be upon such board of trustees or board of directors at least one representative from each of the several bodies represented in the membership of the association, and the term of office of a trustee shall not exceed three years. [1927 c 190 § 6; RRS § 3887-6.]

24.24.070 Control of business—Officers. The management and control of the business and property of such corporation shall be fixed in said board of trustees or board of directors, as the case may be. Said trustees or directors shall elect from their own number at each annual meeting of the corporation a president, vice president, secretary and treasurer, who shall perform the duties of their respective office in accordance with the bylaws of the corporation and the rules and regulations prescribed by the board of trustees or board of directors. [1927 c 190 § 7; RRS § 3887-7.]

24.24.080 Right of corporations under the statutes. Any corporation composed of fraternal organizations and/or members of fraternal organizations, heretofore incorporated under the laws of the state of Washington, may elect to subject [the] corporation and its capital stock and the rights of its stockholders therein to the provisions of this chapter by a majority vote of its trustees or directors and the unanimous assent or vote of the capital stock of such corporation.

If the unanimous written assent of the capital stock has not been obtained then the unanimous vote of all of the stockholders may be taken at any regular meeting of the stockholders or at any special meeting of the stockholders called for that purpose in the manner provided by the bylaws of such corporation for special meetings of the stockholders.

The president and secretary of such corporation shall certify said amendment in triplicate under the seal of such corporation as having been adopted by a majority vote of its trustees or directors and by the unanimous written assent or

vote as the case may be of all of its stockholders, and file and keep the same as in the case of original articles; and from the time of filing said certificate such corporation and its capital stock and the rights of its stockholders therein shall be subject to all of the provisions of this chapter; PROVIDED, That nothing in this chapter shall affect the rights of the third person, pledgees of any shares of such capital stock, in such pledged stock, under pledges subsisting at the date of the filing of said amendment. [1927 c 190 § 8; RRS § 3887-8.]

24.24.090 Certificates of capital stock. All certificates of capital stock of corporations incorporated under or becoming subject to the provisions of this chapter shall have expressly stated on the face thereof that such corporation and its capital stock and the rights of stockholders therein are subject to the provisions of this chapter and that its capital stock is not assignable or transferable except as in this chapter provided. [1927 c 190 § 9; RRS § 3887-9.]

24.24.100 Fees. The secretary of state shall file such articles of incorporation or amendment thereto in the secretary of state's office and issue a certificate of incorporation or amendment, as the case may be, to such fraternal association upon the payment of a fee in the sum of twenty dollars. [1993 c 269 § 11; 1982 c 35 § 167; 1927 c 190 § 10; RRS § 3887-10.]

Effective date—1993 c 269: See note following RCW 23.86.070.

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

24.24.110 Exemption from ordinary corporate taxes. Such fraternal association shall be a body politic and corporate with all powers and incidents of a corporation upon its compliance with the provisions of this chapter; PROVIDED, HOWEVER, That such fraternal corporation shall not be subject to any license fee or other corporate tax of commercial corporations. [1927 c 190 § 11; RRS § 3887-11.]

24.24.120 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

Chapter 24.28 GRANGES

Sections

- 24.28.010 Manner of incorporating a grange.
- 24.28.020 In what pursuits such corporation may engage.
- 24.28.030 General rights and liabilities.
- 24.28.035 Indemnification of agents of any corporation authorized.
- 24.28.040 Use of term "grange"—"Person" defined.
- 24.28.050 Fees for services by secretary of state.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

24.28.010 Manner of incorporating a grange. Any grange of the patrons of husbandry, desiring hereafter to incorporate, may incorporate and become bodies politic in this state, by filing in the office of the secretary of state of Washington, a certificate or article subscribed and acknowl-

edged by not less than five members of such grange and by the master of the Washington state grange embodying:

(1) The name of such grange and the place of holding its meetings.

(2) What elective officers the said grange will have, when such officers shall be elected; how, and by whom, the business of the grange shall be conducted or managed, and what officers shall join in the execution of any contract by such grange to give force and effect in accordance with the usages of the order of the patrons of husbandry; such articles shall be subscribed by the master of such grange attested by the secretary, with the seal of the grange.

(3) A copy of the bylaws of such grange shall also be filed in the said office of the secretary of state.

(4) The names of all such officers at the time of filing the application, and the time for which they may be respectively elected. When such articles shall be filed, such grange shall be a body politic and corporate, with all the incidents of a corporation, subject nevertheless to the laws and parts of laws now in force or hereafter to be passed regulating corporations. [1981 c 302 § 13; 1959 c 207 § 1; 1875 p 97 § 1; RRS § 3901. FORMER PART OF SECTION: 1875 c 97 § 2, part, now codified in RCW 24.28.020.]

Severability—1981 c 302: See note following RCW 19.76.100.

24.28.020 In what pursuits such corporation may engage. Said grange may engage in any industrial pursuit, manufacturing, mining, milling, wharfing, docking, commercial, mechanical, mercantile, building, farming, building, equipping or running railroads, or generally engage in any species of trade or industry; loan money on security, purchase and sell on real estate, but when desiring to engage in either or any of the above pursuits or industries, said grange shall be subject to all the conditions and liabilities imposed by the provisions of the general corporation laws, and in addition to the conditions to be performed as recited in RCW 24.28.010, shall file additional articles with said secretary of state stating the object, business or industry proposed to be pursued or engaged in; the amount of capital stock, the time of its existence, not to exceed fifty years; the number of shares of which the capital stock shall consist, and price per share, and the names of officers necessary to manage said business, and the places where said officers shall pursue the same. [1981 c 302 § 14; 1875 p 97 § 2; RRS § 3902. Formerly RCW 24.28.010, part and 24.28.020.]

Severability—1981 c 302: See note following RCW 19.76.100.

24.28.030 General rights and liabilities. As a business corporation said grange, after having complied with RCW 24.28.020, shall be to all intents and purposes a domestic corporation, with all the rights, privileges and immunities allowed, and all the liabilities imposed by chapter one of the act entitled "an act to provide for the formation of corporations," approved November 13, 1873. [1875 p 98 § 3; RRS § 3903.]

Reviser's note: The reference to chapter one of the 1873 act relates to the general corporation act in effect at the time the above section was enacted. Such general corporation laws were also compiled as Code 1881 §§ 2421-2449. See also table of prior laws following the Title 23 RCW digest.

24.28.035 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

24.28.040 Use of term "grange"—"Person" defined. No person, doing business in this state shall be entitled to use or to register the term "grange" as part or all of his business name or other name or in connection with his products or services, or otherwise, unless either (1) he has complied with the provisions of this chapter or (2) he has obtained written consent of the Washington state grange certified thereto by its master. Any person violating the provisions of this section may be enjoined from using or displaying such name and doing business under such name at the instance of the Washington state grange or any grange organized under this chapter, or any member thereof: PROVIDED, That nothing herein shall prevent the continued use of the term "grange" by any person using said name prior to the adoption of *this act.

For the purposes of this section "person" shall include any person, partnership, corporation, or association of individuals. [1959 c 207 § 2.]

*Reviser's note: "this act" first appeared in chapter 207, Laws of 1959, section 1 of which amended RCW 24.28.010.

24.28.050 Fees for services by secretary of state. See RCW 43.07.120.

Chapter 24.34

AGRICULTURAL PROCESSING AND MARKETING ASSOCIATIONS

Sections

24.34.010 Who may organize—Purposes—Limitations.
24.34.020 Monopoly or restraint of trade—Complaint—Procedure.
Agricultural marketing: Chapters 15.65, 15.66 RCW.

24.34.010 Who may organize—Purposes—Limitations. Persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut growers or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in intrastate commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: PROVIDED, That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of eight percent per annum.

And in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members. [1967 c 187 § 1.]

24.34.020 Monopoly or restraint of trade—Complaint—Procedure. If the attorney general has reason to believe that any such association as provided for in RCW 24.34.010 monopolizes or restrains trade to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade.

Such hearing, and any appeal which may be made from such hearing, shall be conducted and held subject to and in conformance with the provisions for adjudicative proceedings and judicial review in chapter 34.05 RCW, the Administrative Procedure Act. [1989 c 175 § 75; 1967 c 187 § 2.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Chapter 24.36

FISH MARKETING ACT

Sections

24.36.010 Short title.
24.36.020 Declaration of purpose.
24.36.030 Definitions.
24.36.040 Associations deemed nonprofit.
24.36.050 General laws relating to corporations for profit applicable.
24.36.055 Fees for services by secretary of state.
24.36.060 Securities act inapplicable.
24.36.070 Associations deemed not a conspiracy, in restraint of trade, etc.—Contracts not illegal.
24.36.080 Conflicting laws not applicable—Exemptions apply.
24.36.090 Merger, consolidation of associations authorized—Procedure.
24.36.100 Stock associations—Statement in articles.
24.36.110 Stock associations—Classified shares—Statement in articles.
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24.36.130 Bylaws of association.
24.36.140 Bylaws of association—Transfer of stock, membership certificates limited.
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24.36.160 Bylaws of association—Fees, charges, marketing contract, dividends.
24.36.170 Bylaws of association—Membership.
24.36.180 Bylaws of association—Meetings.
24.36.190 Bylaws of association—Direct election of directors from districts of territory.
24.36.200 Bylaws of association—Election of directors by representatives or advisers from districts of territory.
24.36.210 Bylaws of association—Primary elections to nominate directors.
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24.36.315 Indemnification of agents of any corporation authorized—Application of RCW 23A.08.025.
24.36.320 Association as agent for member.
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- 24.36.340 Powers relating to capital stock or bonds of other corporations or associations.
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- 24.36.370 General powers, rights, privileges of association.
- 24.36.380 Use of association's facilities—Disposition of proceeds.
- 24.36.390 Power of association to form, control, own stock in or be member of another corporation or association—Warehouse receipts.
- 24.36.400 Contracts and agreements with other corporations or associations—Joint operations.
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- 24.36.430 Association may sell products without taking title—Powers and duties.
- 24.36.440 Liability of member for breach of marketing contract.
- 24.36.450 Injunctions, specific performance if breach or threatened breach by member.
- 24.36.460 Presumption that landlord or lessor can control delivery—Remedies for nondelivery or breach.
- 24.36.470 Enforcement by association to secure delivery by member.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

24.36.010 Short title. This chapter may be cited as "The Fish Marketing Act". [1959 c 312 § 1.]

24.36.020 Declaration of purpose. The purpose of this chapter is to promote, foster, and encourage the intelligent and orderly marketing of fish and fishery products through cooperation; to eliminate speculation and waste; to make the distribution of fish and fishery products between producer and consumer as direct as can be efficiently done; and to stabilize the marketing of fish and fishery products. [1959 c 312 § 2.]

24.36.030 Definitions. As used in this chapter:

- (1) "Fishery products" includes fish, crustaceans, mollusks, and marine products for human consumption.
- (2) "Member" includes members of associations without capital stock and holders of common stock in associations organized with shares of stock.
- (3) "Association" means any corporation organized under this chapter. [1959 c 312 § 3.]

24.36.040 Associations deemed nonprofit. Associations shall be deemed "nonprofit", inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers of fishery products. [1959 c 312 § 4.]

24.36.050 General laws relating to corporations for profit applicable. The provisions of Title 23B RCW and all powers and rights thereunder, apply to associations, except where such provisions are in conflict with or inconsistent with the express provisions of this chapter. [1991 c 72 § 45; 1959 c 312 § 5.]

24.36.055 Fees for services by secretary of state. See RCW 43.07.120.

24.36.060 Securities act inapplicable. No association is subject in any manner to the terms of chapter 21.20 RCW and all associations may issue their membership certificates

or stock or other securities as provided in this division without the necessity of any permit from the director of licenses. [1983 c 3 § 27; 1959 c 312 § 6.]

24.36.070 Associations deemed not a conspiracy, in restraint of trade, etc.—Contracts not illegal. An association shall be deemed not to be a conspiracy, nor a combination in restraint of trade nor an illegal monopoly; nor an attempt to lessen competition or to fix prices arbitrarily or to create a combination or pool in violation of any law of the state; and the marketing contracts and agreements between the association and its members and any agreements authorized in this chapter shall be considered not to be illegal nor in restraint of trade nor contrary to the provisions of any statute enacted against pooling or combinations. [1959 c 312 § 7.]

24.36.080 Conflicting laws not applicable—Exemptions apply. Any provisions of law which are in conflict with this chapter shall not be construed as applying to associations. Any exemptions under any laws applying to fishery products in the possession or under the control of the individual producer shall apply similarly and completely to such fishery products delivered by its members, in the possession or under the control of the association. [1959 c 312 § 8.]

24.36.090 Merger, consolidation of associations authorized—Procedure. Any two or more associations may be merged into one such constituent association or consolidated into a new association. Such merger or consolidation shall be made in the manner prescribed by RCW 23B.07.050 and chapter 23B.11 RCW for domestic corporations. [1991 c 72 § 46; 1983 c 3 § 28; 1959 c 312 § 9.]

24.36.100 Stock associations—Statement in articles. If the association is organized with shares of stock, the articles shall state the number of shares which may be issued and if the shares are to have a par value, the par value of each share, and the aggregate par value of all shares; and if the shares are to be without par value it shall be so stated. [1959 c 312 § 10.]

24.36.110 Stock associations—Classified shares—Statement in articles. If the shares are to be classified, the articles shall contain a description of the classes of shares and a statement of the number of shares of each kind or class and the nature and extent of the preferences, rights, privileges and restrictions granted to or imposed upon the holders of the respective classes of stock. [1959 c 312 § 11.]

24.36.120 Nonstock associations—Statement in articles. If the association is organized without shares of stock, the articles shall state whether the voting power and the property rights and interest of each member are equal or unequal; and if unequal the general rule or rules applicable to all members by which the voting power and the property rights and interests, respectively, of each member may be

and are determined and fixed; and shall also provide for the admission of new members who shall be entitled to vote and to share in the property of the association with the old members, in accordance with such general rule or rules. [1959 c 312 § 12.]

24.36.130 Bylaws of association. Each association shall within thirty days after its incorporation, adopt for its government and management, a code of bylaws, not inconsistent with this chapter. A majority vote of the members or shares of stock issued and outstanding and entitled to vote, or the written assent of a majority of the members or of stockholders representing a majority of all the shares of stock issued and outstanding and entitled to vote, is necessary to adopt such bylaws and is effectual to repeal or amend any bylaws or to adopt additional bylaws. The power to repeal and amend the bylaws, and adopt new bylaws, may, by a similar vote, or similar written assent, be delegated to the board of directors, which authority may, by a similar vote, or similar written assent, be revoked. [1959 c 312 § 13.]

24.36.140 Bylaws of association—Transfer of stock, membership certificates limited. The bylaws shall prohibit the transfer of the common stock or membership certificates of the associations to persons not engaged in the production of the products handled by the association. [1959 c 312 § 14.]

24.36.150 Bylaws of association—Quorum, voting, directors, penalties. The bylaws may provide:

- (1) The number of members constituting a quorum.
- (2) The right of members to vote by proxy or by mail or both, and the conditions, manner, form and effects of such votes; the right of members to cumulate their votes and the prohibition, if desired, of cumulative voting.
- (3) The number of directors constituting a quorum.
- (4) The qualifications, compensation and duties and term of office of directors and officers and the time of their election.
- (5) Penalties for violations of the bylaws. [1959 c 312 § 15.]

24.36.160 Bylaws of association—Fees, charges, marketing contract, dividends. The bylaws may provide:

- (1) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same; and the purposes for which they may be used.
- (2) The amount which each member shall be required to pay annually, or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members which every member may be required to sign.
- (3) The amount of any dividends which may be declared on the stock or membership capital, which dividends shall not exceed eight percent per annum and which dividends shall be in the nature of interest and shall not affect the nonprofit character of any association organized hereunder. [1959 c 312 § 16.]

24.36.170 Bylaws of association—Membership. The bylaws may provide:

- (1) The number and qualification of members of the association and the conditions precedent to membership or ownership of common stock.
- (2) The method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock.
- (3) The manner of assignment and transfer of the interest of members and of the shares of common stock.
- (4) The conditions upon which and time when membership of any member shall cease.
- (5) For the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association; and the mode, manner and effect of the expulsion of a member.
- (6) The manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or upon the expulsion of a member or forfeiture of his membership, or at the option of the association, the purchase at a price fixed by conclusive appraisal by the board of directors; and the conditions and terms for the repurchase by the corporation from its stockholders of their stock upon their disqualification as stockholders. [1959 c 312 § 17.]

24.36.180 Bylaws of association—Meetings. The bylaws may provide for the time, place, and manner of calling and conducting meetings of the association. [1959 c 312 § 18.]

24.36.190 Bylaws of association—Direct election of directors from districts of territory. The bylaws may provide that the territory in which the association has members shall be divided into districts and that directors shall be elected from the several districts. In such case, the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. [1959 c 312 § 19.]

24.36.200 Bylaws of association—Election of directors by representatives or advisers from districts of territory. The bylaws may provide that the territory in which the association has members shall be divided into districts, and that the directors shall be elected by representatives or advisers, who themselves have been elected by the members from the several territorial districts. In such case, the bylaws shall specify the number of representatives or advisers to be elected by each district, the manner and method of reapportioning the representatives or advisers and of redistricting the territory covered by the association. [1959 c 312 § 20.]

24.36.210 Bylaws of association—Primary elections to nominate directors. The bylaws may provide that primary elections shall be held to nominate directors. Where the bylaws provide that the territory in which the association has members shall be divided into districts, the bylaws may also provide that the results of the primary elections in the

various districts shall be final and shall be ratified at the annual meeting of the association. [1959 c 312 § 21.]

24.36.220 Bylaws of association—Nomination of directors by public officials or other directors—Limitation. The bylaws may provide that one or more directors may be nominated by any public official or commission or by the other directors selected by the members. Such directors shall represent primarily the interest of the general public in such associations. The directors so nominated need not be members of the association, but shall have the same powers and rights as other directors. Such directors shall not number more than one-fifth of the entire number of directors. [1959 c 312 § 22.]

24.36.230 Bylaws of association—Terms of directors—Staggering. The bylaws may provide that directors shall be elected for terms of from one to five years: PROVIDED, That at each annual election the same fraction of the total number of directors shall be elected as one year bears to the number of years of the term of office. [1959 c 312 § 23.]

24.36.240 Bylaws of association—Executive committee. The bylaws may provide for an executive committee and may allot to such committee all the functions and powers of the board of directors, subject to the general direction and control of the board. [1959 c 312 § 24.]

24.36.250 Qualifications of members, stockholders. (1) Under the terms and conditions prescribed in the bylaws, an association may admit as members, or issue common stock to, only such persons as are engaged in the production of fishery products to be handled by or through the association, including the lessees and tenants of boats and equipment used for the production of such fishery products and any lessors and landlords who receive as rent all or part of the fish produced by such leased equipment.

(2) If a member of a nonstock association is other than a natural person, such member may be represented by any individual duly authorized in writing.

(3) One association may become a member or stockholder of any other association. [1959 c 312 § 25.]

24.36.260 Certificate of membership in nonstock associations. When a member of an association established without shares of stock has paid his membership fee in full, he shall receive a certificate of membership. [1959 c 312 § 26.]

24.36.270 Liability of member for association's debts. No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory note given in payment thereof. [1959 c 312 § 27.]

24.36.280 Place of membership meetings. Meetings of members shall be held at the place as provided in the bylaws; and if no provision is made, in the city where the

principal place of business is located at a place designated by the board of directors. [1959 c 312 § 28.]

24.36.290 Appraisal of expelled member's property—Payment. In case of the expulsion of a member, and where the bylaws do not provide any procedure or penalty, the board of directors shall equitably and conclusively appraise his property interest in the association and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion. [1959 c 312 § 29.]

24.36.300 Powers of association—General scope of activities. An association may:

Engage in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling, or utilization of any fishery products produced or delivered to it by its members; or the manufacturing or marketing of the byproducts thereof; or any activity in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment, or in the financing of any such activities. [1959 c 312 § 30.]

24.36.310 Powers of association—Incurring indebtedness—Advances to members. An association may borrow without limitation as to amount of corporate indebtedness or liability and may make advances to members. [1959 c 312 § 31.]

24.36.315 Indemnification of agents of any corporation authorized—Application of RCW 23A.08.025. See RCW 23B.17.030.

24.36.320 Association as agent for member. An association may act as the agent or representative of any member or members in any of the two next preceding sections. [1959 c 312 § 32.]

24.36.330 Reserves—Investments. An association may establish reserves and invest the funds thereof in bonds or in such other property as may be provided in the bylaws. [1959 c 312 § 33.]

24.36.340 Powers relating to capital stock or bonds of other corporations or associations. An association may purchase or otherwise acquire, hold, own, and exercise all rights of ownership in, sell, transfer, pledge, or guarantee the payment of dividends or interest on, or the retirement or redemption of, shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the warehousing or handling or marketing or packing or manufacturing or processing or preparing for market of any of the fishery products handled by the association. [1959 c 312 § 34.]

24.36.350 Powers relating to real or personal property. An association may buy, hold and exercise all privileges or ownership, over such real or personal property as may be necessary or convenient for the conduct and

operation of any of the business of the association, or incidental thereto. [1959 c 312 § 35.]

24.36.360 Levy of assessments. An association may levy assessments in the manner and in the amount provided in its bylaws. [1959 c 312 § 36.]

24.36.370 General powers, rights, privileges of association. An association may do each and every thing necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects enumerated in this chapter; or conducive to or expedient for the interest or benefit of the association; and contract accordingly; and in addition exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and, in addition, any other rights, powers and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the express provisions of this chapter; and do any such thing anywhere. [1959 c 312 § 37.]

24.36.380 Use of association's facilities—Disposition of proceeds. An association may use or employ any of its facilities for any purpose: PROVIDED, That the proceeds arising from such use and employment go to reduce the cost of operation for its members; but the fishery products of nonmembers shall not be dealt in to an amount greater in value than such as are handled by it for its members. [1959 c 312 § 38.]

24.36.390 Power of association to form, control, own stock in or be member of another corporation or association—Warehouse receipts. An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock and engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing, or selling of the fishery products handled by the association, or the byproducts thereof.

If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association against the commodities delivered by it, or to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the usual and current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this state or the United States, its warehouse receipt delivered to the association on commodities of the association or its members, or delivered by the association or its members, shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association. [1959 c 312 § 39.]

24.36.400 Contracts and agreements with other corporations or associations—Joint operations. Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other

cooperative or other corporation, association, or associations, formed in this or in any other state, for the cooperative and more economical carrying on of its business or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same personnel, methods, means, and agencies for carrying on and conducting their respective business. [1959 c 312 § 40.]

24.36.410 Marketing contracts with members. An association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over fifteen years, all or any specified part of their fishery products or specified commodities exclusively to or through the association or any facilities to be created by the association. [1959 c 312 § 41.]

24.36.420 When title passes on sale by member to association. If the members contract a sale to the association, it shall be conclusively held that title to the products passes absolutely and unreservedly, except for recorded liens, to the association upon delivery or at any other time expressly and definitely specified in the contract. [1959 c 312 § 42.]

24.36.430 Association may sell products without taking title—Powers and duties. The contract may provide that the association may sell or resell the fishery products delivered by its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead, and other costs and expenses, including interest on preferred stock, not exceeding eight percent per annum, and reserves for retiring the stock, if any; and other proper reserves; and interest not exceeding eight percent per annum upon common stock. [1959 c 312 § 43.]

24.36.440 Liability of member for breach of marketing contract. The marketing contract may fix, as liquidated damages, specific sums to be paid by the member to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of fishery products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees, in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this state; and such clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties. [1959 c 312 § 44.]

24.36.450 Injunctions, specific performance if breach or threatened breach by member. In the event of any such breach or threatened breach of such marketing contract by a member the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing sufficient bond, the association shall be entitled to a

temporary restraining order and preliminary injunction against the member. [1959 c 312 § 45.]

24.36.460 Presumption that landlord or lessor can control delivery—Remedies for nondelivery or breach. In any action upon such marketing agreements, it shall be conclusively presumed that a landlord or lessor is able to control the delivery of fishery products produced by his equipment by tenants, or others, whose tenancy or possession or work on such equipment or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the landlord or lessor, of such a marketing agreement; and in such actions, the foregoing remedies for nondelivery or breach shall lie and be enforceable against such landlord or lessor. [1959 c 312 § 46.]

24.36.470 Enforcement by association to secure delivery by member. A contract entered into by a member of an association, providing for the delivery to such association of products produced or acquired by the member, may be specifically enforced by the association to secure the delivery to it of such fishery products, any provisions of law to the contrary notwithstanding. [1959 c 312 § 47.]

Chapter 24.40

TAX REFORM ACT OF 1969, STATE IMPLEMENTATION—NOT FOR PROFIT CORPORATIONS

Sections

24.40.010	Application.
24.40.020	Articles of incorporation deemed to contain prohibiting provisions.
24.40.030	Articles of incorporation deemed to contain provisions for distribution.
24.40.040	Rights, powers, of courts, attorney general, not impaired.
24.40.050	Construction of references to federal code.
24.40.060	Present articles of incorporation may be amended— Application to new corporation.
24.40.070	Severability—1971 c 59.
24.40.080	Tax reform act of 1969, state implementation—Charitable trusts.

24.40.010 Application. This chapter shall apply to every not for profit corporation to which Title 24 RCW applies, and which is a "private foundation" as defined in section 509 of the Internal Revenue Code of 1954, and which has been or shall be incorporated under the laws of the state of Washington after December 31, 1969. As to any such corporation so incorporated before January 1, 1970, this chapter shall apply only for its federal taxable years beginning after December 31, 1971. [1971 c 59 § 2.]

24.40.020 Articles of incorporation deemed to contain prohibiting provisions. The articles of incorporation of every corporation to which this chapter applies shall be deemed to contain provisions prohibiting the corporation from:

(1) Engaging in any act of "self-dealing" (as defined in section 4941(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4941(a) of the Internal Revenue Code of 1954;

(2) Retaining any "excess business holdings" (as defined in section 4943(c) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by section 4943(a) of the Internal Revenue Code of 1954;

(3) Making any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944(a) of the Internal Revenue Code of 1954; and

(4) Making any "taxable expenditures" (as defined in section 4945(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by section 4945(a) of the Internal Revenue Code of 1954. [1971 c 59 § 3.]

24.40.030 Articles of incorporation deemed to contain provisions for distribution. The articles of incorporation of every corporation to which this chapter applies shall be deemed to contain a provision requiring such corporation to distribute, for the purposes specified in its articles of incorporation, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code of 1954. [1971 c 59 § 4.]

24.40.040 Rights, powers, of courts, attorney general, not impaired. Nothing in this chapter shall impair the rights and powers of the courts or the attorney general of this state with respect to any corporation. [1971 c 59 § 5.]

24.40.050 Construction of references to federal code. All references to sections of the Internal Revenue Code of 1954 shall include future amendments to such sections and corresponding provisions of future internal revenue laws. [1971 c 59 § 6.]

24.40.060 Present articles of incorporation may be amended—Application to new corporation. Nothing in this chapter shall limit the power of any corporation not for profit now or hereafter incorporated under the laws of the state of Washington

(1) to at any time amend its articles of incorporation or other instrument governing such corporation by any amendment process open to such corporation under the laws of the state of Washington to provide that some or all provisions of RCW 24.40.010 and 24.40.020 shall have no application to such corporation; or

(2) in the case of any such corporation formed after June 10, 1971, to provide in its articles of incorporation that some or all provisions of RCW 24.40.010 and 24.40.020 shall have no application to such corporation. [1971 c 59 § 7.]

24.40.070 Severability—1971 c 59. If any provision of RCW 24.40.010 through 24.40.070 or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of RCW 24.40.010 through 24.40.070 which can be given effect without the invalid provision or application, and to this end the provisions of

RCW 24.40.010 through 24.40.070 are declared to be severable. [1971 c 59 § 8.]

24.40.080 Tax reform act of 1969, state implementation—Charitable trusts. See RCW 11.110.200 through 11.110.260.

Chapter 24.44

UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

Sections

24.44.010	Definitions.
24.44.020	Appropriation of appreciation.
24.44.030	Investment authority.
24.44.040	Delegation of investment management.
24.44.050	Standard of conduct.
24.44.060	Release of restrictions on use or investments.
24.44.070	Uniformity of application and construction.
24.44.080	Short title.
24.44.090	Section headings.
24.44.900	Severability—1973 c 17.

24.44.010 Definitions. As used in this chapter:

(1) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes or a governmental organization to the extent that it holds funds exclusively for any of these purposes;

(2) "Institutional fund" means a fund held by an institution for its exclusive use, benefit or purposes, but does not include (a) a fund held for an institution by a trustee which is not an institution, or (b) a fund in which a beneficiary which is not an institution has an interest other than possible rights which could arise upon violation or failure of the purposes of the fund;

(3) "Endowment fund" means an institutional fund, or any part thereof, which is not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument;

(4) "Governing board" means the body responsible for the management of an institution or of an institutional fund;

(5) "Historic dollar value" means the fair value in dollars of an endowment fund at the time it first became an endowment fund, plus the fair value in dollars of each subsequent donation to the fund at the time it is made, plus the fair value in dollars of each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive;

(6) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund. [1973 c 17 § 1.]

24.44.020 Appropriation of appreciation. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the

fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by RCW 24.44.050. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the character [charter] of an institution. [1973 c 17 § 2.]

24.44.030 Investment authority. In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary is authorized to make, the governing board (subject to any specific limitations set forth in the applicable gift instrument or in applicable law other than law relating to investments a fiduciary is authorized to make) may:

(1) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks and bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any government or subdivision or instrumentality thereof;

(2) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and

(4) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board. [1973 c 17 § 3.]

24.44.040 Delegation of investment management. Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may:

(1) Delegate to its committees, to officers or employees of the institution or the fund, or to agents (including investment counsel) the authority to act in place of the board in investment and reinvestment of institutional funds;

(2) Contract with independent investment advisors, investment counsel or managers, banks, or trust companies, so to act; and

(3) Authorize the payment of compensation for investment advisory or management services. [1973 c 17 § 4.]

24.44.050 Standard of conduct. In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision, and in so doing they shall consider long and short term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total

return on its investments, price level trends, and general economic conditions. [1973 c 17 § 5.]

24.44.060 Release of restrictions on use or investments. (1) A restriction on the use or investment of an institutional fund imposed by the applicable gift instrument may be released, entirely or in part, by the governing board with the written consent of the donor.

(2) If consent of the donor cannot be obtained by reason of the death, disability or unavailability, or impossibility of identification of the donor, upon application of the governing board, a restriction on the use or investment of an institutional fund imposed by the applicable gift instrument may be released, entirely or in part, by order of the superior court after reasonable notice to the attorney general and an opportunity for him to be heard, and upon a finding that the restriction on the use or investment of the fund is obsolete, inappropriate or impracticable. A release under this subsection may not change an endowment fund to a fund which is not an endowment fund.

(3) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(4) The provisions of this section do not limit the application of the doctrine of cy pres. [1973 c 17 § 6.]

24.44.070 Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it. [1973 c 17 § 8.]

24.44.080 Short title. This chapter may be cited as the "Uniform Management of Institutional Funds Act". [1973 c 17 § 9.]

24.44.090 Section headings. Section headings as used in this chapter do not constitute any part of the law. [1973 c 17 § 10.]

24.44.900 Severability—1973 c 17. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1973 c 17 § 7.]

Chapter 24.46

FOREIGN TRADE ZONES

Sections

24.46.010 Legislative finding—Intent.

24.46.020 Application for permission to establish, operate and maintain foreign trade zones authorized.

Operation of foreign trade zones by port districts: RCW 53.08.030.

24.46.010 Legislative finding—Intent. It is the finding of the legislature that foreign trade zones serve an

important public purpose by the creation of employment opportunities within the state and that the establishment of zones designed to accomplish this purpose is to be encouraged. It is the further intent of the legislature that the department of community, trade, and economic development provide assistance to entities planning to apply to the United States for permission to establish such zones. [1995 c 399 § 12; 1985 c 466 § 39; 1977 ex.s. c 196 § 1.]

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

Effective date—1977 ex.s. c 196: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977." [1977 ex.s. c 196 § 8.]

24.46.020 Application for permission to establish, operate and maintain foreign trade zones authorized. A nonprofit corporation or organization, as zone sponsor, may apply to the United States for permission to establish, operate, and maintain foreign trade zones: PROVIDED, That nothing herein shall be construed to prevent these zones from being operated and financed by a private corporation(s) on behalf of said nonprofit corporation acting as zone sponsor. [1977 ex.s. c 196 § 2.]

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

Title 25

PARTNERSHIPS

Chapters

- 25.04** **General and limited liability partnerships.**
- 25.10** **Limited partnerships.**
- 25.12** **Limited partnerships existing prior to June 6, 1945.**
- 25.15** **Limited liability companies.**

Powers of appointment: Chapter 11.95 RCW.

Probate provisions relating to partnership property: Chapter 11.64 RCW.

Chapter 25.04

GENERAL AND LIMITED LIABILITY PARTNERSHIPS

(Formerly: General partnerships)

Sections

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- 25.04.020 Definition of terms.
- 25.04.030 Interpretation of knowledge and notice.
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- 25.04.110 Partnership bound by admission of partner.
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- 25.04.240 Extent of property rights of partner.
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- 25.04.320 Dissolution by decree of court.
- 25.04.330 General effect of dissolution on authority of partner.
- 25.04.340 Right of partner to contribution from copartners after dissolution.
- 25.04.350 Power of partner to bind partnership to third persons after dissolution.
- 25.04.360 Effect of dissolution on partner's existing liability.
- 25.04.370 Right to wind up.
- 25.04.380 Rights of partners to application of partnership property.
- 25.04.390 Rights where partnership is dissolved for fraud or misrepresentation.
- 25.04.400 Rules for distribution.
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LIMITED LIABILITY PARTNERSHIPS

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- 25.04.735 Rights and duties of the partners.
- 25.04.740 Dissolution—Caused by the act, death, or bankruptcy of a partner—Liability of partners.
- 25.04.745 Dissolution—Discharge of existing liabilities—Property of deceased partner.
- 25.04.750 Dissolution—Settling accounts—Order of liabilities—Partner's contribution—Deceased partner—Bankrupt partner.

GENERAL PARTNERSHIPS

PART I

PRELIMINARY PROVISIONS

25.04.010 Name of chapter. This chapter may be cited as the uniform partnership act. [1955 c 15 § 25.04.010. Prior: 1945 c 137 § 1; Rem. Supp. 1945 § 9975-40.]

25.04.020 Definition of terms. In this chapter: "Court" includes every court and judge having jurisdiction in the case; "Business" includes every trade, occupation, or profession; "Person" includes individuals, trustees and personal representatives, partnerships, corporations, and other associations;

"Bankrupt" includes bankrupt under the federal bankruptcy act or insolvent under any state insolvent act;

"Conveyance" includes every assignment, lease, mortgage, or encumbrance;

"Real property" includes land and any interest or estate in land. [1985 c 8 § 2. Prior: 1984 c 149 § 171; 1955 c 15 § 25.04.020; prior: 1945 c 137 § 2; Rem. Supp. 1945 § 9975-41.]

Short title—Application—1985 c 30: See RCW 11.02.900 and 11.02.901.

Purpose—1985 c 8: "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 8 § 1.]

Severability—1985 c 8: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 8 § 4.]

Severability—Effective date—1984 c 149: See notes following RCW 11.02.005.

25.04.030 Interpretation of knowledge and notice.

(1) A person has knowledge of a fact within the meaning of this chapter not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith.

(2) A person has notice of a fact within the meaning of this chapter when the person who claims the benefit of the notice:

(a) States the fact to such person, or

(b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence. [1955 c 15 § 25.04.030. Prior: 1945 c 137 § 3; Rem. Supp. 1945 § 9975-42.]

25.04.040 Rules of construction. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) The law of estoppel shall apply under this chapter.

(3) The law of agency shall apply under this chapter.

(4) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(5) This chapter shall not be construed so as to impair the obligations of any contract existing when the chapter goes into effect, nor to affect any action or proceedings begun or right accrued before this chapter takes effect. [1955 c 15 § 25.04.040. Prior: 1945 c 137 § 4; Rem. Supp. 1945 § 9975-43.]

25.04.050 Rules for cases not provided for in this chapter. In any case not provided for in this chapter the rules of law and equity, including the law merchant, shall govern. [1955 c 15 § 25.04.050. Prior: 1945 c 137 § 5; Rem. Supp. 1945 § 9975-44.]

PART II NATURE OF A PARTNERSHIP

25.04.060 Partnership defined. (1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) Any association formed under any other statute of this state, or a statute adopted by any authority, other than the authority of this state, is not a partnership under this chapter, unless such association would have been a partnership in this state prior to the adoption of this chapter.

(3) This chapter shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith. [1955 c 15 § 25.04.060. Prior: 1945 c 137 § 6; Rem. Supp. 1945 § 9975-45.]

25.04.070 Rules for determining the existence of a partnership. In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by RCW 25.04.160 persons who are not partners as to each other, are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payments:

(a) As a debt by installments or otherwise,

(b) As wages of an employee or rent to a landlord,

(c) As an annuity to a surviving spouse or representative of a deceased partner,

(d) As interest on a loan, though the amount of payment vary with the profits of the business,

(e) As the consideration for the sale of a good will of a business or other property by installments or otherwise. [1973 1st ex.s. c 154 § 24; 1955 c 15 § 25.04.070. Prior: 1945 c 137 § 7; Rem. Supp. 1945 § 9975-46.]

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

25.04.080 Partnership property. (1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise, on account of the partnership, is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears. [1955 c 15 § 25.04.080. Prior: 1945 c 137 § 8; Rem. Supp. 1945 § 9975-47.]

PART III
RELATIONS OF PARTNERS TO PERSONS DEALING
WITH THE PARTNERSHIP

25.04.090 Partner agent of partnership as to partnership business. (1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all partners have no authority to:

(a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,

(b) Dispose of the good will of the business,

(c) Do any other act which would make it impossible to carry on the ordinary business of a partnership,

(d) Confess a judgment,

(e) Submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction. [1955 c 15 § 25.04.090. Prior: 1945 c 137 § 9; Rem. Supp. 1945 § 9975-48.]

25.04.100 Conveyance of real property of the partnership. (1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of subsection (1) of RCW 25.04.090, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of subsection (1) of RCW 25.04.090.

(3) Where title to real property is in the name of one or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of subsection (1) of RCW 25.04.090, unless the purchaser or his assignee, is a holder for value, without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners, or in a third person in trust for

the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of subsection (1) of RCW 25.04.090.

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property. [1955 c 15 § 25.04.100. Prior: 1945 c 137 § 10; Rem. Supp. 1945 § 9975-49.]

25.04.110 Partnership bound by admission of partner. An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership. [1955 c 15 § 25.04.110. Prior: 1945 c 137 § 11; Rem. Supp. 1945 § 9975-50.]

25.04.120 Partnership charged with knowledge of or notice to partner. Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner. [1955 c 15 § 25.04.120. Prior: 1945 c 137 § 12; Rem. Supp. 1945 § 9975-51.]

25.04.130 Partnership bound by partner's wrongful act. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act. [1955 c 15 § 25.04.130. Prior: 1945 c 137 § 13; Rem. Supp. 1945 § 9975-52.]

25.04.140 Partnership bound by partner's breach of trust. The partnership is bound to make good the loss:

(1) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(2) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership. [1955 c 15 § 25.04.140. Prior: 1945 c 137 § 14; Rem. Supp. 1945 § 9975-53.]

25.04.150 Nature of partner's liability. All partners are liable:

(1) Jointly and severally for everything chargeable to the partnership under RCW 25.04.130 and 25.04.140; and

(2) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract;

(3) Except that:

(a) In no event shall a trustee or personal representative (a fiduciary) acting as a partner have personal liability except as provided in RCW 11.98.110 (2) and (4);

(b) Any such liability under these subsections shall be satisfied first from the partnership assets and second from the trust or estate; and

(c) If a fiduciary is liable, the fiduciary is entitled to indemnification first from the partnership assets and second from the trust or estate. [1985 c 8 § 3. Prior: 1984 c 149 § 172; 1955 c 15 § 25.04.150; prior: 1945 c 137 § 15; Rem. Supp. 1945 § 9975-54.]

Short title—Application—1985 c 30: See RCW 11.02.900 and 11.02.901.

Purpose—Severability—1985 c 8: See notes following RCW 25.04.020.

Severability—Effective date—1984 c 149: See notes following RCW 11.02.005.

25.04.160 Partner by estoppel. (1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has, on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made.

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership.

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership, or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation. [1955 c 15 § 25.04.160. Prior: 1945 c 137 § 16; Rem. Supp. 1945 § 9975-55.]

25.04.170 Liability of incoming partner. A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of the partnership property. [1955 c 15 § 25.04.170. Prior: 1945 c 137 § 17; Rem. Supp. 1945 § 9975-56.]

PART IV

RELATIONS OF PARTNERS TO ONE ANOTHER

25.04.180 Rules determining rights and duties of partners. The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(1) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(2) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(3) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance.

(4) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(5) All partners have equal rights in the management and conduct of the partnership business.

(6) No partner is entitled to remuneration for acting in the partnership business; except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(7) No person can become a member of a partnership without the consent of all the partners.

(8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners. [1955 c 15 § 25.04.180. Prior: 1945 c 137 § 18; Rem. Supp. 1945 § 9975-57.]

25.04.190 Partnership books. The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them. [1955 c 15 § 25.04.190. Prior: 1945 c 137 § 19; Rem. Supp. 1945 § 9975-58.]

25.04.200 Duty of partners to render information. Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability. [1955 c 15 § 25.04.200. Prior: 1945 c 137 § 20; Rem. Supp. 1945 § 9975-59.]

25.04.210 Partner accountable as a fiduciary. (1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner. [1955 c 15 § 25.04.210. Prior: 1945 c 137 § 21; Rem. Supp. 1945 § 9975-60.]

25.04.220 Right to an account. Any partner shall have the right to a formal account as to partnership affairs:

(1) If he is wrongfully excluded from the partnership business or possession of its property by his copartners,

(2) If the right exists under the terms of any agreement,

(3) As provided by RCW 25.04.210,

(4) Whenever other circumstances render it just and reasonable. [1955 c 15 § 25.04.220. Prior: 1945 c 137 § 22; Rem. Supp. 1945 § 9975-61.]

25.04.230 Continuation of partnership beyond fixed term. (1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership. [1955 c 15 § 25.04.230. Prior: 1945 c 137 § 23; Rem. Supp. 1945 § 9975-62.]

PART V PROPERTY RIGHTS OF A PARTNER

25.04.240 Extent of property rights of partner. The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management. [1955 c 15 § 25.04.240. Prior: 1945 c 137 § 24; Rem. Supp. 1945 § 9975-63.]

25.04.250 Nature of a partner's right in specific partnership property. (1) A partner is co-owner with his partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt, the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner, his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to a surviving spouse, heirs, or next of kin. [1973 1st ex.s. c 154 § 25; 1955 c 15 § 25.04.250. Prior: 1945 c 137 § 25; Rem. Supp. 1945 § 9975-64.]

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

25.04.260 Nature of partner's interest in the partnership. A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property. [1955 c 15 § 25.04.260. Prior: 1945 c 137 § 26; Rem. Supp. 1945 § 9975-65.]

25.04.270 Assignment of partner's interest. (1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignees, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners. [1955 c 15 § 25.04.270. Prior: 1945 c 137 § 27; Rem. Supp. 1945 § 9975-66.]

25.04.280 Partner's interest subject to charging order. (1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners, or

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership. [1955 c 15 § 25.04.280. Prior: 1945 c 137 § 28; Rem. Supp. 1945 § 9975-67.]

**PART VI
DISSOLUTION AND WINDING UP**

25.04.290 Dissolution defined. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from winding up of the business. [1955 c 15 § 25.04.290. Prior: 1945 c 137 § 29; Rem. Supp. 1945 § 9975-68.]

25.04.300 Partnership not terminated by dissolution. On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed. [1955 c 15 § 25.04.300. Prior: 1945 c 137 § 30; Rem. Supp. 1945 § 9975-69.]

25.04.310 Causes of dissolution. Dissolution is caused:

(1) Without violation of the agreement between the partners,

(a) By the termination of the definite term or particular undertaking specified in the agreement,

(b) By the express will of any partner when no definite term or particular undertaking is specified,

(c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,

(d) By the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

(4) By the death of any partner;

(5) By the bankruptcy of any partner of the partnership;

(6) By decree of court under RCW 25.04.320. [1955 c 15 § 25.04.310. Prior: 1945 c 137 § 31; Rem. Supp. 1945 § 9975-70.]

25.04.320 Dissolution by decree of court. (1) On application by or for a partner the court shall decree a dissolution whenever:

(a) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,

(b) A partner becomes in any other way incapable of performing his part of the partnership contract,

(c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,

(d) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts

himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,

(e) The business of the partnership can only be carried on at a loss,

(f) Other circumstances render dissolution equitable.

(2) On the application of the purchaser of a partner's interest under RCW 25.04.270 and 25.04.280:

(a) After the termination of the specified term or particular undertaking,

(b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued. [1955 c 15 § 25.04.320. Prior: 1945 c 137 § 32; Rem. Supp. 1945 § 9975-71.]

25.04.330 General effect of dissolution on authority of partner. Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership,

(1) With respect to the partners,

(a) When the dissolution is not by the act, bankruptcy or death of a partner; or

(b) When the dissolution is by such act, bankruptcy or death of a partner, in cases where RCW 25.04.340 so requires.

(2) With respect to persons not partners, as declared in RCW 25.04.350. [1955 c 15 § 25.04.330. Prior: 1945 c 137 § 33; Rem. Supp. 1945 § 9975-72.]

25.04.340 Right of partner to contribution from copartners after dissolution. Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his copartners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

(1) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or

(2) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy. [1955 c 15 § 25.04.340. Prior: 1945 c 137 § 34; Rem. Supp. 1945 § 9975-73.]

25.04.350 Power of partner to bind partnership to third persons after dissolution. (1) After dissolution a partner can bind the partnership except as provided in subsection (3) of this section:

(a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(b) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:

(i) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(ii) Though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of gener-

al circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under subsection (1)(b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

(a) Unknown as a partner to the person with whom the contract is made; and

(b) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution:

(a) Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs; or

(b) Where the partner has become bankrupt; or

(c) Where the partner has no authority to wind up partnership affairs; except by a transaction with one who:

(i) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(ii) Had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in subsection (1)(b)(ii).

(4) Nothing in this section shall affect the liability under RCW 25.04.160 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business. [1955 c 15 § 25.04.350. Prior: 1945 c 137 § 35; Rem. Supp. 1945 § 9975-74.]

25.04.360 Effect of dissolution on partner's existing liability. (1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts. [1955 c 15 § 25.04.360. Prior: 1945 c 137 § 36; Rem. Supp. 1945 § 9975-75.]

25.04.370 Right to wind up. Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, have the right to wind up the partnership affairs: PROVIDED, HOWEVER, That any partner, his

legal representative, or his assignee, upon cause shown, may obtain winding up by the court. [1955 c 15 § 25.04.370. Prior: 1945 c 137 § 37; Rem. Supp. 1945 § 9975-76.]

25.04.380 Rights of partners to application of partnership property. (1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under RCW 25.04.360(2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have,

(i) All the rights specified in subsection (1) of this section, and

(ii) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under subsection (2)(a)(ii) of this section, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

(i) If the business is not continued under the provisions of subsection (2)(b) all the rights of a partner under subsection (1), subject to subsection (2)(a)(ii), of this section,

(ii) If the business is continued under subsection (2)(b) of this section the right as against his copartners and all claiming through them in respect of their interests in the partnership, to have the value of his interests in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good will of the business shall not be considered. [1955 c 15 § 25.04.380. Prior: 1945 c 137 § 38; Rem. Supp. 1945 § 9975-77.]

25.04.390 Rights where partnership is dissolved for fraud or misrepresentation. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation

of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled,

(1) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(2) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities; and

(3) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership. [1955 c 15 § 25.04.390. Prior: 1945 c 137 § 39; Rem. Supp. 1945 § 9975-78.]

25.04.400 Rules for distribution. In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(1) The assets of the partnership are:

(a) The partnership property,

(b) The contributions of the partners necessary for the payment of all the liabilities specified in subsection (2) of this section.

(2) The liabilities of the partnership shall rank in order of payment, as follows:

(a) Those owing to creditors other than partners,

(b) Those owing to partners other than for capital and profits,

(c) Those owing to partners in respect of capital,

(d) Those owing to partners in respect of profits.

(3) The assets shall be applied in the order of their declaration in subdivision (1) of this section to the satisfaction of the liabilities.

(4) The partners shall contribute, as provided by RCW 25.04.180(1) the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(5) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contribution specified in subdivision (4) of this section.

(6) Any partner or his legal representative shall have the right to enforce the contributions specified in subdivision (4) of this section, to the extent of the amount which he has paid in excess of his share of the liability.

(7) The individual property of a deceased partner shall be liable for the contributions specified in subdivision (4) of this section.

(8) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(9) Where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:

(a) Those owing to separate creditors,

(b) Those owing to partnership creditors,

(c) Those owing to partners by way of contribution. [1955 c 15 § 25.04.400. Prior: 1945 c 137 § 40; Rem. Supp. 1945 § 9975-79.]

25.04.410 Liability of persons continuing the business in certain cases. (1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners, or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in subsections (1) and (2) of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of RCW 25.04.380(2)(b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or on account of any

consideration promised for such interest or for his right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership. [1955 c 15 § 25.04.410. Prior: 1945 c 137 § 41; Rem. Supp. 1945 § 9975-80.]

25.04.420 Rights of retiring or estate of deceased partner when business is continued. When any partner retires or dies, and the business is continued under any of the conditions set forth in RCW 25.04.410(1), (2), (3), (5), (6), or RCW 25.04.380(2)(b), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnerships may have the value of his interest at the date of dissolution ascertained, and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership: PROVIDED, That the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section as provided by RCW 25.04.410(8). [1955 c 15 § 25.04.420. Prior: 1945 c 137 § 42; Rem. Supp. 1945 § 9975-81.]

25.04.430 Accrual of actions. The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary. [1955 c 15 § 25.04.430. Prior: 1945 c 137 § 43; Rem. Supp. 1945 § 9975-82.]

LIMITED LIABILITY PARTNERSHIPS

25.04.700 Subchapter application. This subchapter applies to limited liability partnerships. All other provisions of this chapter, not in conflict with this subchapter, also apply. [1995 c 337 § 1.]

Effective date—1995 c 337: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 337 § 23.]

25.04.705 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this subchapter.

(1) "Limited liability partnership" or "partnership" means a partnership formed pursuant to an agreement governed by the laws of this state, registered under RCW 25.04.725.

(2) "Foreign limited liability partnership" means a limited liability partnership formed pursuant to an agreement governed by the laws of another jurisdiction. [1995 c 337 § 2.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.04.710 Registration—Application—Fee—Forms.

(1) To become and to continue as a limited liability partnership, a partnership shall file with the secretary of state an application stating the name of the partnership; the address of its principal office; if the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state which the partnership will be required to maintain; the number of partners; a brief statement of the business in which the partnership engages; any other matters that the partnership determines to include; and that the partnership thereby applies for status as a limited liability partnership.

(2) The application shall be executed by a majority in interest of the partners or by one or more partners authorized to execute an application.

(3) The application shall be accompanied by a fee of one hundred seventy-five dollars for each partnership.

(4) The secretary of state shall register as a limited liability partnership any partnership that submits a completed application with the required fee.

(5) A partnership registered under this section shall pay an annual fee, in each year following the year in which its application is filed, on a date and in an amount specified by the secretary of state. The fee must be accompanied by a notice, on a form provided by the secretary of state, of the number of partners currently in the partnership and of any material changes in the information contained in the partnership's application for registration.

(6) Registration is effective immediately after the date an application is filed, and remains effective until: (a) It is voluntarily withdrawn by filing with the secretary of state a written withdrawal notice executed by a majority in interest of the partners or by one or more partners authorized to execute a withdrawal notice; or (b) thirty days after receipt by the partnership of a notice from the secretary of state, which notice shall be sent by certified mail, return receipt requested, that the partnership has failed to make timely payment of the annual fee specified in subsection (5) of this section, unless the fee is paid within such a thirty-day period.

(7) The status of a partnership as a limited liability partnership, and the liability of the partners thereof, shall not be affected by: (a) Errors in the information stated in an application under subsection (1) of this section or a notice under subsection (5) of this section; or (b) changes after the filing of such an application or notice in the information stated in the application or notice.

(8) The secretary of state may provide forms for the application under subsection (1) of this section or a notice under subsection (5) of this section. [1995 c 337 § 3.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.04.715 Name. The name of a limited liability partnership shall contain the words "limited liability partner-

ship" or the abbreviation "L.L.P." or "LLP" as the last words or letters of its name. [1995 c 337 § 4.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.04.720 Rendering professional services. (1) A person or group of persons licensed or otherwise legally authorized to render professional services, as defined in RCW 18.100.030, within this state may organize and become a member or members of a limited liability partnership under the provisions of this chapter for the purposes of rendering professional service. Nothing in this section prohibits a person duly licensed or otherwise legally authorized to render professional services in any jurisdiction other than this state from becoming a member of a limited liability partnership organized for the purpose of rendering the same professional services. Nothing in this section prohibits a limited liability partnership from rendering professional services outside this state through individuals who are not duly licensed or otherwise legally authorized to render such professional services within this state.

(2)(a) Notwithstanding any other provision of this chapter, health care professionals who are licensed or certified pursuant to chapters 18.06, 18.19, 18.22, 18.25, 18.29, 18.34, 18.35, 18.36A, 18.50, 18.53, 18.55, 18.64, 18.79, 18.83, 18.89, 18.108, and 18.138 RCW may join and render their individual professional services through one limited liability partnership and are to be considered, for the purpose of forming a limited liability partnership, as rendering the "same specific professional services" or "same professional services" or similar terms.

(b) Notwithstanding any other provision of this chapter, health care professionals who are licensed pursuant to chapters 18.57 and 18.71 RCW may join and render their individual professional services through one limited liability partnership and are to be considered, for the purpose of forming a limited liability partnership, as rendering the "same specific professional services" or "same professional services" or similar terms.

(c) Formation of a limited liability partnership under this subsection does not restrict the application of the uniform disciplinary act under chapter 18.130 RCW, or any applicable health care professional statutes under Title 18 RCW, including but not limited to restrictions on persons practicing a health profession without being appropriately credentialed and persons practicing beyond the scope of their credential. [1996 c 231 § 4; 1995 c 337 § 5.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.04.725 Formation under this chapter—Formation under the laws of another jurisdiction—

Intent. (1) A limited liability partnership formed and existing under this chapter, may conduct its business, carry on its operations, and have and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country.

(2) It is the intent of the legislature that the legal existence of a limited liability partnership formed and existing under this chapter be recognized outside the boundaries of this state and that the laws of this state governing a limited liability partnership transacting business outside this state be

granted the protection of full faith and credit under the Constitution of the United States.

(3) The internal affairs of a partnership, including a limited liability partnership formed and existing under this chapter, including the liability of partners for debts, obligations, and liabilities of or chargeable to the partnership, shall be subject to and governed by the laws of this state.

(4) Subject to any statutes for the regulation and control of specific types of business, a foreign limited liability partnership, formed and existing under the laws of another jurisdiction, may do business in this state provided it registers with the secretary of state under this chapter in the same manner as a limited liability partnership.

(5) It is the policy of this state that the internal affairs of a foreign limited liability partnership, including the liability of partners for debts, obligations, and liabilities of or chargeable to partnerships, shall be subject to and governed by the laws of such other jurisdiction. However, a foreign limited liability partnership formed and existing under the laws of another jurisdiction is subject to RCW 25.04.730 if it renders professional services, as defined in RCW 18.100.030, in this state. [1995 c 337 § 6.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.04.730 Nature of partner's liability—Legal proceedings—Financial responsibility for providers of professional services. (1) Except as provided in subsection (2) of this section, all partners are liable:

(a) Jointly and severally for everything chargeable to the partnership under RCW 25.04.130 and 25.04.140; and

(b) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract;

(c) Except that:

(i) In no event shall a trustee or personal representative, a fiduciary, acting as a partner have personal liability except as provided in RCW 11.98.110 (2) and (4);

(ii) Any such liability under this section shall be satisfied first from the partnership assets and second from the trust or estate; and

(iii) If a fiduciary is liable, the fiduciary is entitled to indemnification first from the partnership assets and second from the trust or estate.

(2) Subject to subsections (3) and (5) of this section, a partner in a limited liability partnership is not liable directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise for debts, obligations, and liabilities of or chargeable to the partnership, whether in tort, contract or otherwise, arising from omissions, negligence, wrongful acts, misconduct, or malpractice committed in the course of the partnership business by another partner or an employee, agent, or representative of the partnership.

(3) Subsection (2) of this section shall not affect the liability of a partner in a limited liability partnership for his or her own omissions, negligence, wrongful acts, misconduct, or malpractice or that of any person under his or her direct supervision and control.

(4) A partner in a limited liability partnership is not a proper party to a proceeding by or against a limited liability partnership, the object of which is to recover damages or enforce the obligations arising from omissions, negligence,

wrongful acts, misconduct, or malpractice described in subsection (2) of this section, unless such partner is personally liable under subsection (3) or (5) of this section.

(5) If the partners of a limited liability partnership or foreign limited liability partnership are required to be licensed to provide professional services, as defined in RCW 18.100.030, and the partnership fails to maintain for itself and for its members practicing in this state a policy of professional liability insurance, bond, deposit in trust, bank escrow of cash, bank certificates of deposit, United States Treasury obligations, bank letter of credit, insurance company bond, or other evidence of financial responsibility of a kind designated by rule by the state insurance commissioner and in the amount of at least one million dollars or such greater amount, not to exceed three million dollars, as the state insurance commissioner may establish by rule for a licensed profession or for any specialty within a profession, taking into account the nature and size of the businesses within the profession or specialty, then the partners shall be personally liable to the extent that, had such insurance, bond, deposit in trust, bank escrow of cash, bank certificates of deposit, United States Treasury obligations, bank letter of credit, insurance company bond, or other evidence of responsibility been maintained, it would have covered the liability in question. [1995 c 337 § 7.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.04.735 Rights and duties of the partners. The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(1) Each partner shall be repaid his or her contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and except as provided in RCW 25.04.730(2), each partner must contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his or her share in the profits.

(2) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him or her in the ordinary and proper conduct of its business, or for the preservation of its business or property.

(3) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he or she agreed to contribute, shall be paid interest from the date of the payment or advance.

(4) A partner shall receive interest on the capital contributed by him or her only from the date when repayment should be made.

(5) All partners have equal rights in the management and conduct of the partnership business.

(6) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his or her services in winding up the partnership affairs.

(7) No person can become a member of a partnership without the consent of all the partners.

(8) Any difference arising as to ordinary matters connected with the partnership business may be decided by

a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners. [1995 c 337 § 8.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.04.740 Dissolution—Caused by the act, death, or bankruptcy of a partner—Liability of partners. Where a dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to his or her copartners for his or her share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

(1) The dissolution being by [the] act of any partner, the partner acting for the partnership had knowledge of the dissolution; or

(2) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy; or

(3) The liability is for a debt, obligation, or liability for which the partner is not liable as provided in RCW 25.04.730(2). [1995 c 337 § 9.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.04.745 Dissolution—Discharge of existing liabilities—Property of deceased partner. (1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself or herself, the partnership creditor and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for those obligations of the partnership incurred while he or she was a partner and for which he or she was liable under RCW 25.04.730, but subject to the prior payment of his or her separate debts. [1995 c 337 § 10.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.04.750 Dissolution—Settling accounts—Order of liabilities—Partner's contribution—Deceased partner—Bankrupt partner. In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(1) The assets of the partnership are:

(a) The partnership property;

(b) The contributions of the partners specified in subsection (4) of this section.

(2) The liabilities of the partnership shall rank in order of payment, as follows:

(a) Those owing to creditors other than partners;

(b) Those owing to partners other than for capital and profits;

(c) Those owing to partners in respect of capital;
 (d) Those owing to partners in respect of profits.
 (3) The assets shall be applied in the order of their declaration in subsection (1) of this section to the satisfaction of the liabilities.

(4) Except as provided in RCW 25.04.730(2): (a) The partners shall contribute, as provided by RCW 25.04.735(1) the amount necessary to satisfy the liabilities; and (b) if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(5) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contribution specified in subsection (4) of this section.

(6) Any partner or his or her legal representative shall have the right to enforce the contributions specified in subsection (4) of this section, to the extent of the amount which he or she has paid in excess of his or her share of the liability.

(7) The individual property of a deceased partner shall be liable for the contributions specified in subsection (4) of this section.

(8) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore.

(9) Where a partner has become bankrupt or his or her estate is insolvent the claims against his or her separate property shall rank in the following order:

- (a) Those owing to separate creditors;
- (b) Those owing to partnership creditors;
- (c) Those owing to partners by way of contribution.

[1995 c 337 § 11.]

Effective date—1995 c 337: See note following RCW 25.04.700.

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Reviser's note: Throughout this chapter the phrase "this act" has been changed to "this chapter." "This act" [1981 c 51] consists of this chapter and the repeal of chapters 25.08 and 25.98 RCW.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

Revolving fund of secretary of state, deposit of moneys for costs of carrying out secretary of state's functions under this chapter: RCW 43.07.130.

ARTICLE 1
GENERAL PROVISIONS

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

(1) "Certificate of limited partnership" means the certificate referred to in RCW 25.10.080, and the certificate as amended or restated.

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in RCW 25.10.230.

(4) "Foreign limited partnership" means a partnership formed under laws other than the laws of this state and having as partners one or more general partners and one or more limited partners.

(5) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(7) "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(8) "Partner" means a limited or general partner.

(9) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

(11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(13) "Conforms to law" as used in connection with duties of the secretary of state in reviewing documents for filing under this chapter, means the secretary of state has determined the document complies as to form with the applicable requirements of this chapter.

(14) "Effective date" means, in connection with a document filing made by the secretary of state, the date which is shown by affixing a "filed" stamp on the documents. When a document is received for filing by the secretary of state in a form which complies with the requirements of this chapter and which would entitle the document to be filed immediately upon receipt, but the secretary of state's approval action occurs subsequent to the date of receipt, the secretary of state's filing date shall relate back to the date on which the secretary of state first received the document in acceptable form. An applicant may request a specific effective date no more than thirty days later than the receipt date which might otherwise be applied as the effective date. [1987 c 55 § 1; 1982 c 35 § 177; 1981 c 51 § 1.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

25.10.020 Name. (1) The name of each limited partnership formed pursuant to this chapter as set forth in its certificate of limited partnership:

(a) Shall contain the words "limited partnership" or the abbreviation "L.P.";

(b) May not contain the name of a limited partner unless (i) it is also the name of a general partner, or the corporate name of a corporate general partner, or (ii) the business of

the limited partnership had been carried on under that name before the admission of that limited partner;

(c) May not contain any of the following words or phrases: "Bank", "banking", "banker", "trust", "cooperative"; or any combination of the words "industrial" and "loan"; or any combination of any two or more of the words "building", "savings", "loan", "home", "association" and "society"; or any other words or phrases prohibited by any statute of this state;

(d) Except as authorized by subsections (2) and (3) of this section, must be distinguishable upon the records of the secretary of state from:

(i) The name or reserved name of a foreign or domestic limited partnership;

(ii) The name of any limited liability company reserved, registered, or formed under the laws of this state or qualified to do business as a foreign limited liability company in this state;

(iii) The corporate name of a corporation incorporated or authorized to transact business in this state;

(iv) A corporate name reserved or registered under RCW 23B.04.020 or 23B.04.030;

(v) The fictitious name adopted pursuant to RCW 23B.15.060 by a foreign corporation authorized to transact business in this state because its real name is unavailable; and

(vi) The corporate name of a not-for-profit corporation incorporated or authorized to conduct affairs in this state.

(2) A limited partnership may apply to the secretary of state for authorization to use a name that is not distinguishable upon the records from one or more of the names described in subsection (1) of this section. The secretary of state shall authorize use of the name applied for if:

(a) The other limited partnership, corporation, or holder consents to the use in writing and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited partnership; or

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(3) A limited partnership may use the name, including the fictitious name, of another domestic or foreign limited partnership, limited liability company, or corporation that is used in this state if the other limited partnership, limited liability company, or corporation is organized, incorporated, or authorized to transact business in this state and the proposed user limited partnership:

(a) Has merged with the other limited partnership, limited liability company, or corporation; or

(b) Results from reorganization with the other limited partnership, limited liability company, or corporation.

(4) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in the designation, under subsection (1)(a) of this section, used for the same name;

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(5) This title does not control the use of assumed business names or "trade names." [1996 c 76 § 1; 1994 c 211 § 1309; 1991 c 269 § 1; (1991 c 72 § 47 repealed by 1991 sp.s. c 11 § 2); 1987 c 55 § 2; 1981 c 51 § 2.]

Effective date—Severability—1994 c 211: See RCW 25.15.900 and 25.15.902.

Name of foreign limited partnership: RCW 25.10.510.

25.10.030 Reservation of name. (1) The exclusive right to the use of a name may be reserved by:

(a) Any person intending to organize a limited partnership under this chapter and to adopt that name;

(b) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(c) Any foreign limited partnership intending to register in this state and to adopt that name; and

(d) Any person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.

(2) The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, he or she shall reserve the name for the exclusive use of the applicant for a period of one hundred and eighty days. Such reservation shall be limited to one filing and shall be nonrenewable.

The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee. [1991 c 269 § 2; 1981 c 51 § 3.]

25.10.040 Registered office and agent. (1) Each limited partnership shall continuously maintain in this state an office which may but need not be a place of its business in this state, at which shall be kept the records required by RCW 25.10.050 to be maintained. The office shall be at a specific geographical location in this state and be identified by number, if any, and street or building address or rural route or other geographical address. The office shall not be identified only by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the office address.

(2) Each limited partnership shall continuously maintain in this state an agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state. The agent may, but need not, be located at the office identified in RCW 25.10.040(1). The agent's address shall be at a specific geographical location in this state and be identified by number, if any, and street or building address or rural route or other geographical address. The agent's address shall not be identified only by post office box number or other nongeographic address. For purposes of communicating by

mail, the secretary of state may permit the use of a post office address in conjunction with the agent's geographic address.

(3) A registered agent shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state. The registered agent so appointed by a limited partnership shall be an agent of such limited partnership upon whom any process, notice, or demand required or permitted by law to be served upon the limited partnership may be served. If a limited partnership fails to appoint or maintain a registered agent in this state, or if its registered agent cannot with reasonable diligence be found, then the secretary of state shall be an agent of such limited partnership upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any authorized clerk of the corporation department of the secretary of state's office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause one of the copies thereof to be forwarded by certified mail, addressed to the limited partnership at the office referred to in RCW 25.10.040(1). Any service so had on the secretary of state shall be returnable in no fewer than thirty days.

The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, and shall record therein the time of such service and the secretary of state's action with reference thereto.

Nothing in this section limits or affects the right to serve any process, notice, or demand required or permitted by law to be served upon a limited partnership in any other manner now or hereafter permitted by law.

Any registered agent may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail one copy thereof to the limited partnership. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state. [1987 c 55 § 3; 1981 c 51 § 4.]

25.10.050 Records to be kept. Each limited partnership shall keep at the office referred to in RCW 25.10.040(1) the following:

(1) A current list of the full name and last known address of each partner, specifying separately the general and limited partners;

(2) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(3) Copies of the limited partnership's federal, state, and local tax returns and reports, if any, for the three most recent years;

(4) Copies of any then effective written partnership agreements and of any financial statements of the limited partnership for the three most recent years; and

(5) Unless contained in a written partnership agreement, a written statement of:

(a) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;

(b) The times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(c) Any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution; and

(d) Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.

The books and records are subject to inspection and copying at the reasonable request, and at the expense, of any partner during ordinary business hours. [1987 c 55 § 4; 1981 c 51 § 5.]

25.10.060 Nature of business. A limited partnership may carry on any business that a partnership without limited partners may carry on. [1981 c 51 § 6.]

25.10.070 Business transactions of partner with the partnership. Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner. [1981 c 51 § 7.]

25.10.075 Indemnification of agents of any corporation authorized. See RCW 23B.17.030.

ARTICLE 2 FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP

25.10.080 Certificate of limited partnership. (1) In order to form a limited partnership a certificate of limited partnership must be executed and duplicate originals filed in the office of the secretary of state. The certificate shall set forth:

(a) The name of the limited partnership;

(b) The address of the office for records and the name and address of the agent for service of process appointed pursuant to RCW 25.10.040;

(c) The name and the geographical and mailing addresses of each general partner;

(d) The latest date upon which the limited partnership is to dissolve; and

(e) Any other matters the general partners determine to include therein.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of

the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section. [1987 c 55 § 5; 1981 c 51 § 8.]

25.10.090 Amendment to certificate—Restatement of certificate. (1) A certificate of limited partnership is amended by filing duplicate originals of a certificate of amendment thereto in the office of the secretary of state. The certificate shall set forth:

- (a) The name of the limited partnership;
- (b) The date and place of filing of the original certificate of limited partnership; and
- (c) The amendment to the certificate of limited partnership.

(2) Within thirty days after the happening of any of the following events an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

- (a) The admission of a new general partner;
- (b) The withdrawal of a general partner;
- (c) The continuation of the business under RCW 25.10.440 after an event of withdrawal of a general partner; or

(d) A change in the name of the limited partnership, a change in the office described in RCW 25.10.040(1), a change in the name or address of the agent for service of process, a change in the name or address of any general partner, or a change in the date upon which the limited partnership is to dissolve.

(3) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate, but an amendment to show a change of address of a general partner need be filed only once every twelve months.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(5) No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (2) of this section if the amendment is filed within the thirty-day period specified in subsection (2) of this section.

(6) A certificate of limited partnership is restated by filing duplicate originals of a certificate of restatement in the office of the secretary of state. The certificate shall set forth:

- (a) The name of the limited partnership;
- (b) The date and place of filing of the original certificate; and
- (c) A statement setting forth all operative provisions of the certificate of limited partnership as theretofore amended together with a statement that the restated articles correctly set forth without change the provisions of the certificate of limited partnership as theretofore amended and that the restated certificate supersedes the original certificate and all amendments thereto. [1987 c 55 § 6; 1981 c 51 § 9.]

25.10.100 Cancellation of certificate. (1) Upon the dissolution and completion of winding up of a limited partnership or at any time there are no limited partners, duplicate originals of a certificate of cancellation shall be filed with the secretary of state and set forth:

- (a) The name of the limited partnership;
- (b) The date and place of filing of its original certificate of limited partnership;
- (c) The reason for dissolution;
- (d) The effective date, which shall be a later date certain, of cancellation if it is not to be effective upon the filing of the certificate; and
- (e) Any other information the person filing the certificate determines.

(2) A certificate of limited partnership shall be canceled upon the effective date of a certificate of cancellation.

(3) A certificate of limited partnership for a domestic limited partnership which is not the surviving entity in a merger shall be canceled upon the effective date of the merger. [1991 c 269 § 3; 1987 c 55 § 7; 1981 c 51 § 10.]

25.10.110 Execution of documents. (1) Each document required by this article to be filed in the office of the secretary of state shall be executed in the following manner:

(a) Each original certificate of limited partnership must be signed by all general partners named therein;

(b) A certificate of amendment or restatement must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner;

(c) A certificate of cancellation must be signed by all general partners or the limited partners winding up the partnership pursuant to RCW 25.10.460;

(d) If a surviving domestic limited partnership is filing articles of merger, the articles of merger must be signed by at least one general partner of the domestic limited partnership, or if the articles of merger are being filed by a surviving foreign limited partnership or by a corporation, the articles of merger must be signed by a person authorized by such foreign limited partnership or corporation; and

(e) A foreign limited partnership's application for a certificate of authority must be signed by one of its general partners.

(2) Any person may sign a certificate, articles of merger, or partnership agreement by an attorney-in-fact: PROVIDED, That each document signed in such manner identifies the capacity in which the signator signed.

(3) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and capacity in which the person signs. The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of state.

(4) The execution of a certificate or articles of merger by a partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true. [1991 c 269 § 4; 1987 c 55 § 8; 1981 c 51 § 11.]

25.10.120 Execution of certificate by judicial act. If a person required by RCW 25.10.110 to execute a

certificate fails or refuses to do so, any other person who is adversely affected by the failure or refusal, may petition any court of competent jurisdiction to direct the execution. If the court finds that it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, the court shall order the secretary of state to record an appropriate certificate. [1987 c 55 § 9; 1981 c 51 § 12.]

25.10.130 Filing in office of secretary of state. (1) Two signed copies of the certificate of limited partnership and of any certificates of amendment, restatement, or cancellation (or of any judicial decree of amendment or cancellation) shall be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

- (a) Endorse on each duplicate original the word "Filed" and the effective date of the filing;
- (b) File one duplicate original; and
- (c) Return the other duplicate original to the person who filed it or the person's representative.

(2) Upon the filing of a certificate of amendment or restatement, or judicial decree of amendment, in the office of the secretary of state, the certificate of limited partnership shall be amended or restated as set forth therein, and upon the effective date of a certificate of cancellation or a judicial decree thereof, the certificate of limited partnership is canceled. [1991 c 269 § 5; 1987 c 55 § 10; 1982 c 35 § 178; 1981 c 51 § 13.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

25.10.140 Liability for false statement in certificate. If any certificate of limited partnership or certificate of amendment, restatement, or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) Any person who executes the certificate, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

(2) Any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under RCW 25.10.120. [1991 c 269 § 6; 1987 c 55 § 11; 1981 c 51 § 14.]

25.10.150 Notice. (1) The fact that a certificate of limited partnership is on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated therein as general partners are general partners, but is not notice of any other fact.

(2) A restated certificate of limited partnership shall be notice that the prior certificate of limited partnership and all

amendments thereto are superseded. [1987 c 55 § 12; 1981 c 51 § 15.]

25.10.160 Delivery of certificates to limited partners. Upon the return by the secretary of state pursuant to RCW 25.10.130 of a certificate marked "Filed", the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment, restatement, or cancellation to each limited partner unless the partnership agreement provides otherwise. [1991 c 269 § 7; 1987 c 55 § 13; 1981 c 51 § 16.]

ARTICLE 3
LIMITED PARTNERS

25.10.170 Admission of limited partners. (1) A person becomes a limited partner on the later of:

(a) The date the original certificate of limited partnership is filed; or

(b) The date stated in the records of the limited partnership as the date that person becomes a limited partner.

(2) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

(a) In the case of a person acquiring a partnership interest directly from the limited partnership, upon the compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(b) In the case of an assignee of a partnership interest of a partner who has the power, as provided in RCW 25.10.420, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power. [1987 c 55 § 14; 1981 c 51 § 17.]

25.10.180 Voting. Subject to RCW 25.10.190, the partnership agreement may grant to all or a specified group of the limited partners the right to vote on a per capita or other basis upon any matter. [1981 c 51 § 18.]

25.10.190 Liability to third parties. (1) Except as provided in subsection (4) of this section, a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner or, in addition to the exercise of rights and powers as a limited partner, the limited partner participates in the control of the business. However, if the limited partner participates in the control of the business, the limited partner is liable only to persons who transact business with the limited partnership reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(2) A limited partner does not participate in the control of the business within the meaning of subsection (1) of this section solely by doing one or more of the following:

(a) Being a contractor for or an agent or employee of the limited partnership or of a general partner, or being an officer, director, or shareholder of a general partner that is a corporation;

(b) Consulting with and advising a general partner with respect to the business of the limited partnership;

(c) Acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership or providing collateral for partnership obligations;

(d) Taking any action required or permitted by law to bring or pursue a derivative action in the right of the limited partnership;

(e) Requesting or attending a meeting of partners;

(f) Proposing, approving, or disapproving, by voting or otherwise, on one or more of the following matters:

(i) The dissolution and winding up of the limited partnership;

(ii) The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership;

(iii) The incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) A change in the nature of its business;

(v) The admission or removal of a limited partner;

(vi) The admission or removal of a general partner;

(vii) A transaction involving an actual or potential conflict of interest between a general partner and the limited partnership or the limited partners;

(viii) An amendment to the partnership agreement or certificate of limited partnership; or

(ix) Matters related to the business of the limited partnership not otherwise enumerated in this subsection (2), that the partnership agreement states in writing may be subject to the approval or disapproval of limited partners or a committee of limited partners;

(g) Winding up the limited partnership pursuant to RCW 25.10.460 or conducting the affairs of the limited partnership during any portion of the ninety days referred to in RCW 25.10.440; or

(h) Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection (2).

(3) The enumeration in subsection (2) of this section does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the control of the business of the limited partnership.

(4) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by *RCW 25.10.020(2), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner. [1987 c 55 § 15; 1981 c 51 § 19.]

*Reviser's note: RCW 25.10.020 was amended by 1991 c 269 § 1, changing subsection (2) to subsection (1)(b).

25.10.200 Person erroneously believing that he or she is limited partner. (1) Except as provided in subsection (2) of this section, a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he or she has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, within a reasonable time after ascertaining the mistake, the person:

(a) Causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(b) Withdraws from future equity participation in the enterprise by executing and filing in the office of the secretary of state a certificate or statement declaring withdrawal under this section.

(2) A person who makes a contribution of the kind described in subsection (1) of this section is liable as a general partner to any third party who transacts business with the enterprise (a) before the person withdraws and an appropriate certificate is filed to show withdrawal, or (b) before an appropriate certificate is filed to show that the person is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction. [1987 c 55 § 16; 1983 c 302 § 1; 1981 c 51 § 20.]

25.10.210 Information. Each limited partner or limited partner's agent or attorney has the right to:

(1) Inspect and copy any of the partnership records required to be maintained by RCW 25.10.050; and

(2) Obtain from the general partners from time to time upon reasonable demand (a) true and full information regarding the state of the business and financial condition of the limited partnership, (b) promptly after becoming available, a copy of the limited partnership's federal income tax returns and state business and occupation tax return for each year, and (c) other information regarding the affairs of the limited partnership as is just and reasonable. [1991 c 269 § 10; 1987 c 55 § 17; 1981 c 51 § 21.]

ARTICLE 4 GENERAL PARTNERS

25.10.220 Admission of additional general partners. Unless otherwise provided in the partnership agreement, after the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted only with the specific written consent of each partner. [1981 c 51 § 22.]

25.10.230 Events of withdrawal of general partner. Except as approved by the specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(1) The general partner withdraws from the limited partnership as provided in RCW 25.10.320;

(2) The general partner ceases to be a member of the limited partnership as provided in RCW 25.10.400;

(3) The general partner is removed as a general partner in accordance with the partnership agreement;

(4) Unless otherwise provided in writing in the partnership agreement, the general partner:

(a) Makes an assignment for the benefit of creditors;

(b) Files a voluntary petition in bankruptcy;

(c) Is adjudicated a bankrupt or insolvent;

(d) Files a petition or answer seeking for himself or herself any reorganization, arrangement, composition,

readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(e) Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or her in any proceeding of this nature; or

(f) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his or her properties;

(5) Unless otherwise provided in the certificate of limited partnership, ninety days after the commencement of any proceeding against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within sixty days after the appointment without the general partner's consent or acquiescence of a trustee, receiver, or liquidator of the general partner of all or any substantial part of his or her properties, the appointment is not vacated or stayed, or within sixty days after the expiration of any such stay, the appointment is not vacated;

(6) In the case of a general partner who is a natural person:

(a) His or her death; or

(b) The entry by a court of competent jurisdiction adjudicating the general partner incompetent to manage his or her person or estate;

(7) In the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) In the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) In the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or

(10) In the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership. [1987 c 55 § 18; 1981 c 51 § 23.]

25.10.240 General powers and liabilities of general partner. (1) Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(2) Except as provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the limited partnership and the other partners. Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the limited partnership and to the other partners. [1987 c 55 § 19; 1983 c 302 § 2; 1981 c 51 § 24.]

25.10.250 Contributions by a general partner. A general partner of a limited partnership may make contributions to the limited partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions

as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his or her participation in the partnership as a limited partner. [1987 c 55 § 20; 1981 c 51 § 25.]

25.10.260 Voting. The partnership agreement may grant to all or certain identified general partners the right to vote on a per capita or any other basis, separately or with all or any class of the limited partners, on any matter. [1981 c 51 § 26.]

ARTICLE 5 FINANCE

25.10.270 Form of contribution. The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services. [1981 c 51 § 27.]

Prospective application: RCW 25.10.650.

25.10.280 Liability for contributions. (1) Except as provided in the partnership agreement, a partner is obligated to the limited partnership to perform any promise to contribute cash or property or to perform services, even if the partner is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, the partner is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the partnership agreement or, if not stated in the agreement, in the limited partnership records required to be kept pursuant to RCW 25.10.050(5), of the stated contribution that has not been made.

(2) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit, or whose claim arises, after the entering into of a partnership agreement or an amendment thereto which, in either case, reflects the obligation, and before the amendment or cancellation thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a partner to make a contribution. [1987 c 55 § 21; 1981 c 51 § 28.]

Prospective application: RCW 25.10.650.

25.10.290 Sharing of profits and losses. The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses shall be allocated on the basis of the value, as stated in the partnership agreement or, if not stated therein, in the limited partnership records required to be kept pursuant to RCW

25.10.050(5), of the contributions made by each partner to the extent they have been received by the limited partnership and have not been returned. [1987 c 55 § 22; 1981 c 51 § 29.]

25.10.300 Sharing of distributions. Distributions of cash or other assets of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions shall be made on the basis of the value, as stated in the partnership agreement or, if not stated therein, in the limited partnership records required to be kept pursuant to RCW 25.10.050(5), of the contributions made by each partner to the extent they have been received by the limited partnership and have not been returned. [1987 c 55 § 23; 1981 c 51 § 30.]

ARTICLE 6

DISTRIBUTIONS AND WITHDRAWAL

25.10.310 Interim distributions. Except as provided in this article, a partner is entitled to receive distributions from a limited partnership before the partner's withdrawal from the limited partnership and before the dissolution and winding up thereof to the extent and at the times or upon the happening of the events specified in the partnership agreement. [1987 c 55 § 24; 1982 c 35 § 179; 1981 c 51 § 31.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

25.10.320 Withdrawal of general partner. A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him. [1981 c 51 § 32.]

25.10.330 Withdrawal of limited partner. A limited partner may withdraw from a limited partnership at the time or upon the happening of events specified in and in accordance with the partnership agreement. If the partnership agreement does not specify the time or the events upon the happening of which a limited partner may withdraw, a limited partner may not withdraw prior to the time for the dissolution and winding up of the limited partnership. [1996 c 76 § 2; 1987 c 55 § 25; 1981 c 51 § 33.]

25.10.340 Distribution upon withdrawal. Except as provided in this article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he or she is entitled under the partnership agreement and, if not otherwise provided in the partnership agreement, the partner is entitled to receive, within a reasonable time after withdrawal, the fair value of his or her interest in the limited partnership as of the date of withdrawal based upon his or her right to share in distributions from the limited partnership. [1987 c 55 § 26; 1981 c 51 § 34.]

25.10.350 Distribution in kind. Except as provided in the partnership agreement, a partner, regardless of the nature of his or her contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to the partner exceeds a percentage of that asset which is equal to the percentage in which he or she shares in distributions from the limited partnership. [1987 c 55 § 27; 1981 c 51 § 35.]

25.10.360 Right to distribution. At the time a partner becomes entitled to receive a distribution, he has the status of and is entitled to all remedies available to a creditor of the limited partnership with respect to the distribution. [1981 c 51 § 36.]

25.10.370 Limitations on distributions. (1) A limited partnership shall not make a distribution to a partner to the extent that at the time of the distribution, after giving effect to the distribution, (a) the limited partnership would not be able to pay its debts as they become due in the usual course of business, or (b) all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests and liabilities for which the recourse of creditors is limited to specified property of the limited partnership, exceed the fair value of the assets of the limited partnership, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited partnership only to the extent that the fair value of that property exceeds that liability.

(2)(a) A limited partner who receives a distribution in violation of subsection (1) of this section, and who knew at the time of the distribution that the distribution violated subsection (1) of this section, shall be liable to the limited partnership for the amount of the distribution.

(b) A limited partner who receives a distribution in violation of subsection (1) of this section, and who did not know at the time of the distribution that the distribution violated subsection (1) of this section, shall not be liable for the amount of the distribution. This subsection (2)(b) shall not affect any obligation or liability of a limited partner under a partnership agreement or other applicable law for the amount of a distribution.

(3) A limited partner who receives a distribution from a limited partnership shall have no liability under this chapter for the amount of the distribution after the expiration of three years from the date of the distribution, except to the extent such limited partner shall have agreed in writing to extend liability beyond the expiration of the three-year period. [1991 c 269 § 29; 1987 c 55 § 28; 1981 c 51 § 37.]

ARTICLE 7

ASSIGNMENT OF PARTNERSHIP INTERESTS

25.10.390 Nature of partnership interest. A partnership interest is personal property. [1981 c 51 § 39.]

25.10.400 Assignment of partnership interest—Certificate of partnership interest. (1) Unless otherwise provided in the partnership agreement:

(a) A partnership interest is assignable in whole or in part;

(b) An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights or powers of a partner;

(c) An assignment entitles the assignee to share in such profits and losses, to receive such distribution or distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(d) A partner ceases to be a partner and to have the power to exercise any rights or powers of a partner upon assignment of all of his or her partnership interest.

(2) The partnership agreement may provide that a partner's interest in a limited partnership may be evidenced by a certificate of partnership interest issued by the limited partnership and may also provide for the assignment or transfer of any partnership interest represented by such a certificate and make other provisions with respect to such certificates. [1987 c 55 § 30; 1981 c 51 § 40.]

25.10.410 Rights of creditor. On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest. [1981 c 51 § 41.]

25.10.420 Right of assignee to become limited partner. (1) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (a) the assignor gives the assignee that right in accordance with authority described in the partnership agreement, or (b) all other partners consent.

(2) An assignee who has become a limited partner has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner also is liable for the obligations of his or her assignor to make and return contributions as provided in Articles 5 and 6 of this chapter. However, the assignee is not obligated for liabilities unknown to the assignee at the time he or she became a limited partner.

(3) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his or her liability to the limited partnership under RCW 25.10.140 and 25.10.280. [1987 c 55 § 31; 1981 c 51 § 42.]

Prospective application: RCW 25.10.650.

25.10.430 Power of estate of deceased or incompetent partner. If a partner who is an individual dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all of the partner's rights for the

purpose of settling the partner's estate or administering the partner's property, including any power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor. [1981 c 51 § 43.]

ARTICLE 8 DISSOLUTION

25.10.440 Nonjudicial dissolution. A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) At the date specified in the certificate of limited partnership as amended from time to time, or if no date is specified, at a date which is thirty years after the effective date of filing the original certificate of limited partnership;

(2) Upon the happening of events specified in the partnership agreement;

(3) Written consent of all partners;

(4) An event of withdrawal of a general partner unless at the time there is at least one other general partner and the partnership agreement permits the business of the limited partnership to be carried on by the remaining general partner and that partner does so, but the limited partnership is not dissolved and is not required to be wound up by reason of any event of withdrawal if, within ninety days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more additional general partners if necessary or desired;

(5) Entry of a decree of judicial dissolution under RCW 25.10.450; or

(6) Administrative dissolution under RCW 25.10.455. [1996 c 76 § 3; 1991 c 269 § 30; 1987 c 55 § 32; 1981 c 51 § 44.]

25.10.450 Judicial dissolution. On application by or for a partner, the superior courts may decree dissolution of a limited partnership whenever: (1) It is not reasonably practicable to carry on the business in conformity with the partnership agreement; or (2) when other circumstances render dissolution equitable. [1981 c 51 § 45.]

25.10.453 Administrative dissolution—Commencement of proceeding. The secretary of state may commence a proceeding under RCW 25.10.455 to administratively dissolve a limited partnership if:

(1) An amendment to the certificate of limited partnership required by RCW 25.10.090(2)(c) is not filed when specified by that provision;

(2) The limited partnership is without a registered agent or registered office in this state for sixty days or more; or

(3) The limited partnership does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued. [1991 c 269 § 31.]

25.10.455 Administrative dissolution—Notice—Opportunity to correct deficiencies. (1) If the secretary of

state determines that one or more grounds exist under RCW 25.10.453 for dissolving a limited partnership, the secretary of state shall give the limited partnership written notice of the determination by first class mail, postage prepaid reciting the grounds therefor. Notice shall be sent to the address of the office for records and address of the agent for service of process contained in the certificate having this information which is most recently filed with the secretary of state.

(2) If the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is sent, the limited partnership is thereupon dissolved, the secretary of state shall give the limited partnership written notice of the dissolution that recites the ground or grounds therefor and its effective date.

(3) A limited partnership administratively dissolved continues its limited partnership existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs.

(4) The administrative dissolution of a limited partnership does not terminate the authority of its registered agent. [1991 c 269 § 32.]

25.10.457 Administrative dissolution—Reinstatement—Application—When effective. (1) A limited partnership administratively dissolved under RCW 25.10.455 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must:

(a) Recite the name of the limited partnership and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) State that the limited partnership's name satisfies the requirements of RCW 25.10.020.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the name is available, the secretary of state shall reinstate the limited partnership and give the limited partnership written notice, as provided in RCW 25.10.455(1) of the reinstatement that recites the effective date of reinstatement. If the name is not available, the limited partnership must file with its application for reinstatement an amendment to its certificate of limited partnership reflecting a change of name.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership may resume carrying on its business as if the administrative dissolution had never occurred.

(4) If an application for reinstatement is not made within the two-year period set forth in subsection (1) of this section, or if the application made within this period is not granted, the secretary of state shall cancel the limited partnership's certificate of limited partnership. [1991 c 269 § 33.]

25.10.460 Winding up. Except as provided in the partnership agreement, the general partners who have not wrongfully dissolved a limited partnership or, if none, the

limited partners, may wind up the limited partnership's affairs. The superior courts may wind up the limited partnership's affairs upon application of any partner, that partner's legal representative, or assignee. [1981 c 51 § 46.]

25.10.470 Distribution of assets. Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) To creditors, including partners who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distribution to partners under RCW 25.10.310 or 25.10.340;

(2) Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under RCW 25.10.310 or 25.10.340; and

(3) Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions. [1981 c 51 § 47.]

ARTICLE 9

FOREIGN LIMITED PARTNERSHIPS

25.10.480 Law governing. Subject to the Constitution of the state of Washington, (1) the laws of the state, province, or other jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and (2) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state. [1981 c 51 § 48.]

25.10.490 Registration. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state, in duplicate, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) The name of the foreign limited partnership as set forth in its certificate of limited partnership and, if different, the name under which it proposes to register and transact business in this state;

(2) The state, province, or other jurisdiction under which the foreign limited partnership was organized and the date of its formation;

(3) The name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership appoints pursuant to RCW 25.10.040(2) and (3). The agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in this state;

(4) A statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence;

(5) The address of the office required to be maintained in the state or other jurisdiction of its organization by the

laws of that state or other jurisdiction or, if not so required, of the principal office of the foreign limited partnership;

(6) The name and business address of each general partner;

(7) The addresses of the office at which a list is kept of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled; and

(8) If the foreign limited partnership was organized under laws of a jurisdiction other than another state, a copy of a written partnership agreement, in English language. [1987 c 55 § 33; 1981 c 51 § 49.]

25.10.500 Issuance of registration. (1) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, the secretary shall:

(a) Endorse on the application the word "Filed", and the month, day, and year of the filing thereof;

(b) File in his or her office a duplicate original of the application; and

(c) Issue a certificate of registration to transact business in this state.

(2) The certificate of registration, together with a duplicate original of the application, shall be returned to the person who filed the application or his representative. [1981 c 51 § 50.]

25.10.510 Name—Foreign limited partnership. A foreign limited partnership may register with the secretary of state under any name, whether or not it is the name under which it is registered in its place of organization, that includes the words "limited partnership" or the abbreviation "L.P." and that could be registered by a domestic limited partnership. [1987 c 55 § 34; 1981 c 51 § 51.]

Name of limited partnership: RCW 25.10.020, 25.10.030.

25.10.520 Changes and amendments. If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the general partner of the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting such statement. [1981 c 51 § 52.]

25.10.530 Cancellation of registration. A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transactions of business in this state. [1981 c 51 § 53.]

25.10.540 Transaction of business without registration. (1) A foreign limited partnership transacting business

in this state may not maintain any action, suit, or proceeding in any court of this state until it has registered in this state.

(2) The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this state.

(3) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this state without registration.

(4) Without excluding other activities which may not constitute transacting business in this state, a foreign limited partnership shall not be considered to be transacting business in this state, for the purposes of this title, by reason of carrying on in this state any one or more of the following activities:

(a) Defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(b) Holding meetings of its partners or carrying on other activities concerning its internal affairs.

(c) Maintaining bank accounts.

(d) Maintaining offices or agencies for the transfer, exchange, and registration of its interests, or appointing and maintaining trustees or depositaries with relation to its interests.

(e) Effecting sales through independent contractors.

(f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.

(g) Creating evidences of debt, mortgages, or liens on real or personal property.

(h) Securing or collecting debts or enforcing any rights in property securing the same.

(i) Transacting any business in interstate commerce.

(j) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

(5) A foreign limited partnership, by transacting business in this state without registration, appoints the secretary of state as its agent for service of process with respect to causes of action arising out of the transaction of business in this state. [1981 c 51 § 54.]

25.10.550 Action by secretary of state. The secretary of state may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of this article. [1981 c 51 § 55.]

25.10.553 Revocation of registration—Commencement of proceeding. The secretary of state may commence a proceeding under *section 45 of this act to revoke registration of a foreign limited partnership authorized to transact business in this state if:

(1) The foreign limited partnership is without a registered agent or registered office in this state for sixty days or more;

(2) The foreign limited partnership does not inform the secretary of state under RCW 25.10.520 that its registered

agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;

(3) A general partner or other agent of the foreign limited partnership signed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(4) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of partnership records in the jurisdiction under which the foreign limited partnership was organized stating that the foreign limited partnership has been dissolved or its limited partnership certificate canceled. [1991 c 269 § 43.]

***Reviser's note:** The reference to section 45 of this act is incorrect. Section 44 of the act, codified as RCW 25.10.555, was apparently intended.

25.10.555 Revocation of registration—Notice—Opportunity to correct deficiencies. (1) If the secretary of state determines that one or more grounds exist under RCW 25.10.553 for revocation of a foreign limited partnership's registration, the secretary of state shall give the foreign limited partnership written notice of the determination by first class mail, postage prepaid, stating in the notice the ground or grounds for and effective date of the secretary of state's determination, which date shall not be earlier than the date on which the notice is mailed.

(2) If the foreign limited partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is effective, the secretary of state shall revoke the foreign limited partnership's registration by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and mail a copy to the foreign limited partnership.

(3) Documents to be mailed by the secretary of state to a foreign limited partnership for which provision is made in this section shall be sent to the foreign limited partnership at the address of the agent for service of process contained in the application or certificate of this partnership which is most recently filed with the secretary of state.

(4) The authority of a foreign limited partnership to transact business in this state ceases on the date shown on the certificate revoking its registration.

(5) The secretary of state's revocation of a foreign limited partnership's registration appoints the secretary of state the foreign limited partnership's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign limited partnership was authorized to transact business in this state.

(6) Revocation of a foreign limited partnership's registration does not terminate the authority of the registered agent of the foreign limited partnership. [1991 c 269 § 44.]

ARTICLE 10 DERIVATIVE ACTIONS

25.10.560 Right of action. A limited partner may bring an action in the right of a limited partnership to

recover a judgment in its favor if general partners with authority to do so have refused to bring the action or if an effort to cause those general partners to bring the action is not likely to succeed. [1981 c 51 § 56.]

25.10.570 Proper plaintiff. In a derivative action, the plaintiff must be a partner at the time of bringing the action and (1) at the time of the transaction of which he complains or (2) his status as a partner had devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction. [1981 c 51 § 57.]

25.10.580 Pleading. In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort. [1981 c 51 § 58.]

25.10.590 Expenses. If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited partnership the remainder of those proceeds received by him. [1981 c 51 § 59.]

ARTICLE 11 FEES AND CHARGES

25.10.600 Establishment of filing fees and miscellaneous charges. The secretary of state shall adopt rules establishing fees which shall be charged and collected for:

- (1) Filing of a certificate of limited partnership for a domestic or foreign limited partnership;
- (2) Filing of a certificate of cancellation for a domestic or foreign limited partnership;
- (3) Filing of a certificate of amendment or restatement for a domestic or foreign limited partnership;
- (4) Filing an application to reserve or transfer a limited partnership name;
- (5) Filing any other statement or report authorized or permitted to be filed;
- (6) Copies, certified copies, certificates, service of process filings, and expedited filings or other special services.

In the establishment of a fee schedule, the secretary of state shall, insofar as is possible and reasonable, be guided by the fee schedule provided for corporations registering pursuant to Title 23B RCW. Fees for copies, certified copies, certificates of record, and service of process filings shall be as provided for in RCW 23B.01.220.

All fees collected by the secretary of state shall be deposited with the state treasurer pursuant to law. [1991 c 269 § 12; 1991 c 72 § 48; 1987 c 55 § 35; 1981 c 51 § 60.]

Reviser's note: This section was amended by 1991 c 72 § 48 and by 1991 c 269 § 12, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

25.10.605 Fees for services by secretary of state.
See RCW 43.07.120.

ARTICLE 12
MISCELLANEOUS

25.10.610 Authority to adopt rules. The secretary of state shall adopt such rules as are necessary to implement the transfer of duties and records required by this chapter including rules providing for the transfer of existing certificates from the counties to the secretary. [1981 c 51 § 61.]

25.10.620 Construction and application. This chapter shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1981 c 51 § 62.]

25.10.630 Short title. This chapter may be cited as the Washington uniform limited partnership act. [1981 c 51 § 63.]

25.10.640 Severability. If any provision of *this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable. [1981 c 51 § 64.]

*Reviser's note: "this act," see note following chapter digest.

25.10.650 Effective date and extended effective date. Except as set forth below, the effective date of this act is January 1, 1982:

(1) The existing provisions for execution and filing of certificates of limited partnerships and amendments thereunder and cancellations thereof continue in effect until October 1, 1982, the extended effective date, and sections 2, 3, 4, 5, 8, 9, 10, 11, and 13 of this act are not effective until the extended effective dates.

(2) Section 23 of this act, specifying the conditions under which a general partner ceases to be a member of a limited partnership, is not effective until the extended effective date, and the applicable provisions of existing law continue to govern until the extended effective date.

(3) Sections 27, 28, and 38 of this act apply only to contributions and distributions made after the effective date of this act.

(4) Section 42 of this act applies only to assignment made after the effective date of this act.

(5) Article 9 of this act, dealing with registration of foreign limited partnerships, is not effective until the extended effective date. [1981 c 51 § 65.]

Reviser's note: (1) "sections 2, 3, 4, 5; 8, 9, 10, 11, and 13 of this act" are codified as RCW 25.10.020, 25.10.030, 25.10.040, 25.10.050, 25.10.080, 25.10.090, 25.10.100, 25.10.110, and 25.10.130.

(2) "Section 23 of this act" is codified as RCW 25.10.230.

(3) "Sections 27, 28, and 38 of this act" are codified as RCW 25.10.270, 25.10.280, and 25.10.380.

(4) "Section 42 of this act" is codified as RCW 25.10.420.

(5) "Article 9 of this act" is codified as RCW 25.10.480, 25.10.490, 25.10.500, 25.10.510, 25.10.520, 25.10.530, 25.10.540, and 25.10.550.

(1996 Ed.)

25.10.660 Rules for class not provided for in this chapter. In any case not provided for in this chapter, the provisions of the uniform partnership act govern. [1981 c 51 § 66.]

Uniform partnership act: Chapter 25.04 RCW.

25.10.670 Application to existing partnerships. (1) Except as provided in subsections (1) and (2) of this section, the provisions of this title shall apply to all existing limited partnerships formed after June 6, 1945, under any prior statute of this state providing for the formation of limited partnerships, except to the extent provisions of this title are inconsistent with provisions of the certificate or partnership agreement of such existing limited partnerships, which partnership provisions were applicable to such limited partnerships as of January 1, 1982, and which partnership provisions would have been valid under any such applicable prior statutes. Insofar as the provisions of this title are substantially the same as statutory provisions repealed by this title and relate to the same subject matter, such provisions shall be construed as restatements and continuations, and not as new enactments. Neither the enactment of this title nor the amendment of this title nor the repeal of the prior title shall take away or impair any liability or cause of action existing or accrued by or against any limited partnership or its partners.

(2) On or before September 30, 1982, each county clerk shall transmit all files, records, indexes, and other documents maintained in the county clerk's office, pursuant to prior statutes requiring limited partnership filings at the office of county clerk, to the office of the secretary of state.

(3) Upon receipt of the limited partnership records from the county clerks, the secretary of state shall thereafter treat such county filings as a filing with the secretary of state. The secretary of state shall establish by September 30, 1982, a filing and record system for integration of the records received from the county clerks and to accomplish the purposes of this chapter relating to centralized filing. [1981 c 51 § 67.]

25.10.680 Effect of invalidity of part of this title. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this title, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this title, but the effect thereof shall be confined to the clause, sentence, paragraph, section, or part of this title so adjudged to be invalid or unconstitutional. [1981 c 51 § 68.]

25.10.690 Section captions. Section captions as used in this chapter do not constitute any part of the law. [1981 c 51 § 71.]

ARTICLE 13
MERGERS

25.10.800 Merger—Plan—Effective date. (1) One or more domestic limited partnerships may merge with one or more domestic limited partnerships or domestic corpora-

tions pursuant to a plan of merger approved or adopted as provided in RCW 25.10.810.

(2) The plan of merger must set forth:

(a) The name of each limited partnership and corporation planning to merge and the name of the surviving limited partnership or corporation into which the other limited partnership or corporation plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the partnership interests of each limited partnership and the shares of each corporation party to the merger into the partnership interests, shares, obligations, or other securities of the surviving or any other limited partnership or corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) Amendments to the certificate of limited partnership of the surviving limited partnership;

(b) Amendments to the articles of incorporation of the surviving corporation; and

(c) Other provisions relating to the merger.

(4) If the plan of merger does not specify a delayed effective date, it shall become effective upon the filing of articles of merger. If the plan of merger specifies a delayed effective time and date, the plan of merger becomes effective at the time and date specified. If the plan of merger specifies a delayed effective date but no time is specified, the plan of merger is effective at the close of business on that date. A delayed effective date for a plan of merger may not be later than the ninetieth day after the date it is filed. [1991 c 269 § 11.]

25.10.810 Merger—Plan—Approval. (1) Unless otherwise provided in its partnership agreement, approval of a plan of merger by a domestic limited partnership party to a merger shall occur when the plan is approved (a) by all general partners of such limited partnership, and (b) by the limited partners or, if there is more than one class of limited partners, then by each class or group of limited partners of such limited partnership, in either case, by limited partners who own more than fifty percent of the then current percentage or other interest in the profits of such limited partnership owned by all limited partners or by the limited partners in each class or group, as appropriate.

(2) If a domestic corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in chapter 23B.11 RCW. [1991 c 269 § 13.]

25.10.820 Articles of merger—Filing. After a plan of merger is approved or adopted, the surviving limited partnership or corporation shall deliver to the secretary of state for filing articles of merger setting forth:

(1) The plan of merger;

(2) If the approval of any partners or shareholders of one or more limited partnerships or corporations party to the merger was not required, a statement to that effect; or

(3) If the approval of any partners or shareholders of one or more of the limited partnerships or corporations party to the merger was required, a statement that the merger was duly approved by such partners and shareholders pursuant to RCW 25.10.810 or chapter 23B.11 RCW. [1991 c 269 § 14.]

25.10.830 Effect of merger. (1) When a merger takes effect:

(a) Every other limited partnership or corporation that is party to the merger merges into the surviving limited partnership or corporation and the separate existence of every limited partnership and corporation except the surviving limited partnership or corporation ceases;

(b) The title to all real estate and other property owned by each limited partnership and corporation party to the merger is vested in the surviving limited partnership or corporation without reversion or impairment;

(c) The surviving limited partnership or corporation has all liabilities of each limited partnership and corporation that is party to the merger;

(d) A proceeding pending against any limited partnership or corporation that is party to the merger may be continued as if the merger did not occur or the surviving limited partnership or corporation may be substituted in the proceeding for the limited partnership or corporation whose existence ceased;

(e) The partnership agreement of the surviving limited partnership is amended to the extent provided in the plan of merger;

(f) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(g) The former holders of the partnership interests of every domestic limited partnership that is party to the merger and the former holders of the shares of every domestic corporation that is party to the merger are entitled only to the rights provided in the articles of merger or to their rights under RCW 25.10.900 through 25.10.955 or to the rights under chapter 23B.13 RCW.

(2) Unless otherwise agreed, a merger of a domestic limited partnership, including a domestic limited partnership which is not the surviving entity in the merger, shall not require the domestic limited partnership to wind up its affairs under RCW 25.10.460 or pay its liabilities and distribute its assets under RCW 25.10.470. [1991 c 269 § 15.]

25.10.840 Merger—Foreign and domestic. (1) One or more foreign limited partnerships and one or more foreign corporations may merge with one or more domestic limited partnerships or domestic corporations if:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited partnership was organized, and each foreign corporation was incorporated, and each foreign limited partnership and foreign corporation complies with that law in effecting the merger;

(b) The surviving entity complies with RCW 25.10.820;

(c) Each domestic limited partnership complies with RCW 25.10.810; and

(d) Each domestic corporation complies with RCW 23B.11.080.

(2) Upon the merger taking effect, a surviving foreign limited partnership or corporation is deemed to appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting partners or shareholders of each domestic limited partnership or domestic corporation party to the merger. [1991 c 269 § 16.]

ARTICLE 14
DISSENTERS' RIGHTS

25.10.900 Definitions. As used in this article:

(1) "Limited partnership" means the domestic limited partnership in which the dissenter holds or held a partnership interest, or the surviving limited partnership or corporation by merger, whether foreign or domestic, of that limited partnership.

(2) "Dissenter" means a partner who is entitled to dissent from a plan of merger and who exercises that right when and in the manner required by this article.

(3) "Fair value," with respect to a dissenter's partnership interest, means the value of the partnership interest immediately before the effectuation of the merger to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the merger unless exclusion would be inequitable.

(4) "Interest" means interest from the effective date of the merger until the date of payment, at the average rate currently paid by the limited partnership on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances. [1991 c 269 § 17.]

25.10.905 Partner—Dissent—Payment of fair value.

(1) Except as provided in RCW 25.10.915 or 25.10.925(2), a partner of a domestic limited partnership is entitled to dissent from, and obtain payment of, the fair value of the partner's partnership interest in the event of consummation of a plan of merger to which the limited partnership is a party as permitted by RCW 25.10.800 or 25.10.840.

(2) A partner entitled to dissent and obtain payment for the partner's partnership interest under this article may not challenge the merger creating the partner's entitlement unless the merger fails to comply with the procedural requirements imposed by this title, Title 23B RCW, the partnership agreement, or is fraudulent with respect to the partner or the limited partnership.

(3) The right of a dissenting partner to obtain payment of the fair value of the partner's partnership interest shall terminate upon the occurrence of any one of the following events:

- (a) The proposed merger is abandoned or rescinded;
- (b) A court having jurisdiction permanently enjoins or sets aside the merger; or
- (c) The partner's demand for payment is withdrawn with the written consent of the limited partnership. [1991 c 269 § 18.]

25.10.910 Dissenters' rights—Notice—Timing. (1)

Not less than ten days prior to the approval of a plan of merger, the limited partnership must send a written notice to all partners who are entitled to vote on or approve the plan of merger that they may be entitled to assert dissenters' rights under this article. Such notice shall be accompanied by a copy of this article.

(2) The limited partnership shall notify in writing all partners not entitled to vote on or approve the plan of merger that the plan of merger was approved, and send them the dissenters' notice as required by RCW 25.10.920. [1991 c 269 § 19.]

25.10.915 Partner—Dissent—Voting restriction. A partner who is entitled to vote on or approve the plan of merger and who wishes to assert dissenters' rights must not vote in favor of or approve the plan of merger. A partner who does not satisfy the requirements of this section is not entitled to payment for the partner's interest under this article. [1991 c 269 § 20.]

25.10.920 Partners—Dissenters' notice—Requirements. (1) If the plan of merger is approved, the limited partnership shall deliver a written dissenters' notice to all partners who satisfied the requirements of RCW 25.10.915.

(2) The dissenters' notice required by RCW 25.10.910(2) or by subsection (1) of this section must be sent within ten days after the approval of the plan of merger, and must:

- (a) State where the payment demand must be sent;
- (b) Inform holders of the partnership interest as to the extent transfer of the partnership interest will be restricted as permitted by RCW 25.10.930 after the payment demand is received;
- (c) Supply a form for demanding payment;
- (d) Set a date by which the limited partnership must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice under this section is delivered; and
- (e) Be accompanied by a copy of this article. [1991 c 269 § 21.]

25.10.925 Partner—Payment demand—Entitlement.

(1) A partner who demands payment retains all other rights of a partner until the proposed merger becomes effective.

(2) A partner sent a dissenters' notice who does not demand payment by the date set in the dissenters' notice is not entitled to payment for the partner's partnership interest under this article. [1991 c 269 § 22.]

25.10.930 Partnership interests—Transfer restrictions. The limited partnership may restrict the transfer of partnership interests from the date the demand for their payment is received until the proposed merger becomes effective or the restriction is released under this article. [1991 c 269 § 23.]

25.10.935 Payment of fair value—Requirements for compliance. (1) Within thirty days of the later of the date the proposed merger becomes effective, or the payment demand is received, the limited partnership shall pay each dissenter who complied with RCW 25.10.925 the amount the limited partnership estimates to be the fair value of the partnership interest, plus accrued interest.

- (2) The payment must be accompanied by:
 - (a) Copies of the financial statements for the most recent fiscal year maintained as required by RCW 25.10.050;
 - (b) An explanation of how the limited partnership estimated the fair value of the partnership interest;
 - (c) An explanation of how the accrued interest was calculated;
 - (d) A statement of the dissenter's right to demand payment; and

(e) A copy of this article. [1991 c 269 § 24.]

25.10.940 Merger—Not effective within sixty days—Transfer restrictions. (1) If the proposed merger does not become effective within sixty days after the date set for demanding payment, the limited partnership shall release any transfer restrictions imposed as permitted by RCW 25.10.930.

(2) If, after releasing transfer restrictions, the proposed merger becomes effective, the limited partnership must send a new dissenters' notice as provided in RCW 25.10.910(2) and 25.10.920 and repeat the payment demand procedure. [1991 c 269 § 25.]

25.10.945 Dissenter's estimate of fair value—Notice.

(1) A dissenter may notify the limited partnership in writing of the dissenter's own estimate of the fair value of the dissenter's partnership interest and amount of interest due, and demand payment of the dissenter's estimate, less any payment under RCW 25.10.935, if:

(a) The dissenter believes that the amount paid is less than the fair value of the dissenter's partnership interest or that the interest due is incorrectly calculated;

(b) The limited partnership fails to make payment within sixty days after the date set for demanding payment; or

(c) The limited partnership, having failed to effectuate the proposed merger, does not release the transfer restrictions imposed on partnership interests as permitted by RCW 25.10.930 within sixty days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless the dissenter notifies the limited partnership of the dissenter's demand in writing under subsection (1) of this section within thirty days after the limited partnership made payment for the dissenter's partnership interest. [1991 c 269 § 26.]

25.10.950 Unsettled demand for payment—Proceeding—Parties—Appraisers. (1) If a demand for payment under RCW 25.10.945 remains unsettled, the limited partnership shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the partnership interest and accrued interest. If the limited partnership does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The limited partnership shall commence the proceeding in the superior court. If the limited partnership is a domestic limited partnership, it shall commence the proceeding in the county where its office is maintained as required by RCW 25.10.040(1). If the limited partnership is a domestic corporation, it shall commence the proceeding in the county where its principal office, as defined in *RCW 23B.01.400(17), is located, or if none is in this state, its registered office under RCW 23B.05.010. If the limited partnership is a foreign limited partnership or corporation without a registered office in this state, it shall commence the proceeding in the county in this state where the office of the domestic limited partnership maintained pursuant to

RCW 25.10.040(1) merged with the foreign limited partnership or foreign corporation was located.

(3) The limited partnership shall make all dissenters (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their partnership interests and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The limited partnership may join as a party to the proceeding any partner who claims to be a dissenter but who has not, in the opinion of the limited partnership, complied with the provisions of this chapter. If the court determines that such partner has not complied with the provisions of this article, the partner shall be dismissed as a party.

(5) The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decisions on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(6) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of the dissenter's partnership interest, plus interest, exceeds the amount paid by the limited partnership. [1991 c 269 § 27.]

*Reviser's note: RCW 23B.01.400(17) was renumbered as RCW 23B.01.400(19) by 1991 c 269 § 35.

25.10.955 Unsettled demand for payment—Costs—Fees and expenses of counsel. (1) The court in a proceeding commenced under RCW 25.10.950 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited partnership, except that the court may assess the costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the limited partnership and in favor of any or all dissenters if the court finds the limited partnership did not substantially comply with the requirements of this article; or

(b) Against either the limited partnership or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the limited partnership, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited. [1991 c 269 § 28.]

Chapter 25.12

LIMITED PARTNERSHIPS EXISTING PRIOR TO JUNE 6, 1945

Sections

- 25.12.005 Application of chapter.
- 25.12.010 Limited partnership may be formed.
- 25.12.020 Of whom composed—Liability of members.
- 25.12.030 Certificate to be made, acknowledged and filed.
- 25.12.040 Certificate of partnership—Publication.
- 25.12.050 Renewal of limited partnership.
- 25.12.060 Name of firm—When special partner liable as general partner.
- 25.12.070 Withdrawal of stock and profits—Effect.
- 25.12.080 Suits by and against limited partnership—Parties.
- 25.12.090 Dissolution, how accomplished.
- 25.12.100 Liabilities and rights of members of firm.

25.12.005 Application of chapter. The provisions of this chapter shall apply only to those limited partnerships which were in existence on or prior to June 6, 1945 and which have not become a limited partnership under *chapter 25.08 RCW. [1955 c 15 § 25.12.005.]

*Reviser's note: Chapter 25.08 RCW was repealed in its entirety by 1981 c 51 § 72; later enactment, see chapter 25.10 RCW.

25.12.010 Limited partnership may be formed. Limited partnerships for the transaction of mercantile, mechanical, or manufacturing business may be formed within this state, by two or more persons, upon the terms and subject to the conditions contained in this chapter. [1955 c 15 § 25.12.010. Prior: 1869 p 380 § 1; RRS § 9966.]

25.12.020 Of whom composed—Liability of members. A limited partnership may consist of two or more persons, who are known and called general partners, and are jointly liable as general partners now are by law, and of two or more persons who shall contribute to the common stock a specific sum in actual money as capital, and are known and called special partners, and are not personally liable for any of the debts of the partnership, except as in this chapter specially provided. [1955 c 15 § 25.12.020. Prior: 1927 c 106 § 1; 1869 p 380 § 2; RRS § 9967.]

25.12.030 Certificate to be made, acknowledged and filed. The persons forming such partnership shall make and severally subscribe a certificate, in duplicate, and file one of such certificates with the county auditor of the county in which the principal place of business of the partnership is to be. Before being filed, the execution of such certificate shall be acknowledged by each partner subscribing it before some officer authorized to take acknowledgments of deeds; and such certificate shall contain the name assumed by the partnership and under which its business is to be conducted, the names and respective places of residence of all the general and special partners, the amount of capital which each special partner has contributed to the common stock, the general nature of the business to be transacted, and the time when the partnership is to commence, and when it is to terminate. [1955 c 15 § 25.12.030. Prior: 1869 p 380 § 3; RRS § 9968.]

25.12.040 Certificate of partnership—Publication. The partnership cannot commence before the filing of the certificate of partnership, and if a false statement is made in the certificate, all the persons subscribing thereto are liable as general partners for all the debts of the partnership. The partners shall, for four consecutive weeks immediately after the filing of the certificate of partnership, publish a copy of it in some newspaper of general circulation in the county where the principal place of business of the partnership is, and until the publication is made and completed, the partnership is to be deemed general. [1985 c 469 § 12; 1955 c 15 § 25.12.040. Prior: 1869 p 380 § 4; RRS § 9969.]

25.12.050 Renewal of limited partnership. A limited partnership may be continued or renewed by making, acknowledging, filing, and publishing a certificate thereof, in the manner provided in this chapter for the formation of such partnership originally, and every such partnership, not renewed or continued as herein provided, from and after the expiration thereof according to the original certificate, shall be a general partnership. [1955 c 15 § 25.12.050. Prior: 1869 p 381 § 5; RRS § 9970.]

25.12.060 Name of firm—When special partner liable as general partner. The business of the partnership may be conducted under a name in which the names of the general partners only shall be inserted, without the addition of the word "company" or any other general term. If the name of any special partner is used in such firm with his consent or privity, he shall be deemed and treated as a general partner, or if he personally makes any contract respecting the concerns of the partnership with any person except the general partners, he shall be deemed and treated as a general partner in relation to such contract, unless he makes it appear that in making such contract he acted and was recognized as a special partner only. [1955 c 15 § 25.12.060. Prior: 1869 p 381 § 6; RRS § 9971.]

25.12.070 Withdrawal of stock and profits—Effect. During the continuance of any partnership formed under this chapter no part of the capital stock thereof shall be withdrawn, nor any division of interests or profits be made, so as to reduce such capital stock below the sum stated in the certificate of partnership before mentioned; and if at any time during the continuance or at the termination of such partnership, the property or assets thereof are not sufficient to satisfy the partnership debts then the special partners shall be severally liable for all sums or amounts by them in any way received or withdrawn from such capital stock, with interest thereon from the time they were so received or withdrawn respectively. [1955 c 15 § 25.12.070. Prior: 1869 p 381 § 7; RRS § 9972.]

25.12.080 Suits by and against limited partnership—Parties. All actions, suits or proceedings respecting the business of such partnership shall be prosecuted by and against the general partners only, except in those cases where special partners or partnerships are to be deemed general partners or partnerships, in which case all the partners deemed general partners may join therein; and excepting also those cases where special partners are severally liable on

account of sums or amounts received or withdrawn from the capital stock as provided in RCW 25.12.070. [1955 c 15 § 25.12.080. Prior: 1869 p 381 § 8; RRS § 9973.]

25.12.090 Dissolution, how accomplished. No dissolution of a limited partnership shall take place except by operation of law, before the time specified in the certificate of partnership, unless a notice of such dissolution, subscribed by the general and special partners is filed with the original certificate of partnership or the certificate, if any, renewing or continuing such partnership nor unless a copy of such notice be published for the time and in the manner prescribed for the publication of the certificate of partnership. [1955 c 15 § 25.12.090. Prior: 1869 p 382 § 9; RRS § 9974.]

25.12.100 Liabilities and rights of members of firm. In all cases not otherwise provided for in this chapter, all the members of limited partnerships shall be subject to all the liabilities and entitled to all the rights of general partners. [1955 c 15 § 25.12.100. Prior: 1869 p 382 § 10; RRS § 9975.]

Chapter 25.15

LIMITED LIABILITY COMPANIES

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Limited liability partnerships: Chapter 25.04 RCW.

ARTICLE I. GENERAL PROVISIONS

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

(1) "Certificate of formation" means the certificate referred to in RCW 25.15.070, and the certificate as amended.

(2) "Event of dissociation" means an event that causes a person to cease to be a member as provided in RCW 25.15.130.

(3) "Foreign limited liability company" means an entity that is formed under:

(a) The limited liability company laws of any state other than this state; or

(b) The laws of any foreign country that is: (A)[(i)] An unincorporated association, (B)[(ii)] formed under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity, and (C)[(iii)] not required, in order to transact business or conduct affairs in this state, to be registered or qualified under Title 23B or 24 RCW, or any other chapter of the Revised Code of Washington authorizing the formation of a domestic entity and the registration or qualification in this state of similar entities formed under the laws of a jurisdiction other than this state.

(4) "Limited liability company" and "domestic limited liability company" means a limited liability company organized and existing under this chapter.

(5) "Limited liability company agreement" means any written agreement as to the affairs of a limited liability company and the conduct of its business which is binding upon all of the members.

(6) "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.

(7) "Manager" or "managers" means, with respect to a limited liability company that has set forth in its certificate of formation that it is to be managed by managers, the person, or persons designated in accordance with RCW 25.15.150(2).

(8) "Member" means a person who has been admitted to a limited liability company as a member as provided in RCW 25.15.115 and who has not been dissociated from the limited liability company.

(9) "Person" means a natural person, partnership (whether general or limited and whether domestic or foreign), limited liability company, foreign limited liability company, trust, estate, association, corporation, custodian, nominee, or any other individual or entity in its own or any representative capacity.

(10) "Professional limited liability company" means a limited liability company which is organized for the purpose of rendering professional service and whose certificate of formation sets forth that it is a professional limited liability company subject to RCW 25.15.045.

(11) "Professional service" means the same as defined under RCW 18.100.030.

(12) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States other than the state of Washington. [1995 c 337 § 13; 1994 c 211 § 101.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.15.010 Name set forth in certificate of formation.

(1) The name of each limited liability company as set forth in its certificate of formation:

(a) Must contain the words "Limited Liability Company," the words "Limited Liability" and abbreviation "Co.," or the abbreviation "L.L.C." or "LLC";

(b) Except as provided in subsection (1)(d) of this section, may contain the name of a member or manager;

(c) Must not contain language stating or implying that the limited liability company is organized for a purpose other than those permitted by RCW 25.15.030;

(d) Must not contain any of the words or phrases: "Bank," "banking," "banker," "trust," "cooperative," "partnership," "corporation," "incorporated," or the abbreviations "corp.," "ltd.," or "inc.," or "L.P.," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(e) Must be distinguishable upon the records of the secretary of state from the names described in RCW 23B.04.010(1)(d) and 25.10.020(1)(d), and the names of any limited liability company reserved, registered, or formed under the laws of this state or qualified to do business as a foreign limited liability company in this state.

(2) A limited liability company may apply to the secretary of state for authorization to use any name which is not distinguishable upon the records of the secretary of state from one or more of the names described in subsection (1)(e) of this section. The secretary of state shall authorize use of the name applied for if the other corporation, limited partnership, or limited liability company consents in writing to the use and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited liability company.

(3) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

- (a) A variation in the designation, under subsection (1)(a) of this section, used for the same name;
- (b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;
- (c) Punctuation, capitalization, or special characters or symbols in the same name; or
- (d) Use of abbreviation or the plural form of a word in the same name.

(4) This chapter does not control the use of assumed business names or "trade names." [1996 c 231 § 5; 1994 c 211 § 102.]

25.15.015 Reserved name—Registered name. (1) Reserved Name.

(a) A person may reserve the exclusive use of a limited liability company name by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the limited liability company name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred eighty-day period.

(b) The owner of a reserved limited liability company name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

(2) Registered Name.

(a) A foreign limited liability company may register its name if the name is distinguishable upon the records of the secretary of state from the names specified in RCW 25.15.010(1)(e).

(b) A foreign limited liability company registers its name by delivering to the secretary of state for filing an application that:

- (i) Sets forth its name and the state or country and date of its organization; and
- (ii) Is accompanied by a certificate of existence, or a document of similar import, from the state or country of organization.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application and until the close of the calendar year in which the application for registration is filed.

(d) A foreign limited liability company whose registration is effective may renew it for successive years by delivering to the secretary of state for filing a renewal application, which complies with the requirements of (b) of this subsection, between October 1st and December 31st of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(e) A foreign limited liability company whose registration is effective may thereafter qualify as a foreign limited liability company under the registered name, or consent in writing to the use of that name by a limited liability company thereafter organized under this chapter, by a corporation thereafter formed under Title 23B RCW, by a limited partnership thereafter formed under chapter 25.10 RCW, or by another foreign limited liability company, foreign corpo-

ration, or foreign limited partnership thereafter authorized to transact business in this state. The registration terminates when the domestic limited liability company is organized, the domestic corporation is incorporated, or the domestic limited partnership is formed, or the foreign limited liability company qualifies or consents to the qualification of another foreign limited liability company, corporation, or limited partnership under the registered name. [1994 c 211 § 103.]

25.15.020 Registered office—Registered agent. (1) Each limited liability company shall continuously maintain in this state:

(a) A registered office, which may but need not be a place of its business in this state. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in the same city as the registered office in conjunction with the registered office address if the limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent for service of process on the limited liability company, which agent may be either an individual resident of this state whose business office is identical with the limited liability company's registered office, or a domestic corporation, limited partnership, or limited liability company, or a foreign corporation, limited partnership, or limited liability company authorized to do business in this state having a business office identical with such registered office; and

(c) A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent.

(2) A limited liability company may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

- (a) The name of the limited liability company;
- (b) If the current registered office is to be changed, the street address of the new registered office in accord with subsection (1) of this section;
- (c) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and
- (d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(3) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any limited liability company for which the agent is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and

delivering to the secretary of state for filing a statement that complies with the requirements of subsection (2) of this section and recites that the limited liability company has been notified of the change.

(4) A registered agent may resign as agent by signing and delivering to the secretary of state for filing a statement that the registered office is also discontinued. After filing the statement the secretary of state shall mail a copy of the statement to the limited liability company at its principal office. The agency appointment is terminated, and the registered office discontinued is so provided, on the thirty-first day after the date on which the statement was filed. [1996 c 231 § 6; 1994 c 211 § 104.]

25.15.025 Service of process on domestic limited liability companies. (1) A limited liability company's registered agent is its agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company.

(2) The secretary of state shall be an agent of a limited liability company upon whom any such process, notice, or demand may be served if:

(a) The limited liability company fails to appoint or maintain a registered agent in this state; or

(b) The registered agent cannot with reasonable diligence be found at the registered office.

(3) Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the secretary of state's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the limited liability company at its principal place of business as it appears on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.

(4) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, and shall record therein the time of such service and the secretary of state's action with reference thereto.

(5) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law. [1994 c 211 § 105.]

25.15.030 Nature of business permitted—Powers. (1) Every limited liability company formed under this chapter may carry on any lawful business or activity unless a more limited purpose is set forth in the certificate of formation. A limited liability company may not be formed under this chapter for the purposes of banking or engaging in business as an insurer.

(2) Unless this chapter, its certificate of formation, or its limited liability company agreement provides otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs. [1994 c 211 § 106.]

25.15.035 Business transactions of member or manager with the limited liability company. Except as provided in a limited liability company agreement, a member or manager may lend money to, act as a surety, guarantor, or endorser for, guarantee or assume one or more specific obligations of, provide collateral for, and transact other business with a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a member or manager. [1994 c 211 § 107.]

25.15.040 Limitation of liability and indemnification. (1) The limited liability company agreement may contain provisions not inconsistent with law that:

(a) Eliminate or limit the personal liability of a member or manager to the limited liability company or its members for monetary damages for conduct as a member or manager, provided that such provisions shall not eliminate or limit the liability of a member or manager for acts or omissions that involve intentional misconduct or a knowing violation of law by a member or manager, for conduct of the member or manager, violating RCW 25.15.235, or for any transaction from which the member or manager will personally receive a benefit in money, property, or services to which the member or manager is not legally entitled; or

(b) Indemnify any member or manager from and against any judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which an individual is a party because he or she is, or was, a member or a manager, provided that no such indemnity shall indemnify a member or a manager from or on account of acts or omissions of the member or manager finally adjudged to be intentional misconduct or a knowing violation of law by the member or manager, conduct of the member or manager adjudged to be in violation of RCW 25.15.235, or any transaction with respect to which it was finally adjudged that such member or manager received a benefit in money, property, or services to which such member or manager was not legally entitled.

(2) To the extent that, at law or in equity, a member or manager has duties (including fiduciary duties) and liabilities relating thereto to a limited liability company or to another member or manager (a) any such member or manager acting under a limited liability company agreement shall not be liable to the limited liability company or to any such other member or manager for the member's or manager's good faith reliance on the provisions of the limited liability company agreement, and (b) the member's or manager's duties and liabilities may be expanded or restricted by provisions in a limited liability company agreement. [1994 c 211 § 108.]

25.15.045 Professional limited liability companies. (1) A person or group of persons licensed or otherwise legally authorized to render professional services within this state may organize and become a member or members of a professional limited liability company under the provisions of this chapter for the purposes of rendering professional service. A "professional limited liability company" is subject to all the provisions of chapter 18.100 RCW that apply to a professional corporation, and its managers, members, agents,

and employees shall be subject to all the provisions of chapter 18.100 RCW that apply to the directors, officers, shareholders, agents, or employees of a professional corporation, except as provided otherwise in this section. Nothing in this section prohibits a person duly licensed or otherwise legally authorized to render professional services in any jurisdiction other than this state from becoming a member of a professional limited liability company organized for the purpose of rendering the same professional services. Nothing in this section prohibits a professional limited liability company from rendering professional services outside this state through individuals who are not duly licensed or otherwise legally authorized to render such professional services within this state. Notwithstanding RCW 18.100.065, persons engaged in a profession and otherwise meeting the requirements of this chapter may operate under this chapter as a professional limited liability company so long as each member personally engaged in the practice of the profession in this state is duly licensed or otherwise legally authorized to practice the profession in this state and:

(a) At least one manager of the company is duly licensed or otherwise legally authorized to practice the profession in this state; or

(b) Each member in charge of an office of the company in this state is duly licensed or otherwise legally authorized to practice the profession in this state.

(2) If the company's members are required to be licensed to practice such profession, and the company fails to maintain for itself and for its members practicing in this state a policy of professional liability insurance, bond, or other evidence of financial responsibility of a kind designated by rule by the state insurance commissioner and in the amount of at least one million dollars or a greater amount as the state insurance commissioner may establish by rule for a licensed profession or for any specialty within a profession, taking into account the nature and size of the business, then the company's members are personally liable to the extent that, had the insurance, bond, or other evidence of responsibility been maintained, it would have covered the liability in question.

(3) For purposes of applying the provisions of chapter 18.100 RCW to a professional limited liability company, the terms "director" or "officer" means manager, "shareholder" means member, "corporation" means professional limited liability company, "articles of incorporation" means certificate of formation, "shares" or "capital stock" means a limited liability company interest, "incorporator" means the person who executes the certificate of formation, and "bylaws" means the limited liability company agreement.

(4) The name of a professional limited liability company must contain either the words "Professional Limited Liability Company," or the words "Professional Limited Liability" and the abbreviation "Co.," or the abbreviation "P.L.L.C." or "PLLC" provided that the name of a professional limited liability company organized to render dental services shall contain the full names or surnames of all members and no other word than "chartered" or the words "professional services" or the abbreviation "P.L.L.C." or "PLLC."

(5) Subject to the provisions in article VII of this chapter, the following may be a member of a professional limited liability company and may be the transferee of the

interest of an ineligible person or deceased member of the professional limited liability company:

(a) A professional corporation, if its shareholders, directors, and its officers other than the secretary and the treasurer, are licensed or otherwise legally authorized to render the same specific professional services as the professional limited liability company; and

(b) Another professional limited liability company, if the managers and members of both professional limited liability companies are licensed or otherwise legally authorized to render the same specific professional services.

(6)(a) Notwithstanding any other provision of this chapter, health care professionals who are licensed or certified pursuant to chapters 18.06, 18.19, 18.22, 18.25, 18.29, 18.34, 18.35, 18.36A, 18.50, 18.53, 18.55, 18.64, 18.79, 18.83, 18.89, 18.108, and 18.138 RCW may own membership interests in and render their individual professional services through one limited liability company and are to be considered, for the purpose of forming a limited liability company, as rendering the "same specific professional services" or "same professional services" or similar terms.

(b) Notwithstanding any other provision of this chapter, health care professionals who are licensed pursuant to chapters 18.57 and 18.71 RCW may own membership interests in and render their individual professional services through one limited liability company and are to be considered, for the purpose of forming a limited liability company, as rendering the "same specific professional services" or "same professional services" or similar terms.

(c) Formation of a limited liability company under this subsection does not restrict the application of the uniform disciplinary act under chapter 18.130 RCW, or any applicable health care professional statutes under Title 18 RCW, including but not limited to restrictions on persons practicing a health profession without being appropriately credentialed and persons practicing beyond the scope of their credential. [1996 c 231 § 7; 1996 c 22 § 2; 1995 c 337 § 14; 1994 c 211 § 109.]

Reviser's note: This section was amended by 1996 c 22 § 2 and by 1996 c 231 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1995 c 337: See note following RCW 25.04.700.

25.15.050 Member agreements. In addition to agreeing among themselves with respect to the provisions of this chapter, the members of a limited liability company or professional limited liability company may agree among themselves to any otherwise lawful provision governing the company which is not in conflict with this chapter. Such agreements include, but are not limited to, buy-sell agreements among the members and agreements relating to expulsion of members. [1994 c 211 § 110.]

25.15.055 Membership residency. Nothing in this chapter requires a limited liability company or a professional limited liability company to restrict membership to persons residing in or engaging in business in this state. [1994 c 211 § 111.]

25.15.060 Piercing the veil. Members of a limited liability company shall be personally liable for any act, debt, obligation, or liability of the limited liability company to the extent that shareholders of a Washington business corporation would be liable in analogous circumstances. In this regard, the court may consider the factors and policies set forth in established case law with regard to piercing the corporate veil, except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that the members have personal liability for any act, debt, obligation, or liability of the limited liability company if the certificate of formation and limited liability company agreement do not expressly require the holding of meetings of members or managers. [1995 c 337 § 15; 1994 c 211 § 112.]

Effective date—1995 c 337: See note following RCW 25.04.700.

ARTICLE II. FORMATION: CERTIFICATE OF FORMATION, AMENDMENT, FILING AND EXECUTION

25.15.070 Certificate of formation. (1) In order to form a limited liability company, one or more persons must execute a certificate of formation. The certificate of formation shall be filed in the office of the secretary of state and set forth:

- (a) The name of the limited liability company;
- (b) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by RCW 25.15.020;
- (c) The address of the principal place of business of the limited liability company;
- (d) If the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve;
- (e) If management of the limited liability company is vested in a manager or managers, a statement to that effect;
- (f) Any other matters the members decide to include therein; and
- (g) The name and address of each person executing the certificate of formation.

(2) Effect of filing:

(a) Unless a delayed effective date is specified, a limited liability company is formed when its certificate of formation is filed by the secretary of state. A delayed effective date for a certificate of formation may be no later than the ninetieth day after the date it is filed.

(b) The secretary of state's filing of the certificate of formation is conclusive proof that the persons executing the certificate satisfied all conditions precedent to the formation except in a proceeding by the state to cancel the certificate.

(c) A limited liability company formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the limited liability company's certificate of formation. [1994 c 211 § 201.]

25.15.075 Amendment to certificate of formation.

(1) A certificate of formation is amended by filing a certi-

cate of amendment thereto with the secretary of state. The certificate of amendment shall set forth:

- (a) The name of the limited liability company; and
- (b) The amendment to the certificate of formation.

(2) A manager or, if there is no manager, then any member who becomes aware that any statement in a certificate of formation was false when made, or that any matter described has changed making the certificate of formation false in any material respect, shall promptly amend the certificate of formation.

(3) A certificate of formation may be amended at any time for any other proper purpose.

(4) Unless otherwise provided in this chapter or unless a later effective date (which shall be a date not later than the ninetieth day after the date it is filed) is provided for in the certificate of amendment, a certificate of amendment shall be effective when filed by the secretary of state. [1994 c 211 § 202.]

25.15.080 Cancellation of certificate. A certificate of formation shall be canceled upon the effective date of the certificate of cancellation, or as provided in RCW 25.15.290, or upon the filing of articles of merger if the limited liability company is not the surviving or resulting entity in a merger. A certificate of cancellation shall be filed in the office of the secretary of state to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company and shall set forth:

- (1) The name of the limited liability company;
- (2) The date of filing of its certificate of formation;
- (3) The reason for filing the certificate of cancellation;
- (4) The future effective date (which shall be a date not later than the ninetieth day after the date it is filed) of cancellation if it is not to be effective upon the filing of the certificate; and
- (5) Any other information the person filing the certificate of cancellation determines. [1994 c 211 § 203.]

25.15.085 Execution. (1) Each document required by this chapter to be filed in the office of the secretary of state shall be executed in the following manner:

- (a) Each original certificate of formation must be signed by the person or persons forming the limited liability company;
- (b) A reservation of name may be signed by any person;
- (c) A transfer of reservation of name must be signed by, or on behalf of, the applicant for the reserved name;
- (d) A registration of name must be signed by any member or manager of the foreign limited liability company;
- (e) A certificate of amendment or restatement must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members;

(f) A certificate of cancellation must be signed by the person or persons authorized to wind up the limited liability company's affairs pursuant to RCW 25.15.295(1);

(g) If a surviving domestic limited liability company is filing articles of merger, the articles of merger must be signed by at least one manager, or by a member if management of the limited liability company is reserved to the members, or if the articles of merger are being filed by a

surviving foreign limited liability company, limited partnership, or corporation, the articles of merger must be signed by a person authorized by such foreign limited liability company, limited partnership, or corporation; and

(h) A foreign limited liability company's application for registration as a foreign limited liability company doing business within the state must be signed by any member or manager of the foreign limited liability company.

(2) Any person may sign a certificate, articles of merger, limited liability company agreement, or other document by an attorney-in-fact or other person acting in a valid representative capacity, so long as each document signed in such manner identifies the capacity in which the signator signed.

(3) The person executing the document shall sign it and state beneath or opposite the signature the name of the person and capacity in which the person signs. The document must be typewritten or printed, and must meet such legibility or other standards as may be prescribed by the secretary of state.

(4) The execution of a certificate or articles of merger by any person constitutes an affirmation under the penalties of perjury that the facts stated therein are true. [1995 c 337 § 16; 1994 c 211 § 204.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.15.090 Execution, amendment, or cancellation by judicial order. (1) If a person required to execute a certificate required by this chapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the superior courts to direct the execution of the certificate. If the court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate.

(2) If a person required to execute a limited liability company agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the superior courts to direct the execution of the limited liability company agreement or amendment thereof. If the court finds that the limited liability company agreement or amendment thereof should be executed and that any person required to execute the limited liability company agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief. [1994 c 211 § 205.]

25.15.095 Filing. (1) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or conformed copy, of the certificate of formation or any other document required to be filed pursuant to this chapter shall be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter, he or she shall, when all required filing fees have been paid:

(a) Endorse on each signed original and duplicate copy the word "filed" and the date of its acceptance for filing;

(b) Retain the signed original in the secretary of state's files; and

(c) Return the duplicate copy to the person who filed it or the person's representative.

(2) If the secretary of state is unable to make the determination required for filing by subsection (1) of this section at the time any documents are delivered for filing, the documents are deemed to have been filed at the time of delivery if the secretary of state subsequently determines that:

(a) The documents as delivered conform to the filing provisions of this chapter; or

(b) Within twenty days after notification of nonconformance is given by the secretary of state to the person who delivered the documents for filing or the person's representative, the documents are brought into conformance.

(3) If the filing and determination requirements of this chapter are not satisfied completely within the time prescribed in subsection (2)(b) of this section, the documents shall not be filed.

(4) Upon the filing of a certificate of amendment (or judicial decree of amendment) or restated certificate in the office of the secretary of state, or upon the future effective date or time of a certificate of amendment (or judicial decree thereof) or restated certificate, as provided for therein, the certificate of formation shall be amended or restated as set forth therein. Upon the filing of a certificate of cancellation (or a judicial decree thereof), or articles of merger which act as a certificate of cancellation, or upon the future effective date or time of a certificate of cancellation (or a judicial decree thereof) or of articles of merger which act as a certificate of cancellation, as provided for therein, or as specified in RCW 25.15.290, the certificate of formation is canceled. [1994 c 211 § 206.]

25.15.100 Restated certificate. (1) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative as a result of there having theretofore been filed with the secretary of state one or more certificates or other instruments pursuant to any of the sections referred to in this chapter and it may at the same time also further amend its certificate of formation by adopting a restated certificate of formation.

(2) If a restated certificate of formation merely restates and integrates but does not amend the initial certificate of formation, as theretofore amended or supplemented by any instrument that was executed and filed pursuant to any of the sections in this chapter, it shall be specifically designated in its heading as a "Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least one manager, or by a member if management of the limited liability company is reserved to its members, and filed as provided in RCW 25.15.095 in the office of the secretary of state. If a restated certificate restates and integrates and also amends in any respect the certificate of formation, as theretofore amended or supplemented, it shall be specifically designated in its heading as an "Amended and Restated Certificate of Formation" together with such other words as the limited liability company may deem appropriate and shall be executed by at least one manager, or by a member if management of the limited liability company is reserved to

its members, and filed as provided in RCW 25.15.095 in the office of the secretary of state.

(3) A restated certificate of formation shall state, either in its heading or in an introductory paragraph, the limited liability company's present name, and, if it has been changed, the name under which it was originally filed, and the date of filing of its original certificate of formation with the secretary of state, and the future effective date (which shall be a date not later than the ninetieth day after the date it is filed) of the restated certificate if it is not to be effective upon the filing of the restated certificate. A restated certificate shall also state that it was duly executed and is being filed in accordance with this section. If a restated certificate only restates and integrates and does not further amend a limited liability company's certificate of formation as theretofore amended or supplemented and there is no discrepancy between those provisions and the restated certificate, it shall state that fact as well.

(4) Upon the filing of a restated certificate of formation with the secretary of state, or upon the future effective date or time of a restated certificate of formation as provided for therein, the initial certificate of formation, as theretofore amended or supplemented, shall be superseded; thenceforth, the restated certificate of formation, including any further amendment or changes made thereby, shall be the certificate of formation of the limited liability company, but the original effective date of formation shall remain unchanged.

(5) Any amendment or change effected in connection with the restatement and integration of the certificate of formation shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change. [1994 c 211 § 207.]

25.15.105 Initial and annual reports. (1) Each domestic limited liability company, and each foreign limited liability company authorized to transact business in this state, shall deliver to the secretary of state for filing, both initial and annual reports that set forth:

(a) The name of the company and the state or country under whose law it is organized;

(b) The street address of its registered office and the name of its registered agent at that office in this state;

(c) In the case of a foreign company, the address of its principal office in the state or country under the laws of which it is organized;

(d) The address of the principal place of business of the company in this state;

(e) The names and addresses of the company's members, or if the management of the company is vested in a manager or managers, then the name and address of its manager or managers; and

(f) A brief description of the nature of its business.

(2) Information in an initial report or an annual report must be current as of the date the report is executed on behalf of the company.

(3) A company's initial report must be delivered to the secretary of state within one hundred twenty days of the date on which a domestic company's certificate of formation was filed, or on which a foreign company's application for registration was submitted. Subsequent annual reports must

be delivered to the secretary of state on a date determined by the secretary of state, and at such additional times as the company elects. [1994 c 211 § 208.]

ARTICLE III. MEMBERS

25.15.115 Admission of members. (1) In connection with the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of:

(a) The formation of the limited liability company; or

(b) The time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, when the person's admission is reflected in the records of the limited liability company.

(2) After the formation of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:

(a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company; or

(b) In the case of an assignee of a limited liability company interest who meets the conditions for membership set forth in RCW 25.15.260(1), at the time provided in and upon compliance with the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, when any such assignee's admission as a member is reflected in the records of the limited liability company. [1994 c 211 § 301.]

25.15.120 Voting and classes of membership. (1) Except as provided in this chapter, or in the limited liability company agreement, and subject to subsection (2) of this section, the affirmative vote, approval, or consent of members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to RCW 25.15.135) of the contributions made, or required to be made, by all members shall be necessary for actions requiring member approval.

(2) Except as provided in the limited liability company agreement, the affirmative vote, approval, or consent of all members shall be required to:

(a) Amend the limited liability company agreement; or

(b) Authorize a manager, member, or other person to do any act on behalf of the limited liability company that contravenes the limited liability company agreement, including any provision thereof which expressly limits the purpose, business, or affairs of the limited liability company or the conduct thereof.

(3) A limited liability company agreement may provide for classes or groups of members having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future

creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(4) A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. If the limited liability company agreement so provides, voting by members may be on a per capita, number, profit share, class, group, or any other basis.

(5) A limited liability company agreement which contains provisions related to voting rights of members may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote. [1994 c 211 § 302.]

25.15.125 Liability of members and managers to third parties. (1) Except as otherwise provided by this chapter, the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations, and liabilities of the limited liability company; and no member or manager of a limited liability company shall be obligated personally for any such debt, obligation, or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.

(2) A member or manager of a limited liability company is personally liable for his or her own torts. [1994 c 211 § 303.]

25.15.130 Events of dissociation. (1) A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(a) The member dies or withdraws by voluntary act from the limited liability company as provided in subsection (3) of this section;

(b) The member ceases to be a member as provided in RCW 25.15.250(2)(b) following an assignment of all the member's limited liability company interest;

(c) The member is removed as a member in accordance with the limited liability company agreement;

(d) Unless otherwise provided in the limited liability company agreement, or with the written consent of all other members at the time, the member (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) becomes the subject of an order

for relief in bankruptcy proceedings; (iv) files a petition or answer seeking for himself or herself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him or her in any proceeding of the nature described in (d) (i) through (iv) of this subsection; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties;

(e) Unless otherwise provided in the limited liability company agreement, or with the consent of all other members at the time, one hundred twenty days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without his or her consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within ninety days after the expiration of any stay, the appointment is not vacated;

(f) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member who is an individual, the entry of an order by a court of competent jurisdiction adjudicating the member incapacitated, as used and defined under chapter 11.88 RCW, as to his or her estate;

(g) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is another limited liability company, the dissolution and commencement of winding up of such limited liability company;

(h) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the administrative dissolution of the corporation and the lapse of any period authorized for application for reinstatement; or

(i) Unless otherwise provided in the limited liability company agreement, or with written consent of all other members at the time, in the case of a member that is a limited partnership, the dissolution and commencement of winding up of such limited partnership.

(2) The limited liability company agreement may provide for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

(3) A member may withdraw from a limited liability company at the time or upon the happening of events specified in and in accordance with the limited liability company agreement. If the limited liability company agreement does not specify the time or the events upon the happening of which a member may withdraw, a member may not withdraw prior to the time for the dissolution and commencement of winding up of the limited liability company, without the written consent of all other members at the time. [1995 c 337 § 17; 1994 c 211 § 304.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.15.135 Records and information. (1) A limited liability company shall keep at its principal place of business the following:

(a) A current and a past list, setting forth the full name and last known mailing address of each member and manager, if any;

(b) A copy of its certificate of formation and all amendments thereto;

(c) A copy of its current limited liability company agreement and all amendments thereto, and a copy of any prior agreements no longer in effect;

(d) Unless contained in its certificate of formation or limited liability company agreement, a written statement of:

(i) The amount of cash and a description of the agreed value of the other property or services contributed by each member (including that member's predecessors in interest), and which each member has agreed to contribute;

(ii) The times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made; and

(iii) Any right of any member to receive distributions which include a return of all or any part of the member's contribution.

(e) A copy of the limited liability company's federal, state, and local tax returns and reports, if any, for the three most recent years; and

(f) A copy of any financial statements of the limited liability company for the three most recent years.

(2) The records required by subsection (1) of this section to be kept by a limited liability company are subject to inspection and copying at the reasonable request, and at the expense, of any member during ordinary business hours. A member's agent or attorney has the same inspection and copying rights as the member.

(3) Each manager shall have the right to examine all of the information described in subsection (1) of this section for a purpose reasonably related to his or her position as a manager.

(4) A limited liability company may maintain its records in other than a written form if such form is capable of conversion into written form within a reasonable time.

(5) Any action to enforce any right arising under this section shall be brought in the superior courts. [1994 c 211 § 305.]

25.15.140 Remedies for breach of limited liability company agreement by member. A limited liability company agreement may provide that (1) a member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences, and (2) at the time or upon the happening of events specified in the limited liability company agreement, a member shall be subject to specified penalties or specified consequences. [1994 c 211 § 306.]

ARTICLE IV. MANAGEMENT AND MANAGERS

25.15.150 Management. (1) Unless the certificate of formation vests management of the limited liability company in a manager or managers: (a) Management of the business or affairs of the limited liability company shall be vested in the members; and (b) each member is an agent of the limited liability company for the purpose of its business and the act of any member for apparently carrying on in the usual way the business of the limited liability company binds the limited liability company unless the member so acting has in fact no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority. Subject to any provisions in the limited liability company agreement or this chapter restricting or enlarging the management rights and duties of any person or group or class of persons, the members shall have the right and authority to manage the affairs of the limited liability company and to make all decisions with respect thereto.

(2) If the certificate of formation vests management of the limited liability company in one or more managers, then such persons shall have such power to manage the business or affairs of the limited liability company as is provided in the limited liability company agreement. Unless otherwise provided in the limited liability company agreement, such persons:

(a) Shall be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to RCW 25.15.135) of the contributions made, or required to be made, by all members at the time of such action;

(b) Need not be members of the limited liability company or natural persons; and

(c) Unless they have been earlier removed or have earlier resigned, shall hold office until their successors shall have been elected and qualified.

(3) If the certificate of formation vests management of the limited liability company in a manager or managers, no member, acting solely in the capacity as a member, is an agent of the limited liability company. [1996 c 231 § 8; 1994 c 211 § 401.]

Application—1996 c 231 § 8: "Section 8, chapter 231, Laws of 1996 does not apply to a limited liability company formed prior to June 6, 1996, unless the certificate of formation of the limited liability company is amended after June 6, 1996, to provide that the limited liability company has perpetual duration." [1996 c 231 § 13.]

25.15.155 Liability of managers and members. Unless otherwise provided in the limited liability company agreement:

(1) A member or manager shall not be liable, responsible, or accountable in damages or otherwise to the limited liability company or to the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless such act or omission constitutes gross negligence, intentional misconduct, or a knowing violation of law.

(2) Every member and manager must account to the limited liability company and hold as trustee for it any profit

or benefit derived by him or her without the consent of a majority of the disinterested managers or members, or other persons participating in the management of the business or affairs of the limited liability company from (a) any transaction connected with the conduct or winding up of the limited liability company or (b) any use by him or her of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to him or her as a result of his or her status as manager or member. [1994 c 211 § 402.]

25.15.160 Manager—Members' rights and duties.

A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and, except as provided in a limited liability company agreement, also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of his or her participation in the limited liability company as a member. [1994 c 211 § 403.]

25.15.165 Voting and classes of managers. (1)

Unless the limited liability company agreement provides otherwise, the affirmative vote, approval, or consent of more than one-half by number of the managers shall be required to decide any matter connected with the business and affairs of the limited liability company.

(2) A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of managers. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(3) A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. If the limited liability company agreement so provides, voting by managers may be on a financial interest, class, group, or any other basis.

(4) A limited liability company agreement which contains provisions related to voting rights of managers may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote. [1994 c 211 § 404.]

25.15.170 Remedies for breach of limited liability company agreement by manager. A limited liability company agreement may provide that (1) a manager who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement shall be subject to specified penalties or specified consequences, and (2) at the time or upon the happening of events specified in the limited liability company agreement, a manager shall be subject to specified penalties or specified consequences. [1994 c 211 § 405.]

25.15.175 Reliance on reports and information by member or manager.

In discharging the duties of a manager or a member, a member or manager of a limited liability company is entitled to rely in good faith upon the records of the limited liability company and upon such information, opinions, reports, or statements presented to the limited liability company by any of its other managers, members, officers, employees, or committees of the limited liability company, or by any other person, as to matters the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid. [1994 c 211 § 406.]

25.15.180 Resignation of manager. A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. A limited liability company agreement may provide that a manager shall not have the right to resign as a manager of a limited liability company. Notwithstanding that a limited liability company agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the members and other managers. If the resignation of a manager violates a limited liability company agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the limited liability company agreement and offset the damages against the amount otherwise distributable to the resigning manager. [1994 c 211 § 407.]

ARTICLE V. FINANCE

25.15.190 Form of contribution. The contribution of a member to a limited liability company may be made in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services. [1994 c 211 § 501.]

25.15.195 Liability for contribution. (1) Except as provided in a limited liability company agreement, a member

is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to RCW 25.15.135) of the contribution that has not been made. This option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the limited liability company agreement or applicable law.

(2) Unless otherwise provided in a limited liability company agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit, after either the certificate of formation, limited liability company agreement or an amendment thereto, or records required to be kept under RCW 25.15.135 reflect the obligation, and before the amendment of any thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

(3) A limited liability company agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the member's limited liability company interest to that of nondefaulting members, a forced sale of the member's limited liability company interest, forfeiture of the member's limited liability company interest, the lending by other members of the amount necessary to meet the member's commitment, a fixing of the value of the member's limited liability company interest by appraisal or by formula and redemption or sale of the member's limited liability company interest at such value, or other penalty or consequence. [1994 c 211 § 502.]

25.15.200 Allocation of profits and losses. The profits and losses of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, profits and losses shall be allocated in proportion to the agreed value (as stated in the records of the limited liability company required to be kept

pursuant to RCW 25.15.135) of the contributions made, or required to be made, by each member. [1994 c 211 § 503.]

25.15.205 Allocation of distributions. Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, distributions shall be made in proportion to the agreed value (as stated in the records of the limited liability company required to be kept pursuant to RCW 25.15.135) of the contributions made, or required to be made, by each member. [1994 c 211 § 504.]

ARTICLE VI. DISTRIBUTIONS AND RESIGNATION

25.15.215 Interim distributions. Except as provided in this article, to the extent and at the times or upon the happening of the events specified in a limited liability company agreement, a member is entitled to receive from a limited liability company distributions before the member's dissociation from the limited liability company and before the dissolution and winding up thereof. [1994 c 211 § 601.]

25.15.220 Distribution on event of dissociation. Unless otherwise provided in the limited liability company agreement, upon the occurrence of an event of dissociation under RCW 25.15.130 which does not cause dissolution (other than an event of dissociation specified in RCW 25.15.130(1)(b) where the dissociating member's assignee is admitted as a member), a dissociating member (or the member's assignee) is entitled to receive any distribution to which an assignee would be entitled. [1995 c 337 § 18; 1994 c 211 § 602.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.15.225 Distribution in-kind. Except as provided in a limited liability company agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Except as provided in a limited liability company agreement, a member may not be compelled to accept a distribution of any asset in-kind from a limited liability company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset which is equal to the percentage in which he or she shares in distributions from the limited liability company. [1994 c 211 § 603.]

25.15.230 Right to distribution. Subject to RCW 25.15.235 and 25.15.300, and unless otherwise provided in a limited liability company agreement, at the time a member becomes entitled to receive a distribution, he or she has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company. [1994 c 211 § 604.]

25.15.235 Limitations on distribution. (1) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution (a) the limited liability company would not be able to pay its debts as they became due in the usual course of business, or (b) all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.

(2) A member who receives a distribution in violation of subsection (1) of this section, and who knew at the time of the distribution that the distribution violated subsection (1) of this section, shall be liable to a limited liability company for the amount of the distribution. A member who receives a distribution in violation of subsection (1) of this section, and who did not know at the time of the distribution that the distribution violated subsection (1) of this section, shall not be liable for the amount of the distribution. Subject to subsection (3) of this section, this subsection (2) shall not affect any obligation or liability of a member under a limited liability company agreement or other applicable law for the amount of a distribution.

(3) Unless otherwise agreed, a member who receives a distribution from a limited liability company shall have no liability under this chapter or other applicable law for the amount of the distribution after the expiration of three years from the date of the distribution unless an action to recover the distribution from such member is commenced prior to the expiration of the said three-year period and an adjudication of liability against such member is made in the said action. [1994 c 211 § 605.]

ARTICLE VII. ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

25.15.245 Nature of limited liability company interest—Certificate of interest. (1) A limited liability company interest is personal property. A member has no interest in specific limited liability company property.

(2) A limited liability company agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of limited liability company interest issued by the limited liability company. [1994 c 211 § 701.]

25.15.250 Assignment of limited liability company interest. (1) A limited liability company interest is assignable in whole or in part except as provided in a limited liability company agreement. The assignee of a member's limited liability company interest shall have no right to participate in the management of the business and affairs of a limited liability company except:

(a) Upon the approval of all of the members of the limited liability company other than the member assigning his or her limited liability company interest; or

(b) As provided in a limited liability company agreement.

(2) Unless otherwise provided in a limited liability company agreement:

(a) An assignment entitles the assignee to share in such profits and losses, to receive such distributions, and to receive such allocation of income, gain, loss, deduction, or credit or similar item to which the assignor was entitled, to the extent assigned; and

(b) A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his or her limited liability company interest.

(3) For the purposes of this chapter, unless otherwise provided in a limited liability company agreement:

(a) The pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the limited liability company interest of a member shall not be deemed to be an assignment of the member's limited liability company interest, but a foreclosure or execution sale or exercise of similar rights with respect to all of a member's limited liability company interest shall be deemed to be an assignment of the member's limited liability company interest to the transferee pursuant to such foreclosure or execution sale or exercise of similar rights;

(b) Where a limited liability company interest is held in a trust or estate, or is held by a trustee, personal representative, or other fiduciary, the transfer of the limited liability company interest, whether to a beneficiary of the trust or estate or otherwise, shall be deemed to be an assignment of such limited liability company interest, but the mere substitution or replacement of the trustee, personal representative, or other fiduciary shall not constitute an assignment of any portion of such limited liability company interest.

(4) Unless otherwise provided in a limited liability company agreement and except to the extent assumed by agreement, until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment. [1995 c 337 § 19; 1994 c 211 § 702.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.15.255 Rights of judgment creditor. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the limited liability company interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's limited liability company interest. [1994 c 211 § 703.]

25.15.260 Right of assignee to become member. (1) An assignee of a limited liability company interest may become a member upon:

(a) The approval of all of the members of the limited liability company other than the member assigning his or her limited liability company interest; or

(b) Compliance with any procedure provided for in the limited liability company agreement.

(2) An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under a limited liability company agreement and this chapter. An assignee who becomes a member is liable for the obligations of his or her assignor to make contributions as provided in RCW 25.15.195, and for the obligations of his or her assignor under article VI of this chapter.

(3) Whether or not an assignee of a limited liability company interest becomes a member, the assignor is not released from his or her liability to a limited liability company under articles V and VI of this chapter. [1994 c 211 § 704.]

ARTICLE VIII. DISSOLUTION

25.15.270 Dissolution. A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1) The dissolution date, if any, specified in a limited liability company agreement. If a date is not specified in the agreement or the agreement does not specify perpetual existence, then the dissolution date is thirty years after the date of formation. If a dissolution date is specified in the agreement, it is renewable by consent of all the members;

(2) The happening of events specified in a limited liability company agreement;

(3) The written consent of all members;

(4) An event of dissociation of a member, unless the business of the limited liability company is continued either by the consent of all the remaining members within ninety days following the occurrence of any such event or pursuant to a right to continue stated in the limited liability company agreement;

(5) The entry of a decree of judicial dissolution under RCW 25.15.275;

(6) At any time there are fewer than two members unless, within ninety days following the event of dissociation upon which the number of members is reduced below two, one or more additional members are admitted so that there are at least two members; or

(7) The expiration of two years after the effective date of dissolution under RCW 25.15.285 without the reinstatement of the limited liability company. [1996 c 231 § 9; 1994 c 211 § 801.]

25.15.275 Judicial dissolution. On application by or for a member or manager the superior courts may decree dissolution of a limited liability company whenever: (1) It is not reasonably practicable to carry on the business in conformity with a limited liability company agreement; or (2) other circumstances render dissolution equitable. [1994 c 211 § 802.]

25.15.280 Administrative dissolution—Commencement of proceeding. The secretary of state may

commence a proceeding under RCW 25.15.285 to administratively dissolve a limited liability company if:

(1) The limited liability company does not pay any license fees or penalties, imposed by this chapter, when they become due;

(2) The limited liability company does not deliver its completed initial report or annual report to the secretary of state when it is due;

(3) The limited liability company is without a registered agent or registered office in this state for sixty days or more; or

(4) The limited liability company does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued. [1995 c 337 § 20; 1994 c 211 § 803.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.15.285 Administrative dissolution—Notice—Opportunity to correct deficiencies. (1) If the secretary of state determines that one or more grounds exist under RCW 25.15.280 for dissolving a limited liability company, the secretary of state shall give the limited liability company written notice of the determination by first class mail, postage prepaid, reciting the grounds therefor. Notice shall be sent to the address of the principal place of business of the limited liability company as it appears in the records of the secretary of state.

(2) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is sent, the limited liability company is thereupon dissolved. The secretary of state shall give the limited liability company written notice of the dissolution that recites the ground or grounds therefor and its effective date.

(3) A limited liability company administratively dissolved continues its existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs.

(4) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent. [1994 c 211 § 804.]

25.15.290 Administrative dissolution—Reinstatement—Application—When effective. (1) A limited liability company administratively dissolved under RCW 25.15.285 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application must:

(a) Recite the name of the limited liability company and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) State that the limited liability company's name satisfies the requirements of RCW 25.15.010.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the name is available, the secretary of state shall reinstate the limited liability company and give

the limited liability company written notice, as provided in RCW 25.15.285(1), of the reinstatement that recites the effective date of reinstatement. If the name is not available, the limited liability company must file with its application for reinstatement an amendment to its certificate of formation reflecting a change of name.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume carrying on its business as if the administrative dissolution had never occurred.

(4) If an application for reinstatement is not made within the two-year period set forth in subsection (1) of this section, or if the application made within this period is not granted, the secretary of state shall cancel the limited liability company's certificate of formation. [1994 c 211 § 805.]

25.15.295 Winding up. (1) Unless otherwise provided in a limited liability company agreement, a manager who has not wrongfully dissolved a limited liability company or, if none, the members or a person approved by the members or, if there is more than one class or group of members, then by each class or group of members, in either case, by members contributing, or required to contribute, more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to RCW 25.15.135) of the contributions made, or required to be made, by all members, or by the members in each class or group, as appropriate, may wind up the limited liability company's affairs. The superior courts, upon cause shown, may wind up the limited liability company's affairs upon application of any member or manager, his or her legal representative or assignee, and in connection therewith, may appoint a receiver.

(2) Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in RCW 25.15.080, the persons winding up the limited liability company's affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal, or administrative, gradually settle and close the limited liability company's business, dispose of and convey the limited liability company's property, discharge or make reasonable provision for the limited liability company's liabilities, and distribute to the members any remaining assets of the limited liability company. [1994 c 211 § 806.]

25.15.300 Distribution of assets. (1) Upon the winding up of a limited liability company, the assets shall be distributed as follows:

(a) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company (whether by payment or the making of reasonable provision for payment thereof) other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under RCW 25.15.215 or 25.15.230;

(b) Unless otherwise provided in a limited liability company agreement, to members and former members in

satisfaction of liabilities for distributions under RCW 25.15.215 or 25.15.230; and

(c) Unless otherwise provided in a limited liability company agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

(2) A limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the limited liability company and all claims and obligations which are known to the limited liability company but for which the identity of the claimant is unknown. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment made shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in a limited liability company agreement, any remaining assets shall be distributed as provided in this chapter. Any person winding up a limited liability company's affairs who has complied with this section is not personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company. [1994 c 211 § 807.]

ARTICLE IX. FOREIGN LIMITED LIABILITY COMPANIES

25.15.310 Law governing. (1) Subject to the Constitution of the state of Washington:

(a) The laws of the state, territory, possession, or other jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers; and

(b) A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this state.

(2) A foreign limited liability company is subject to RCW 25.15.030 and, notwithstanding subsection (1)(a) of this section, a foreign limited liability company rendering professional services in this state is also subject to RCW 25.15.045(2).

(3) A foreign limited liability company and its members and managers doing business in this state thereby submit to personal jurisdiction of the courts of this state and are subject to RCW 25.15.125. [1995 c 337 § 21; 1994 c 211 § 901.]

Effective date—1995 c 337: See note following RCW 25.04.700.

25.15.315 Registration required—Application. Before doing business in this state, a foreign limited liability company shall register with the secretary of state. In order to register, a foreign limited liability company shall submit to the secretary of state, an application for registration as a foreign limited liability company executed by any member or manager of the foreign limited liability company, setting forth:

(1) The name of the foreign limited liability company and, if different, the name under which it proposes to register and do business in this state;

(2) The state, territory, possession, or other jurisdiction or country where formed, the date of its formation and a duly authenticated statement from the secretary of state or other official having custody of limited liability company records in the jurisdiction under whose law it was formed, that as of the date of filing the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation;

(3) The nature of the business or purposes to be conducted or promoted in this state;

(4) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by RCW 25.15.325(2);

(5) The address of the principal place of business of the foreign limited liability company;

(6) A statement that the secretary of state is appointed the agent of the foreign limited liability company for service of process under the circumstances set forth in RCW 25.15.355(2); and

(7) The date on which the foreign limited liability company first did, or intends to do, business in this state. [1994 c 211 § 902.]

25.15.320 Issuance of registration. (1) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, the secretary shall:

(a) Certify that the application has been filed in his or her office by endorsing upon the original application the word "Filed," and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud;

(b) File the endorsed application.

(2) The duplicate of the application, similarly endorsed, shall be returned to the person who filed the application or that person's representative. [1994 c 211 § 903.]

25.15.325 Name—Registered office—Registered agent. (1) A foreign limited liability company may register with the secretary of state under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words "Limited Liability Company," the words "Limited Liability" and the abbreviation "Co.," or the abbreviation "L.L.C." and that could be registered by a domestic limited liability company. A foreign limited liability company may apply to the secretary of state for authorization to use a name which is not distinguishable upon the records of the office of the secretary of state from the names described in RCW 23B.04.010(1)(d), and the names of any domestic or foreign limited liability company reserved, registered, or formed under the laws of this state. The secretary of state shall authorize use of the name applied for if the other corporation, limited liability company, or limited partnership consents in writing to the use and files with the secretary of state documents necessary to change its name, or the name reserved or registered to a name that is distinguishable upon the records of the secretary

of state from the name of the applying foreign limited liability company.

(2) Each foreign limited liability company shall continuously maintain in this state:

(a) A registered office, which may but need not be a place of its business in this state. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in the same city as the registered office in conjunction with the registered office address if the foreign limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent for service of process on the foreign limited liability company, which agent may be either an individual resident of this state whose business office is identical with the foreign limited liability company's registered office, or a domestic corporation, a limited partnership or limited liability company, or a foreign corporation authorized to do business in this state having a business office identical with such registered office; and

(c) A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filled with or as a part of the document first appointing a registered agent. In the event any individual, limited liability company, limited partnership, or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state.

(3) A foreign limited liability company may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(a) The name of the foreign limited liability company;

(b) If the current registered office is to be changed, the street address of the new registered office in accord with subsection (2)(a) of this section;

(c) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(4) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company for which the agent is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (3) of this section and recites that the foreign limited liability company has been notified of the change.

(5) A registered agent of any foreign limited liability company may resign as agent by signing and delivering to the secretary of state for filing a statement that the registered office is also discontinued. After filing the statement the secretary of state shall mail a copy of the statement to the foreign limited liability company at its principal office address shown in its most recent annual report, or the address of its principal place of business shown in its application for certificate of registration if no annual report has been filed. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed. [1996 c 231 § 10; 1994 c 211 § 904.]

25.15.330 Amendments to application. If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application false in any respect, the foreign limited liability company shall promptly file in the office of the secretary of state a certificate, executed by any member or manager, correcting such statement. [1994 c 211 § 905.]

25.15.335 Cancellation of registration. (1) A foreign limited liability company may cancel its registration by filing with the secretary of state a certificate of cancellation, executed by any member or manager. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in this state.

(2) The certificate of cancellation shall set forth:

- (a) The name of the foreign limited liability company;
- (b) The date of filing of its certificate of registration;
- (c) The reason for filing the certificate of cancellation;
- (d) The future effective date (not later than the ninetieth day after the date it is filed) of cancellation if it is not to be effective upon filing of the certificate;
- (e) The address to which service of process may be forwarded; and
- (f) Any other information the person filing the certificate of cancellation desires. [1994 c 211 § 906.]

25.15.340 Doing business without registration. (1) A foreign limited liability company doing business in this state may not maintain any action, suit, or proceeding in this state until it has registered in this state, and has paid to this state all fees and penalties for the years or parts thereof, during which it did business in this state without having registered.

(2) The failure of a foreign limited liability company to register in this state does not impair:

- (a) The validity of any contract or act of the foreign limited liability company;
- (b) The right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or
- (c) Prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

(3) A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign

limited liability company solely by reason of the limited liability company's having done business in this state without registration. [1994 c 211 § 907.]

25.15.345 Foreign limited liability companies doing business without having qualified—Injunctions. The superior courts shall have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business in this state if such foreign limited liability company has failed to register under this article or if such foreign limited liability company has secured a certificate of registration from the secretary of state under RCW 25.15.320 on the basis of false or misleading representations. The secretary of state shall, upon the secretary's own motion or upon the relation of proper parties, proceed for this purpose by complaint in any county in which such foreign limited liability company is doing or has done business. [1994 c 211 § 908.]

25.15.350 Transactions not constituting transacting business. (1) The following activities, among others, do not constitute transacting business within the meaning of this article:

- (a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
- (b) Holding meetings of the members, or managers if any, or carrying on other activities concerning internal limited liability company affairs;
- (c) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;
- (d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or interests or maintaining trustees or depositories with respect to those securities or interests;
- (e) Selling through independent contractors;
- (f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this state before becoming binding contracts and where the contracts do not involve any local performance other than delivery and installation;
- (g) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;
- (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (i) Owning, without more, real or personal property;
- (j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
- (k) Transacting business in interstate commerce;
- (l) Owning a controlling interest in a corporation or a foreign corporation that transacts business within this state;
- (m) Participating as a limited partner of a domestic or foreign limited partnership that transacts business within this state; or
- (n) Participating as a member or a manager of a domestic or foreign limited liability company that transacts business within this state.

(2) The list of activities in subsection (1) of this section is not exhaustive. [1994 c 211 § 909.]

25.15.355 Service of process on registered foreign limited liability companies. (1) A foreign limited liability company's registered agent is its agent for service of process, notice, or demand required or permitted by law to be served on the foreign limited liability company.

(2) The secretary of state shall be an agent of a foreign limited liability company upon whom any such process, notice, or demand may be served if:

(a) The foreign limited liability company fails to appoint or maintain a registered agent in this state; or

(b) The registered agent cannot with reasonable diligence be found at the registered office.

(3) Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the secretary of state's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the foreign limited liability company at the address of its principal place of business as it appears on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.

(4) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, and shall record therein the time of such service and the secretary of state's action with reference thereto.

(5) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign limited liability company in any other manner now or hereafter permitted by law. [1994 c 211 § 910.]

25.15.360 Service of process on unregistered foreign limited liability companies. (1) Any foreign limited liability company which shall do business in this state without having registered under RCW 25.15.315 shall be deemed to have thereby appointed and constituted the secretary of state its agent for the acceptance of legal process in any civil action, suit, or proceeding against it in any state or federal court in this state arising or growing out of any business done by it within this state. The doing of business in this state by such foreign limited liability company shall be a signification of the agreement of such foreign limited liability company that any such process when so served shall be of the same legal force and validity as if served upon a registered agent personally within this state.

(2) In the event of service upon the secretary of state in accordance with subsection (1) of this section, the secretary of state shall forthwith notify the foreign limited liability company thereof by letter, certified mail, return receipt requested, directed to the foreign limited liability company at the address furnished to the secretary of state by the plaintiff in such action, suit, or proceeding. Such letter shall enclose a copy of the process and any other papers served upon the secretary of state. It shall be the duty of the

plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the secretary of state that service is being made pursuant to this subsection. [1994 c 211 § 911.]

25.15.365 Revocation of registration—Requirements for commencement. The secretary of state may commence a proceeding under *section 11 of this act to revoke registration of a foreign limited liability company authorized to transact business in this state if:

(1) The foreign limited liability company is without a registered agent or registered office in this state for sixty days or more;

(2) The foreign limited liability company does not inform the secretary of state under RCW 25.15.330 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;

(3) A manager or other agent of the foreign limited liability company signed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of state for filing; or

(4) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of limited liability company records in the jurisdiction under which the foreign limited liability company was organized stating that the foreign limited liability company has been dissolved or its certificate or articles of formation canceled. [1996 c 231 § 11.]

***Reviser's note:** The reference to "section 11 of this act" appears to be erroneous. The error arose in the renumbering of sections when the bill was engrossed. Section 12, codified as RCW 25.15.366, was apparently intended.

25.15.366 Revocation of registration—Procedure—Notice—Correction of grounds—Certificate of revocation—Authority of agent. (1) If the secretary of state determines that one or more grounds exist under *section 10 of this act for revocation of a foreign limited liability company's registration, the secretary of state shall give the foreign limited liability company written notice of the determination by first class mail, postage prepaid, stating in the notice the ground or grounds for and effective date of the secretary of state's determination, which date shall not be earlier than the date on which the notice is mailed.

(2) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is effective, the secretary of state shall revoke the foreign limited liability company's registration by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state shall file the original of the certificate and mail a copy to the foreign limited liability company.

(3) Documents to be mailed by the secretary of state to a foreign limited liability company for which provision is made in this section shall be sent to the foreign limited liability company at the address of the agent for service of process contained in the application or certificate of this

limited liability company which is most recently filed with the secretary of state.

(4) The authority of a foreign limited liability company to transact business in this state ceases on the date shown on the certificate revoking its registration.

(5) The secretary of state's revocation of a foreign limited liability company's registration appoints the secretary of state the foreign limited liability company's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign limited liability company was authorized to transact business in this state.

(6) Revocation of a foreign limited liability company's registration does not terminate the authority of the registered agent of the foreign limited liability company. [1996 c 231 § 12.]

***Reviser's note:** The reference to "section 10 of this act" appears to be erroneous. The error arose in the renumbering of sections when the bill was engrossed. Section 11, codified as RCW 25.15.365, was apparently intended.

ARTICLE X. DERIVATIVE ACTIONS

25.15.370 Right to bring action. A member may bring an action in the superior courts in the right of a limited liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed. [1994 c 211 § 1001.]

25.15.375 Proper plaintiff. In a derivative action, the plaintiff must be a member at the time of bringing the action and:

(1) At the time of the transaction of which the plaintiff complains; or

(2) The plaintiff's status as a member had devolved upon him or her by operation of law or pursuant to the terms of a limited liability company agreement from a person who was a member at the time of the transaction. [1994 c 211 § 1002.]

25.15.380 Complaint. In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager or member or the reasons for not making the effort. [1994 c 211 § 1003.]

25.15.385 Expenses. If a derivative action is successful, in whole or in part, as a result of a judgment, compromise, or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, from any recovery in any such action or from a limited liability company. [1994 c 211 § 1004.]

ARTICLE XI. MERGERS

25.15.395 Merger—Plan—Effective date. (1) One or more domestic limited liability companies may merge with one or more domestic limited partnerships, domestic limited liability companies, or domestic corporations pursu-

ant to a plan of merger approved or adopted as provided in RCW 25.15.400.

(2) The plan of merger must set forth:

(a) The name of each limited liability company, limited partnership, and corporation planning to merge and the name of the surviving limited liability company, limited partnership, or corporation into which the other limited liability company, limited partnership, or corporation plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the interests of each member of each limited liability company, the partnership interests in each limited partnership, and the shares of each corporation party to the merger into the interests, shares, obligations, or other securities of the surviving or any other limited liability company, limited partnership, or corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) Amendments to the certificate of formation of the surviving limited liability company;

(b) Amendments to the certificate of limited partnership of the surviving limited partnership;

(c) Amendments to the articles of incorporation of the surviving corporation; and

(d) Other provisions relating to the merger.

(4) If the plan of merger does not specify a delayed effective date, it shall become effective upon the filing of articles of merger. If the plan of merger specifies a delayed effective time and date, the plan of merger becomes effective at the time and date specified. If the plan of merger specifies a delayed effective date but no time is specified, the plan of merger is effective at the close of business on that date. A delayed effective date for a plan of merger may not be later than the ninetieth day after the date it is filed. [1994 c 211 § 1101.]

25.15.400 Merger—Plan—Approval. (1) Unless otherwise provided in the limited liability company agreement, approval of a plan of merger by a domestic limited liability company party to the merger shall occur when the plan is approved by the members, or if there is more than one class or group of members, then by each class or group of members, in either case, by members contributing more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to RCW 25.15.135) of the contributions made, or obligated to be made, by all members or by the members in each class or group, as appropriate.

(2) If a domestic limited partnership is a party to the merger, the plan of merger shall be adopted and approved as provided in RCW 25.10.810.

(3) If a domestic corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in chapter 23B.11 RCW. [1994 c 211 § 1102.]

25.15.405 Articles of merger—Filing. After a plan of merger is approved or adopted, the surviving limited liability company, limited partnership, or corporation shall deliver to the secretary of state for filing articles of merger setting forth:

(1) The plan of merger;

(2) If the approval of any members, partners, or shareholders of one or more limited liability companies, limited partnerships, or corporations party to the merger was not required, a statement to that effect; or

(3) If the approval of any members, partners, or shareholders of one or more of the limited liability companies, limited partnerships, or corporations party to the merger was required, a statement that the merger was duly approved by such members, partners, and shareholders pursuant to RCW 25.15.400, 25.10.810, or chapter 23B.11 RCW. [1994 c 211 § 1103.]

25.15.410 Effect of merger. (1) When a merger takes effect:

(a) Every other limited liability company, limited partnership, or corporation that is party to the merger merges into the surviving limited liability company, limited partnership, or corporation and the separate existence of every limited liability company, limited partnership, or corporation except the surviving limited liability company, limited partnership, or corporation ceases;

(b) The title to all real estate and other property owned by each limited liability company, limited partnership, and corporation party to the merger is vested in the surviving limited liability company, limited partnership, or corporation without reversion or impairment;

(c) The surviving limited liability company, limited partnership, or corporation has all liabilities of each limited liability company, limited partnership, and corporation that is party to the merger;

(d) A proceeding pending against any limited liability company, limited partnership, or corporation that is party to the merger may be continued as if the merger did not occur or the surviving limited liability company, limited partnership, or corporation may be substituted in the proceeding for the limited liability company, limited partnership, or corporation whose existence ceased;

(e) The certificate of formation of the surviving limited liability company is amended to the extent provided in the plan of merger;

(f) The partnership agreement of the surviving limited partnership is amended to the extent provided in the plan of merger;

(g) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(h) The former members of every limited liability company party to the merger, holders of the partnership interests of every domestic limited partnership that is party to the merger, and the former holders of the shares of every domestic corporation that is party to the merger are entitled only to the rights provided in the plan of merger, or to their rights under this article, to their rights under RCW 25.10.900 through 25.10.955, or to their rights under chapter 23B.13 RCW.

(2) Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs under RCW 25.15.295 or pay its liabilities and distribute its assets under RCW 25.15.300.

(3) Unless otherwise agreed, a merger of a domestic limited partnership, including a domestic limited partnership which is not the surviving entity in the merger, shall not require the domestic limited partnership to wind up its affairs under RCW 25.10.460 or pay its liabilities and distribute its assets under RCW 25.10.470. [1994 c 211 § 1104.]

25.15.415 Merger—Foreign and domestic. (1) One or more foreign limited liability companies, one or more foreign limited partnerships, and one or more foreign corporations may merge with one or more domestic limited liability companies, domestic limited partnerships, or domestic corporations if:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited liability company was formed, each foreign limited partnership was organized, and each foreign corporation was incorporated, and each foreign limited liability company, foreign limited partnership, and foreign corporation complies with that law in effecting the merger;

(b) The surviving entity complies with RCW 25.15.405;

(c) Each domestic limited liability company complies with RCW 25.15.400;

(d) Each domestic limited partnership complies with RCW 25.10.810; and

(e) Each domestic corporation complies with RCW 23B.11.080.

(2) Upon the merger taking effect, a surviving foreign limited liability company, limited partnership, or corporation is deemed to appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting partners or shareholders of each domestic limited liability company, domestic limited partnership, or domestic corporation party to the merger. [1994 c 211 § 1105.]

ARTICLE XII. DISSENTERS' RIGHTS

25.15.425 Definitions. As used in this article, unless the context otherwise requires:

(1) "Limited liability company" means the domestic limited liability company in which the dissenter holds or held a membership interest, or the surviving limited liability company, limited partnership, or corporation by merger, whether foreign or domestic, of that limited liability company.

(2) "Dissenter" means a member who is entitled to dissent from a plan of merger and who exercises that right when and in the manner required by this article.

(3) "Fair value," with respect to a dissenter's limited liability company interest, means the value of the member's limited liability company interest immediately before the effectuation of the merger to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the merger unless exclusion would be inequitable.

(4) "Interest" means interest from the effective date of the merger until the date of payment, at the average rate currently paid by the limited liability company on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances. [1994 c 211 § 1201.]

25.15.430 Member—Dissent—Payment of fair value. (1) Except as provided in RCW 25.15.440 or 25.15.450(2), a member of a domestic limited liability company is entitled to dissent from, and obtain payment of, the fair value of the member's interest in a limited liability company in the event of consummation of a plan of merger to which the limited liability company is a party as permitted by RCW 25.15.395 or 25.15.415.

(2) A member entitled to dissent and obtain payment for the member's interest in a limited liability company under this article may not challenge the merger creating the member's entitlement unless the merger fails to comply with the procedural requirements imposed by this title, Title 23B RCW, RCW 25.10.800 through 25.10.840, or the limited liability company agreement, or is fraudulent with respect to the member or the limited liability company.

(3) The right of a dissenting member in a limited liability company to obtain payment of the fair value of the member's interest in the limited liability company shall terminate upon the occurrence of any one of the following events:

- (a) The proposed merger is abandoned or rescinded;
- (b) A court having jurisdiction permanently enjoins or sets aside the merger; or
- (c) The member's demand for payment is withdrawn with the written consent of the limited liability company. [1994 c 211 § 1202.]

25.15.435 Dissenters' rights—Notice—Timing. (1) Not less than ten days prior to the approval of a plan of merger, the limited liability company must send a written notice to all members who are entitled to vote on or approve the plan of merger that they may be entitled to assert dissenters' rights under this article. Such notice shall be accompanied by a copy of this article.

(2) The limited liability company shall notify in writing all members not entitled to vote on or approve the plan of merger that the plan of merger was approved, and send them the dissenters' notice as required by RCW 25.15.445. [1994 c 211 § 1203.]

25.15.440 Member—Dissent—Voting restriction. A member of a limited liability company who is entitled to vote on or approve the plan of merger and who wishes to assert dissenters' rights must not vote in favor of or approve the plan of merger. A member who does not satisfy the requirements of this section is not entitled to payment for the member's interest in the limited liability company under this article. [1994 c 211 § 1204.]

25.15.445 Members—Dissenters' notice—Requirements. (1) If the plan of merger is approved, the limited liability company shall deliver a written dissenters' notice to all members who satisfied the requirements of RCW 25.15.440.

(2) The dissenters' notice required by RCW 25.15.435(2) or by subsection (1) of this section must be sent within ten days after the approval of the plan of merger, and must:

- (a) State where the payment demand must be sent;

(b) Inform members as to the extent transfer of the member's interest in the limited liability company will be restricted as permitted by RCW 25.15.455 after the payment demand is received;

(c) Supply a form for demanding payment;

(d) Set a date by which the limited liability company must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice under this section is delivered; and

(e) Be accompanied by a copy of this article. [1994 c 211 § 1205.]

25.15.450 Member—Payment demand—Entitlement. (1) A member of a limited liability company who demands payment retains all other rights of a member of such company until the proposed merger becomes effective.

(2) A member of a limited liability company sent a dissenters' notice who does not demand payment by the date set in the dissenters' notice is not entitled to payment for the member's interest in the limited liability company under this article. [1994 c 211 § 1206.]

25.15.455 Member's interests—Transfer restriction. The limited liability company agreement may restrict the transfer of members' interests in the limited liability company from the date the demand for their payment is received until the proposed merger becomes effective or the restriction is released under this article. [1994 c 211 § 1207.]

25.15.460 Payment of fair value—Requirements for compliance. (1) Within thirty days of the later of the date the proposed merger becomes effective, or the payment demand is received, the limited liability company shall pay each dissenter who complied with RCW 25.15.450 the amount the limited liability company estimates to be the fair value of the dissenting member's interest in the limited liability company, plus accrued interest.

(2) The payment must be accompanied by:

(a) Copies of the financial statements for the limited liability company for its most recent fiscal year;

(b) An explanation of how the limited liability company estimated the fair value of the member's interest in the limited liability company;

(c) An explanation of how the accrued interest was calculated;

(d) A statement of the dissenter's right to demand payment; and

(e) A copy of this article. [1994 c 211 § 1208.]

25.15.465 Merger—Not effective within sixty days—Transfer restrictions. (1) If the proposed merger does not become effective within sixty days after the date set for demanding payment, the limited liability company shall release any transfer restrictions imposed as permitted by RCW 25.15.455.

(2) If, after releasing transfer restrictions, the proposed merger becomes effective, the limited liability company must send a new dissenters' notice as provided in RCW 25.15.435(2) and 25.15.445 and repeat the payment demand procedure. [1994 c 211 § 1209.]

25.15.470 Dissenter's estimate of fair value—Notice.

(1) A dissenting member may notify the limited liability company in writing of the dissenter's own estimate of the fair value of the dissenter's interest in the limited liability company, and amount of interest due, and demand payment of the dissenter's estimate, less any payment under RCW 25.15.460, if:

(a) The dissenter believes that the amount paid is less than the fair value of the dissenter's interest in the limited liability company, or that the interest due is incorrectly calculated;

(b) The limited liability company fails to make payment within sixty days after the date set for demanding payment; or

(c) The limited liability company, having failed to effectuate the proposed merger, does not release the transfer restrictions imposed on members' interests as permitted by RCW 25.15.455 within sixty days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless the dissenter notifies the limited liability company of the dissenter's demand in writing under subsection (1) of this section within thirty days after the limited liability company made payment for the dissenter's interest in the limited liability company. [1994 c 211 § 1210.]

25.15.475 Unsettled demand for payment—Proceeding—Parties—Appraisers.

(1) If a demand for payment under RCW 25.15.450 remains unsettled, the limited liability company shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the dissenting member's interest in the limited liability company, and accrued interest. If the limited liability company does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The limited liability company shall commence the proceeding in the superior court. If the limited liability company is a domestic limited liability company, it shall commence the proceeding in the county where its registered office is maintained.

(3) The limited liability company shall make all dissenters (whether or not residents of this state) whose demands remain unsettled parties to the proceeding as in an action against their membership interests in the limited liability company and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The limited liability company may join as a party to the proceeding any member who claims to be a dissenter but who has not, in the opinion of the limited liability company, complied with the provisions of this article. If the court determines that such member has not complied with the provisions of this article, the member shall be dismissed as a party.

(5) The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decisions on the question of fair

value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(6) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of the dissenter's membership interest in the limited liability company, plus interest, exceeds the amount paid by the limited liability company. [1994 c 211 § 1211.]

25.15.480 Unsettled demand for payment—Costs—Fees and expenses of counsel.

(1) The court in a proceeding commenced under RCW 25.15.475 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited liability company, except that the court may assess the costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the limited liability company and in favor of any or all dissenters if the court finds the limited liability company did not substantially comply with the requirements of this article; or

(b) Against either the limited liability company or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the limited liability company, the court may award to these counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited. [1994 c 211 § 1212.]

ARTICLE XIII. MISCELLANEOUS**25.15.800 Construction and application of chapter and limited liability company agreement.**

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

(3) Unless the context otherwise requires, as used in this chapter, the singular shall include the plural and the plural may refer to only the singular. The captions contained herein are for purposes of convenience only and shall not control or affect the construction of this chapter and do not constitute part of the law. [1994 c 211 § 1301.]

25.15.805 Establishment of filing fees and miscellaneous charges.

(1) The secretary of state shall adopt rules establishing fees which shall be charged and collected for:

(a) Filing of a certificate of formation for a domestic limited liability company or an application for registration of a foreign limited liability company;

(b) Filing of a certificate of cancellation for a domestic or foreign limited liability company;

(c) Filing of a certificate of amendment or restatement for a domestic or foreign limited liability company;

(d) Filing an application to reserve, register, or transfer a limited liability company name;

(e) Filing any other certificate, statement, or report authorized or permitted to be filed;

(f) Copies, certified copies, certificates, service of process filings, and expedited filings or other special services.

(2) In the establishment of a fee schedule, the secretary of state shall, insofar as is possible and reasonable, be guided by the fee schedule provided for corporations governed by Title 23B RCW. Fees for copies, certified copies, certificates of record, and service of process filings shall be as provided for in RCW 23B.01.220.

(3) All fees collected by the secretary of state shall be deposited with the state treasurer pursuant to law. [1994 c 211 § 1302.]

25.15.810 Authority to adopt rules. The secretary of state shall adopt such rules as are necessary to implement the transfer of duties and records required by this chapter. [1994 c 211 § 1303.]

25.15.900 Effective date—1994 c 211. This act shall take effect October 1, 1994. [1994 c 211 § 1312.]

25.15.901 Short title. This chapter may be cited as the "Washington Limited Liability Company Act." [1994 c 211 § 1313.]

25.15.902 Severability—1994 c 211. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 211 § 1314.]

Title 26

DOMESTIC RELATIONS

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Chapter 26.04 MARRIAGE

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26.04.010 Who may contract—Certain marriages void, exception. Marriage is a civil contract which may be entered into by persons of the age of eighteen years, who are otherwise capable: PROVIDED, That every marriage entered into in which either party shall not have attained the age of seventeen years shall be void except where this

section has been waived by a superior court judge of the county in which one of the parties resides on a showing of necessity. [1973 1st ex.s. c 154 § 26; 1970 ex.s. c 17 § 2; 1963 c 230 § 1; Code 1881 § 2380; 1866 p 81 § 1; 1854 p 404 §§ 1, 5; RRS § 8437.]

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

26.04.020 Prohibited marriages—Spouse living—Consanguinity. Marriages in the following cases are prohibited:

(1) When either party thereto has a wife or husband living at the time of such marriage.

(2) When the parties thereto are nearer of kin to each other than second cousins, whether of the whole or half blood computing by the rules of the civil law.

(3) It shall be unlawful for any man to marry his father's sister, mother's sister, daughter, sister, son's daughter, daughter's daughter, brother's daughter or sister's daughter; it shall be unlawful for any woman to marry her father's brother, mother's brother, son, brother, son's son, daughter's son, brother's son or sister's son. [1927 c 189 § 1; Code 1881 § 949; 1866 p 81 § 2; 1854 p 96 § 115; RRS § 8438.]

Bigamy: RCW 9A.64.010.

Incest—Penalties: RCW 9A.64.020.

26.04.050 Who may solemnize. The following named officers and persons, active or retired, are hereby authorized to solemnize marriages, to wit: Justices of the supreme court, judges of the court of appeals, judges of the superior courts, superior court commissioners, any regularly licensed or ordained minister or any priest of any church or religious denomination, and judges of courts of limited jurisdiction as defined in RCW 3.02.010. [1987 c 291 § 1; 1984 c 258 § 95; 1983 c 186 § 1; 1971 c 81 § 69; 1913 c 35 § 1; 1890 p 98 § 1; 1883 p 43 § 1; Code 1881 § 2382; 1866 p 82 § 4; 1854 p 404 § 4; RRS § 8441.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

26.04.060 Marriage before unauthorized cleric—Effect. A marriage solemnized before any person professing to be a minister or a priest of any religious denomination in this state or professing to be an authorized officer thereof, is not void, nor shall the validity thereof be in any way affected on account of any want of power or authority in such person, if such marriage be consummated with a belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage. [1975-'76 2nd ex.s. c 42 § 25; Code 1881 § 2388; 1866 p 83 §§ 10 and 11; 1854 p 405 § 6; RRS § 8442. Formerly RCW 26.04.060 and 26.24.200.]

Severability—Savings—Construction—1975-'76 2nd ex.s. c 42: See RCW 26.26.900 through 26.26.905.

26.04.070 Form of solemnization. In the solemnization of marriage no particular form is required, except that the parties thereto shall assent or declare in the presence of the minister, priest, or judicial officer solemnizing the same, and in the presence of at least two attending witnesses, that

they take each other to be husband and wife. [Code 1881 § 2383; 1866 p 82 § 5; RRS § 8443.]

26.04.080 Marriage certificate—Contents. The person solemnizing a marriage shall give to each of the parties thereto, if required, a certificate thereof, specifying therein the names and residence of the parties, and of at least two witnesses present, the time and place of such marriage, and the date of the license thereof, and by whom issued. [Code 1881 § 2384; 1866 p 82 § 6; RRS § 8444.]

26.04.090 Certificate for files of county auditor and state registrar of vital statistics—Forms. A person solemnizing a marriage shall, within thirty days thereafter, make and deliver to the county auditor of the county wherein the license was issued a certificate for the files of the county auditor, and a certificate for the files of the state registrar of vital statistics. The certificate for the files of the county auditor shall be substantially as follows:

STATE OF WASHINGTON }
COUNTY OF }

This is to certify that the undersigned, a, by authority of a license bearing date the day of A.D., 19. . ., and issued by the County auditor of the county of, did, on the day of A.D., 19. . ., at in this county and state, join in lawful wedlock A.B. of the county of, state of and C.D. of the county of, state of, with their mutual assent, in the presence of F H and E G, witnesses.

In Testimony Whereof, witness the signatures of the parties to said ceremony, the witnesses and myself, this day of, A.D., 19. . .

The certificate for the files of the state registrar of vital statistics shall be in accordance with *RCW 70.58.200. The certificate forms for the files of the county auditor and for the files of the state registrar of vital statistics shall be provided by the state registrar of vital statistics. [1967 c 26 § 4; 1947 c 59 § 1; 1927 c 172 § 1; Code 1881 § 2385; 1866 p 82 § 7; 1854 p 405 § 7; RRS § 8445.]

*Reviser's note: RCW 70.58.200 was repealed by 1991 c 96 § 6. Effective date—1967 c 26: See note following RCW 43.70.150.

26.04.100 Filing and recording—County auditor. The county auditor shall file said certificates and record them or bind them into numbered volumes, and note on the original index to the license issued the volume and page wherein such certificate is recorded or bound. He shall enter the date of filing and his name on the certificates for the files of the state registrar of vital statistics, and transmit, by the tenth day of each month, all such certificates filed with him during the preceding month. [1967 c 26 § 5; 1947 c 59 § 2; 1886 p 66 § 1; Code 1881 § 2386; 1867 p 105 § 2; 1866 p 82 § 8; Rem. Supp. 1947 § 8446.]

Effective date—1967 c 26: See note following RCW 43.70.150.

26.04.105 Preservation of copies of applications and licenses—County auditor. The county auditor may preserve copies of marriage license applications submitted

and marriage licenses issued under this chapter in the same manner as authorized for the recording of instruments under RCW 65.04.040. [1985 c 44 § 1.]

26.04.110 Penalty for failure to deliver certificates.

Any person solemnizing a marriage, who shall wilfully refuse or neglect to make and deliver to the county auditor for record, the certificates mentioned in RCW 26.04.090, within the time in such section specified, shall be deemed guilty of a misdemeanor, and upon conviction shall pay for such refusal, or neglect, a fine of not less than twenty-five nor more than three hundred dollars. [1967 c 26 § 6; 1947 c 59 § 3; 1886 p 66 § 2; Code 1881 § 2387; 1866 p 83 § 9; Rem. Supp. 1947 § 8447.]

Effective date—1967 c 26: See note following RCW 43.70.150.

26.04.120 Marriage according to religious ritual.

All marriages to which there are no legal impediments, solemnized before or in any religious organization or congregation, according to the established ritual or form commonly practiced therein, are valid, and a certificate containing the particulars specified in RCW 26.04.080 and 26.04.090, shall be made and filed for record by the person or persons presiding or officiating in or recording the proceedings of such religious organization or congregation, in the manner and with like effect as in ordinary cases. [Code 1881 § 2389; RRS § 8448.]

26.04.130 Voidable marriages. When either party to a marriage shall be incapable of consenting thereto, for want of legal age or a sufficient understanding, or when the consent of either party shall be obtained by force or fraud, such marriage is voidable, but only at the suit of the party laboring under the disability, or upon whom the force or fraud is imposed. [Code 1881 § 2381; 1866 p 81 § 3; RRS § 8449.]

26.04.140 Marriage license. Before any persons can be joined in marriage, they shall procure a license from a county auditor, as provided in RCW 26.04.150 through 26.04.190. [1985 c 82 § 1; 1939 c 204 § 2; RRS § 8450-1. Prior: Code 1881 § 2390; 1866 p 83 § 12.]

26.04.150 Application for license—May be secured by mail—Execution and acknowledgment. Any person may secure by mail from the county auditor of the county in the state of Washington where he intends to be married, an application, and execute and acknowledge said application before a notary public. [1963 c 230 § 2; 1939 c 204 § 3; RRS § 8450-2.]

26.04.160 Application for license—Contents—Oath.

(1) Application for a marriage license must be made and filed with the appropriate county auditor upon blanks to be provided by the county auditor for that purpose, which application shall be under the oath of each of the applicants, and each application shall state the name, address at the time of execution of application, age, birthplace, whether single, widowed or divorced, and whether under control of a guardian, residence during the past six months: PROVID-

ED, That each county may require such other and further information on said application as it shall deem necessary.

(2) The county legislative authority may impose an additional fee up to fifteen dollars on a marriage license for the purpose of funding family services such as family support centers. [1993 c 451 § 1; 1985 c 82 § 2; 1967 c 26 § 7; 1939 c 204 § 4; RRS § 8450-3.]

Effective date—1967 c 26: See note following RCW 43.70.150.

26.04.165 Additional marriage certificate form.

In addition to the application provided for in RCW 26.04.160, the county auditor for the county wherein the license is issued shall submit to each applicant at the time for application for a license the Washington state department of health marriage certificate form prescribed by *RCW 70.58.200 to be completed by the applicants and returned to the county auditor for the files of the state registrar of vital statistics. After the execution of the application for, and the issuance of a license, no county shall require the persons authorized to solemnize marriages to obtain any further information from the persons to be married except the names and county of residence of the persons to be married. [1989 1st ex.s. c 9 § 203; 1979 c 141 § 34; 1969 ex.s. c 279 § 1.]

***Reviser's note:** RCW 70.58.200 was repealed by 1991 c 96 § 6.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

26.04.170 Inspection of applications. Any such application shall be open to public inspection as a part of the records of the office of such county auditor. [1985 c 82 § 3; 1939 c 204 § 5; RRS § 8450-4.]

26.04.175 When disclosure of marriage applications and records prohibited. If a program participant under chapter 40.24 RCW notifies the appropriate county auditor as required under rules adopted by the secretary of state, the county auditor shall not make available for inspection or copying the name and address of a program participant contained in marriage applications and records filed under chapter 26.04 RCW, except under the following circumstances:

(1) If requested by a law enforcement agency, to the law enforcement agency; and

(2) If directed by a court order, to a person identified in the order. [1991 c 23 § 12.]

Effective dates—1991 c 23: See RCW 40.24.900.

26.04.180 License—Time limitations as to issuance and use—Notification. The county auditor may issue the marriage license at the time of application, but shall issue such license no later than the third full day following the date of the application. A marriage license issued pursuant to the provisions of this chapter may not be used until three days after the date of application and shall become void if the marriage is not solemnized within sixty days of the date of the issuance of the license, and the county auditor shall notify the applicant in writing of this requirement at the time of issuance of the license. [1985 c 82 § 4; 1979 ex.s. c 128 § 1; 1963 c 230 § 3; 1953 c 107 § 1. Prior: 1943 c 250 § 1; 1939 c 204 § 6; Rem. Supp. 1943 § 8450-5.]

26.04.190 Refusal of license—Appeal. Any county auditor is hereby authorized to refuse to issue a license to marry if, in his discretion, the applications executed by the parties or information coming to his knowledge as a result of the execution of said applications, justifies said refusal: PROVIDED, HOWEVER, The denied parties may appeal to the superior court of said county for an order to show cause, directed to said county auditor to appear before said court to show why said court should not grant an order to issue a license to said denied parties and, after due hearing, or if the auditor fails to appear, said court may in its discretion, issue an order to said auditor directing him to issue said license; any hearings held by a superior court under RCW 26.04.140 through 26.04.200 may, in the discretion of said court, be held in chambers. [1939 c 204 § 7; RRS § 8450-6.]

26.04.200 Penalty for violations—1939 c 204. Any person intentionally violating any provision of RCW 26.04.140 through 26.04.190 shall be guilty of a misdemeanor. [1939 c 204 § 8; RRS § 8450-7.]

Punishment of misdemeanor when not fixed by statute: RCW 9.92.030.

26.04.210 Affidavits required for issuance of license.

(1) The county auditor, before a marriage license is issued, upon the payment of a license fee as fixed in RCW 36.18.010 shall require each applicant therefor to make and file in the auditor's office upon blanks to be provided by the county for that purpose, an affidavit showing that if an applicant is afflicted with any contagious sexually transmitted disease, the condition is known to both applicants, and that the applicants are the age of eighteen years or over. If the consent in writing is obtained of the father, mother, or legal guardian of the person for whom the license is required, the license may be granted in cases where the female has attained the age of seventeen years or the male has attained the age of seventeen years. Such affidavit may be subscribed and sworn to before any person authorized to administer oaths. Anyone knowingly swearing falsely to any of the statements contained in the affidavits mentioned in this section shall be deemed guilty of perjury and punished as provided by the laws of the state of Washington.

(2) The affidavit form shall be designed to require a statement that no contagious sexually transmitted disease is present or that the condition is known to both applicants, without requiring the applicants to state whether or not either or both of them are afflicted by such disease. [1995 c 301 § 78; 1985 c 82 § 5; 1979 ex.s. c 128 § 2; 1973 1st ex.s. c 154 § 29; 1970 ex.s. c 17 § 5; 1963 c 230 § 4; 1959 c 149 § 3; 1909 ex.s. c 16 § 3; 1909 c 174 § 3; Code 1881 §§ 2391, 2392; 1867 p 104 § 1; 1866 p 83 §§ 13, 14; RRS § 8451.]

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

Penalty for violation of marriage requirements: RCW 26.04.230.

26.04.220 Retention of license by person solemnizing—Auditor's record. The person solemnizing the marriage is authorized to retain in his possession the license, but the county auditor who issues the same, before delivering it, shall enter in his marriage record a memorandum of the names of the parties, the consent of the parents or guardian,

if any, and the name of the affiant and the substance of the affidavit upon which said license issued, and the date of such license. [Code 1881 § 2393; 1866 p 84 § 15; RRS § 8453.]

26.04.230 Penalty for violation of marriage requirements. Any person knowingly violating any of the provisions of RCW 26.04.210 shall, upon conviction thereof, be punished by a fine of not more than one thousand dollars, or by imprisonment in a state correctional facility for a period of not more than three years, or by both such fine and imprisonment. [1992 c 7 § 30; 1909 ex.s. c 16 § 4; 1909 c 174 § 4; Code 1881 § 2394; 1866 p 84 § 16; RRS § 8452.]

26.04.240 Penalty for unlawful solemnization—Code 1881. Any person who shall undertake to join others in marriage knowing that he is not lawfully authorized so to do, or any person authorized to solemnize marriage, who shall join persons in marriage contrary to the provisions of *this chapter, shall, upon conviction thereof, be punished by a fine of not more than five hundred, nor less than one hundred dollars. [Code 1881 § 2395; 1866 p 84 § 17; RRS § 8454. FORMER PART OF SECTION: 1909 c 249 § 419; RRS § 2671 now codified as RCW 26.04.250.]

***Reviser's note:** "This chapter" (chapter 182, Code 1881) is codified as RCW 26.04.010, 26.04.050 through 26.04.140, and 26.04.220 through 26.04.240. Code 1881 §§ 2391 and 2392, being part of chapter 182, Code 1881, appear to be superseded by 1909 ex.s. c 16 § 3 (RCW 26.04.210) which is subject to the penalties of RCW 26.04.230.

26.04.250 Penalty for unlawful solemnization—1909 c 249. Every person who shall solemnize a marriage when either party thereto is known to him to be under the age of legal consent or a marriage to which, within his knowledge, any legal impediment exists, shall be guilty of a gross misdemeanor. [1979 ex.s. c 128 § 3; 1909 c 249 § 419; RRS § 2671. Formerly RCW 26.04.240, part.]

Punishment of gross misdemeanor when not fixed by statute: RCW 9.92.020.

Chapter 26.09

DISSOLUTION OF MARRIAGE—LEGAL SEPARATION

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- 26.09.910 Short title—1987 c 460.
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Nonparental actions for child custody: Chapter 26.10 RCW.

Process—Domestic relations actions: Rules of court: CR 4.1.

26.09.002 Policy. Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm. [1987 c 460 § 2.]

26.09.004 Definitions. The definitions in this section apply throughout this chapter.

(1) "Temporary parenting plan" means a plan for parenting of the child pending final resolution of any action for dissolution of marriage, declaration of invalidity, or legal separation which is incorporated in a temporary order.

(2) "Permanent parenting plan" means a plan for parenting the child, including allocation of parenting functions, which plan is incorporated in any final decree or decree of modification in an action for dissolution of marriage, declaration of invalidity, or legal separation.

(3) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:

(a) Maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) Attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) Attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

(d) Assisting the child in developing and maintaining appropriate interpersonal relationships;

(e) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and

(f) Providing for the financial support of the child. [1987 c 460 § 3.]

26.09.006 Mandatory use of approved forms. (1) Effective January 1, 1992, a party shall not file any pleading with the clerk of the court in an action commenced under

this chapter unless on forms approved by the administrator for the courts.

(2) The parties shall comply with requirements for submission to the court of forms as provided in RCW 26.18.220. [1992 c 229 § 1; 1990 1st ex.s. c 2 § 26.]

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

26.09.010 Civil practice to govern—Designation of proceedings—Decrees. (1) Except as otherwise specifically provided herein, the practice in civil action shall govern all proceedings under this chapter, except that trial by jury is dispensed with.

(2) A proceeding for dissolution of marriage, legal separation or a declaration concerning the validity of a marriage shall be entitled "In re the marriage of and" Such proceeding may be filed in the superior court of the county where the petitioner resides.

(3) In cases where there has been no prior proceeding in this state involving the marital status of the parties or support obligations for a minor child, a separate parenting and support proceeding between the parents shall be entitled "In re the parenting and support of"

(4) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter shall be denominated as provided in the civil rules for superior court.

(5) In this chapter, "decree" includes "judgment".

(6) A decree of dissolution, of legal separation, or a declaration concerning the validity of a marriage shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed. [1989 c 375 § 1; 1987 c 460 § 1; 1975 c 32 § 1; 1973 1st ex.s. c 157 § 1.]

26.09.015 Mediation—Confidentiality—Report to court. (1) In any proceeding under this chapter, the matter may be set for mediation of the contested issues before or concurrent with the setting of the matter for hearing. The purpose of the mediation proceeding shall be to reduce acrimony which may exist between the parties and to develop an agreement assuring the child's close and continuing contact with both parents after the marriage is dissolved. The mediator shall use his or her best efforts to effect a settlement of the dispute.

(2) Each superior court may make available a mediator. The mediator may be a member of the professional staff of a family court or mental health services agency, or may be any other person or agency designated by the court. In order to provide mediation services, the court is not required to institute a family court.

(3) Mediation proceedings shall be held in private and shall be confidential. The mediator shall not testify as to any aspect of the mediation proceedings. This subsection shall not apply to postdecree mediation required pursuant to a parenting plan.

(4) The mediator shall assess the needs and interests of the child or children involved in the controversy and may interview the child or children if the mediator deems such interview appropriate or necessary.

(5) Any agreement reached by the parties as a result of mediation shall be reported to the court and to counsel for the parties by the mediator on the day set for mediation or any time thereafter designated by the court. [1991 c 367 § 2; 1989 c 375 § 2; 1986 c 95 § 4.]

Severability—1991 c 367: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 367 § 54.]

Effective date—1991 c 367: "This act shall take effect September 1, 1991." [1991 c 367 § 55.]

Captions not law—1991 c 367: "Captions as used in this act do not constitute any part of the law." [1991 c 367 § 57.]

Mediation testimony competency: RCW 5.60.070 and 5.60.072.

26.09.020 Petition in proceeding for dissolution of marriage, legal separation, or for a declaration concerning validity of marriage—Contents—Parties—Certificate.

(1) A petition in a proceeding for dissolution of marriage, legal separation, or for a declaration concerning the validity of a marriage, shall allege the following:

- (a) The last known residence of each party;
 - (b) The date and place of the marriage;
 - (c) If the parties are separated the date on which the separation occurred;
 - (d) The names, ages, and addresses of any child dependent upon either or both spouses and whether the wife is pregnant;
 - (e) Any arrangements as to the residential schedule of, decision making for, dispute resolution for, and support of the children and the maintenance of a spouse;
 - (f) A statement specifying whether there is community or separate property owned by the parties to be disposed of;
 - (g) The relief sought.
- (2) Either or both parties to the marriage may initiate the proceeding.

(3) The petitioner shall complete and file with the petition a certificate under *RCW 70.58.200 on the form provided by the department of health. [1989 1st ex.s. c 9 § 204; 1989 c 375 § 3; 1983 1st ex.s. c 45 § 2; 1973 2nd ex.s. c 23 § 1; 1973 1st ex.s. c 157 § 2.]

Reviser's note: (1) This section was amended by 1989 c 375 § 3 and by 1989 1st ex.s. c 9 § 204, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

* (2) RCW 70.58.200 was repealed by 1991 c 96 § 6.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

26.09.030 Petition for dissolution of marriage—Court proceedings, findings—Transfer to family court—Legal separation in lieu of dissolution.

When a party who (1) is a resident of this state, or (2) is a member of the armed forces and is stationed in this state, or (3) is married to a party who is a resident of this state or who is a member of the armed forces and is stationed in this state, petitions for a dissolution of marriage, and alleges that the marriage is irretrievably broken and when ninety days have elapsed since the petition was filed and from the date when service of summons was made upon the respondent or the first publication of summons was made, the court shall proceed as follows:

(1) If the other party joins in the petition or does not deny that the marriage is irretrievably broken, the court shall enter a decree of dissolution.

(2) If the other party alleges that the petitioner was induced to file the petition by fraud, or coercion, the court shall make a finding as to that allegation and, if it so finds shall dismiss the petition.

(3) If the other party denies that the marriage is irretrievably broken the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospects for reconciliation and shall:

(a) Make a finding that the marriage is irretrievably broken and enter a decree of dissolution of the marriage; or

(b) At the request of either party or on its own motion, transfer the cause to the family court, refer them to another counseling service of their choice, and request a report back from the counseling service within sixty days, or continue the matter for not more than sixty days for hearing. If the cause is returned from the family court or at the adjourned hearing, the court shall:

(i) Find that the parties have agreed to reconciliation and dismiss the petition; or

(ii) Find that the parties have not been reconciled, and that either party continues to allege that the marriage is irretrievably broken. When such facts are found, the court shall enter a decree of dissolution of the marriage.

(4) If the petitioner requests the court to decree legal separation in lieu of dissolution, the court shall enter the decree in that form unless the other party objects and petitions for a decree of dissolution or declaration of invalidity. [1996 c 23 § 1; 1973 1st ex.s. c 157 § 3.]

26.09.040 Petition to have marriage declared invalid or judicial determination of validity—Procedure—Findings—Grounds—Legitimacy of children. (1) While both parties to an alleged marriage are living, and at least one party is resident in this state or a member of the armed service and stationed in the state, a petition to have the marriage declared invalid may be sought by:

(a) Either or both parties, or the guardian of an incompetent spouse, for any cause specified in subsection (4) of this section; or

(b) Either or both parties, the legal spouse, or a child of either party when it is alleged that the marriage is bigamous.

(2) If the validity of a marriage is denied or questioned at any time, either or both parties to the marriage may petition the court for a judicial determination of the validity of such marriage.

(3) In a proceeding to declare the invalidity of a marriage, the court shall proceed in the manner and shall have the jurisdiction, including the authority to provide for maintenance, a parenting plan for minor children, and division of the property of the parties, provided by this chapter.

(4) After hearing the evidence concerning the validity of a marriage, if both parties to the alleged marriage are still living, the court:

(a) If it finds the marriage to be valid, shall enter a decree of validity;

(b) If it finds that:

(i) The marriage should not have been contracted because of age of one or both of the parties, lack of required parental or court approval, a prior undissolved marriage of one or both of the parties, reasons of consanguinity, or because a party lacked capacity to consent to the marriage, either because of mental incapacity or because of the influence of alcohol or other incapacitating substances, or because a party was induced to enter into the marriage by force or duress, or by fraud involving the essentials of marriage, and that the parties have not ratified their marriage by voluntarily cohabiting after attaining the age of consent, or after attaining capacity to consent, or after cessation of the force or duress or discovery of the fraud, shall declare the marriage invalid as of the date it was purportedly contracted;

(ii) The marriage should not have been contracted because of any reason other than those above, shall upon motion of a party, order any action which may be appropriate to complete or to correct the record and enter a decree declaring such marriage to be valid for all purposes from the date upon which it was purportedly contracted;

(c) If it finds that a marriage contracted in a jurisdiction other than this state, was void or voidable under the law of the place where the marriage was contracted, and in the absence of proof that such marriage was subsequently validated by the laws of the place of contract or of a subsequent domicile of the parties, shall declare the marriage invalid as of the date of the marriage.

(5) Any child of the parties born or conceived during the existence of a marriage of record is legitimate and remains legitimate notwithstanding the entry of a declaration of invalidity of the marriage. [1987 c 460 § 4; 1975 c 32 § 2; 1973 1st ex.s. c 157 § 4.]

26.09.050 Decrees—Contents—Restraining orders—Enforcement. (1) In entering a decree of dissolution of marriage, legal separation, or declaration of invalidity, the court shall determine the marital status of the parties, make provision for a parenting plan for any minor child of the marriage, make provision for the support of any child of the marriage entitled to support, consider or approve provision for the maintenance of either spouse, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any necessary continuing restraining orders including the provisions contained in RCW 9.41.800, make provision for the issuance within this action of the restraint provisions of a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW, and make provision for the change of name of any party.

(2) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.09 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(3) The court shall order that any restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section, in addition to the law enforcement information sheet or proof of service of the order, be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state. [1995 c 93 § 2; 1994 sp.s. c 7 § 451; 1989 c 375 § 29; 1987 c 460 § 5; 1973 1st ex.s. c 157 § 5.]

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

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

26.09.060 Temporary maintenance or child support—Temporary restraining order—Preliminary injunction—Domestic violence or antiharassment protection order—Support debts, notice. (1) In a proceeding for:

(a) Dissolution of marriage, legal separation, or a declaration of invalidity; or

(b) Disposition of property or liabilities, maintenance, or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse; either party may move for temporary maintenance or for temporary support of children entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any person from:

(a) Transferring, removing, encumbering, concealing, or in any way disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained or enjoined, requiring him or her to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) Molesting or disturbing the peace of the other party or of any child;

(c) Going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child upon a showing of the necessity therefor;

(d) Removing a child from the jurisdiction of the court.

(3) Either party may request a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW on a temporary basis. The court may grant any of the relief provided in RCW 26.50.060 except relief pertaining to residential provisions for the children which provisions shall be provided for under this chapter, and any of the relief provided in RCW 10.14.080. Ex parte orders issued under this subsection shall be effective for a fixed period not to exceed fourteen days, or upon court order, not to exceed

twenty-four days if necessary to ensure that all temporary motions in the case can be heard at the same time.

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

(5) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(6) The court may issue a temporary restraining order or preliminary injunction and an order for temporary maintenance or support in such amounts and on such terms as are just and proper in the circumstances. The court may in its discretion waive the filing of the bond or the posting of security.

(7) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.09 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(8) The court shall order that any temporary restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(9) A temporary order, temporary restraining order, or preliminary injunction:

(a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;

(b) May be revoked or modified;

(c) Terminates when the final decree is entered, except as provided under subsection (10) of this section, or when the petition for dissolution, legal separation, or declaration of invalidity is dismissed;

(d) May be entered in a proceeding for the modification of an existing decree.

(10) Delinquent support payments accrued under an order for temporary support remain collectible and are not extinguished when a final decree is entered unless the decree contains specific language to the contrary. A support debt under a temporary order owed to the state for public assistance expenditures shall not be extinguished by the final decree if:

(a) The obligor was given notice of the state's interest under chapter 74.20A RCW; or

(b) The temporary order directs the obligor to make support payments to the office of support enforcement or the Washington state support registry. [1995 c 246 § 26; 1994 sp.s. c 7 § 452; 1992 c 229 § 9; 1989 c 360 § 37; 1984 c

263 § 26; 1983 1st ex.s. c 41 § 1; 1983 c 232 § 10; 1975 c 32 § 3; 1973 1st ex.s. c 157 § 6.]

Severability—1995 c 246: See note following RCW 26.50.010.

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

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

Severability—1983 1st ex.s. c 41: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 41 § 46.]

Severability—1983 c 232: See note following RCW 9.41.010.

Arrest without warrant in domestic violence cases: RCW 10.31.100(2).

Child abuse, temporary restraining order: RCW 26.44.063.

Ex parte temporary order for protection: RCW 26.50.070.

Orders for protection in cases of domestic violence: RCW 26.50.030.

Orders prohibiting contact: RCW 10.99.040.

26.09.070 Separation contracts. (1) The parties to a marriage, in order to promote the amicable settlement of disputes attendant upon their separation or upon the filing of a petition for dissolution of their marriage, a decree of legal separation, or declaration of invalidity of their marriage, may enter into a written separation contract providing for the maintenance of either of them, the disposition of any property owned by both or either of them, the parenting plan and support for their children and for the release of each other from all obligation except that expressed in the contract.

(2) If the parties to such contract elect to live separate and apart without any court decree, they may record such contract and cause notice thereof to be published in a legal newspaper of the county wherein the parties resided prior to their separation. Recording such contract and publishing notice of the making thereof shall constitute notice to all persons of such separation and of the facts contained in the recorded document.

(3) If either or both of the parties to a separation contract shall at the time of the execution thereof, or at a subsequent time, petition the court for dissolution of their marriage, for a decree of legal separation, or for a declaration of invalidity of their marriage, the contract, except for those terms providing for a parenting plan for their children, shall be binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties on their own motion or on request of the court, that the separation contract was unfair at the time of its execution. Child support may be included in the separation contract and shall be reviewed in the subsequent proceeding for compliance with RCW 26.19.020.

(4) If the court in an action for dissolution of marriage, legal separation, or declaration of invalidity finds that the separation contract was unfair at the time of its execution, it may make orders for the maintenance of either party, the disposition of their property and the discharge of their obligations.

(5) Unless the separation contract provides to the contrary, the agreement shall be set forth in the decree of dissolution, legal separation, or declaration of invalidity, or

filed in the action or made an exhibit and incorporated by reference, except that in all cases the terms of the parenting plan shall be set out in the decree, and the parties shall be ordered to comply with its terms.

(6) Terms of the contract set forth or incorporated by reference in the decree may be enforced by all remedies available for the enforcement of a judgment, including contempt, and are enforceable as contract terms.

(7) When the separation contract so provides, the decree may expressly preclude or limit modification of any provision for maintenance set forth in the decree. Terms of a separation contract pertaining to a parenting plan for the children and, in the absence of express provision to the contrary, terms providing for maintenance set forth or incorporated by reference in the decree are automatically modified by modification of the decree.

(8) If at any time the parties to the separation contract by mutual agreement elect to terminate the separation contract they may do so without formality unless the contract was recorded as in subsection (2) of this section, in which case a statement should be filed terminating the contract. [1989 c 375 § 4; 1987 c 460 § 6; 1973 1st ex.s. c 157 § 7.]

26.09.080 Disposition of property and liabilities—Factors. In a proceeding for dissolution of the marriage, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall, without regard to marital misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage; and
- (4) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse with whom the children reside the majority of the time. [1989 c 375 § 5; 1973 1st ex.s. c 157 § 8.]

26.09.090 Maintenance orders for either spouse—Factors. (1) In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, after considering all relevant factors including but not limited to:

- (a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;
- (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find

employment appropriate to his skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage;

(d) The duration of the marriage;

(e) The age, physical and emotional condition, and financial obligations of the spouse seeking maintenance; and

(f) The ability of the spouse from whom maintenance is sought to meet his needs and financial obligations while meeting those of the spouse seeking maintenance. [1989 c 375 § 6; 1973 1st ex.s. c 157 § 9.]

26.09.100 Child support—Apportionment of expense—Periodic adjustments or modifications. (1) In a proceeding for dissolution of marriage, legal separation, declaration of invalidity, maintenance, or child support, after considering all relevant factors but without regard to marital misconduct, the court shall order either or both parents owing a duty of support to any child of the marriage dependent upon either or both spouses to pay an amount determined under chapter 26.19 RCW.

(2) The court may require automatic periodic adjustments or modifications of child support. That portion of any decree that requires periodic adjustments or modifications of child support shall use the provisions in chapter 26.19 RCW as the basis for the adjustment or modification. Provisions in the decree for periodic adjustment or modification shall not conflict with RCW 26.09.170 except that the decree may require periodic adjustments or modifications of support more frequently than the time periods established pursuant to RCW 26.09.170.

(3) Upon motion of a party and without a substantial change of circumstances, the court shall modify the decree to comply with subsection (2) of this section as to installments accruing subsequent to entry of the court's order on the motion for modification.

(4) The adjustment or modification provision may be modified by the court due to economic hardship consistent with the provisions of RCW 26.09.170(4)(a). [1991 sp.s. c 28 § 1; 1990 1st ex.s. c 2 § 1; 1989 c 375 § 7; 1988 c 275 § 9; 1987 c 430 § 3; 1973 1st ex.s. c 157 § 10.]

Severability—1991 sp.s. c 28: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 sp.s. c 28 § 9.]

Effective date—1991 sp.s. c 28: "Sections 1 through 9 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect September 1, 1991." [1991 sp.s. c 28 § 10.]

Captions not law—1991 sp.s. c 28: "Captions as used in this act do not constitute any part of the law." [1991 sp.s. c 28 § 11.]

Effective dates—1990 1st ex.s. c 2: "(1) Sections 5 and 22 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 26, 1990].

(2) The remainder of this act shall take effect July 1, 1990." [1990 1st ex.s. c 2 § 30.]

Severability—1990 1st ex.s. c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 1st ex.s. c 2 § 31.]

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

Severability—1987 c 430: See note following RCW 26.09.170.

26.09.105 Child support—Health insurance coverage—Conditions. (1) In entering or modifying a support order under this chapter, the court shall require either or both parents to maintain or provide health insurance coverage except as provided in subsection (2) of this section, for any child named in the order if:

(a) Coverage that can be extended to cover the child is or becomes available to that parent through employment or is union-related; and

(b) The cost of such coverage does not exceed twenty-five percent of the obligated parent's basic child support obligation.

(2) The court shall consider the best interests of the child and have discretion to order health insurance coverage when entering or modifying a support order under this chapter if the cost of such coverage exceeds twenty-five percent of the obligated parent's basic support obligation.

(3) The parents shall maintain such coverage required under this section until:

(a) Further order of the court;

(b) The child is emancipated, if there is no express language to the contrary in the order; or

(c) Health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment.

(4) A parent who is required to extend health insurance coverage to a child under this section is liable for any covered health care costs for which the parent receives direct payment from an insurer.

(5) This section shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of uninsured health expenses, health care costs, or insurance premiums which are in addition to and not inconsistent with this section.

(6) A parent ordered to provide health insurance coverage shall provide proof of such coverage or proof that such coverage is unavailable within twenty days of the entry of the order to:

(a) The physical custodian; or

(b) The department of social and health services if the parent has been notified or ordered to make support payments to the Washington state support registry.

(7) Every order requiring a parent to provide health care or insurance coverage shall be entered in compliance with *RCW 26.23.050 and be subject to direct enforcement as provided under chapter 26.18 RCW.

(8) "Health insurance coverage" as used in this section does not include medical assistance provided under chapter 74.09 RCW. [1994 c 230 § 1; 1989 c 416 § 1; 1985 c 108 § 1; 1984 c 201 § 1.]

***Reviser's note:** The reference to RCW 26.23.050 appears to refer to the amendments made by 1989 c 416 § 8, which was vetoed by the governor.

26.09.110 Minor or dependent child—Court appointed attorney to represent—Payment of costs, fees, and disbursements. The court may appoint an attorney to represent the interests of a minor or dependent child with respect to provision for the parenting plan in an action for dissolution of marriage, legal separation, or declaration concerning the validity of a marriage. The court shall enter

an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against either or both parents, except that, if both parties are indigent, the costs, fees, and disbursements shall be borne by the county. [1987 c 460 § 11; 1973 1st ex.s. c 157 § 11.]

Process—Domestic relations actions: Rules of court: CR 4.1.

26.09.120 Support or maintenance payments—To whom paid. (1) The court shall order support payments, including spousal maintenance if child support is ordered, to be made to the Washington state support registry, or the person entitled to receive the payments under an order approved by the court as provided in RCW 26.23.050.

(2) Maintenance payments, when ordered in an action where there is no dependent child, may be ordered to be paid to the person entitled to receive the payments, or the clerk of the court as trustee for remittance to the persons entitled to receive the payments.

(3) If support or maintenance payments are made to the clerk of court, the clerk:

(a) Shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order;

(b) May by local court rule accept only certified funds or cash as payment; and

(c) Shall accept only certified funds or cash for five years in all cases after one check has been returned for nonsufficient funds or account closure.

(4) The parties affected by the order shall inform the registry through which the payments are ordered to be paid of any change of address or of other conditions that may affect the administration of the order. [1994 c 230 § 2; 1989 c 360 § 11. Prior: 1987 c 435 § 15; 1987 c 363 § 5; 1983 1st ex.s. c 45 § 3; 1973 1st ex.s. c 157 § 12.]

Effective date—1987 c 435: See RCW 26.23.900.

26.09.135 Order or decree for child support—Compliance with RCW 26.23.050. Every court order or decree establishing a child support obligation shall be entered in compliance with the provisions of RCW 26.23.050. [1987 c 435 § 16; 1986 c 138 § 1; 1984 c 260 § 21.]

Effective date—1987 c 435: See RCW 26.23.900.

Severability—1984 c 260: See RCW 26.18.900.

26.09.138 Mandatory assignment of public retirement benefits—Remedies exclusive. (1) Any obligee of a court order or decree establishing a spousal maintenance obligation may seek a mandatory benefits assignment order under chapter 41.50 RCW if any spousal maintenance payment is more than fifteen days past due and the total of such past due payments is equal to or greater than one hundred dollars, or if the obligor requests a withdrawal of accumulated contributions from the department of retirement systems.

(2) Any court order or decree establishing a spousal maintenance obligation may state that, if any spousal maintenance payment is more than fifteen days past due and the total of such past due payments is equal to or greater than one hundred dollars, or if the obligor requests a withdrawal of accumulated contributions from the depart-

ment of retirement systems, the obligee may seek a mandatory benefits assignment order under chapter 41.50 RCW without prior notice to the obligor. Any such court order or decree may also, or in the alternative, contain a provision that would allow the department to make a direct payment of all or part of a withdrawal of accumulated contributions pursuant to RCW 41.50.550(3). Failure to include this provision does not affect the validity of the court order or decree establishing the spousal maintenance, nor does such failure affect the general applicability of RCW 41.50.500 through 41.50.650 to such obligations.

(3) The remedies in RCW 41.50.530 through 41.50.630 are the exclusive provisions of law enforceable against the department of retirement systems in connection with any action for enforcement of a spousal maintenance obligation ordered pursuant to a divorce, dissolution, or legal separation, and no other remedy ordered by a court under this chapter shall be enforceable against the department of retirement systems for collection of spousal maintenance.

(4)(a) Nothing in this section regarding mandatory assignment of benefits to enforce a spousal maintenance obligation shall abridge the right of an ex spouse to receive direct payment of retirement benefits payable pursuant to: (i) A court decree of dissolution or legal separation; or (ii) any court order or court-approved property settlement agreement; or (iii) incident to any court decree of dissolution or legal separation, if such dissolution orders fully comply with RCW 41.50.670 and 41.50.700, or as applicable, RCW 2.10.180, 2.12.090, 41.04.310, 41.04.320, 41.04.330, *41.26.180, 41.32.052, 41.40.052, or 43.43.310 as those statutes existed before July 1, 1987, and as those statutes exist on and after July 28, 1991.

(b) Persons whose dissolution orders as defined in RCW 41.50.500(3) were entered between July 1, 1987, and July 28, 1991, shall be entitled to receive direct payments of retirement benefits to satisfy court-ordered property divisions if the dissolution orders filed with the department comply or are amended to comply with RCW 41.50.670 through 41.50.720 and, as applicable, RCW 2.10.180, 2.12.090, *41.26.180, 41.32.052, 41.40.052, or 43.43.310. [1991 c 365 § 24; 1987 c 326 § 26.]

***Reviser's note:** RCW 41.26.180 was recodified as RCW 41.26.053 pursuant to 1994 c 298 § 5.

Severability—1991 c 365: See note following RCW 41.50.500.

Effective date—1987 c 326: See RCW 41.50.901.

26.09.140 Payment of costs, attorney's fees, etc. The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.

The court may order that the attorney's fees be paid directly to the attorney who may enforce the order in his name. [1973 1st ex.s. c 157 § 14.]

26.09.150 Decree of dissolution of marriage, legal separation, or declaration of invalidity—Finality—Appeal—Conversion of decree of legal separation to decree of dissolution—Name of party. A decree of dissolution of marriage, legal separation, or declaration of invalidity is final when entered, subject to the right of appeal. An appeal which does not challenge the finding that the marriage is irretrievably broken or was invalid, does not delay the finality of the dissolution or declaration of invalidity and either party may remarry pending such an appeal.

No earlier than six months after entry of a decree of legal separation, on motion of either party, the court shall convert the decree of legal separation to a decree of dissolution of marriage. The clerk of court shall complete the certificate as provided for in *RCW 70.58.200 on the form provided by the department of health. On or before the tenth day of each month, the clerk of the court shall forward to the state registrar of vital statistics the certificate of each decree of divorce, dissolution of marriage, annulment, or separate maintenance granted during the preceding month.

Upon request of a party whose marriage is dissolved or declared invalid, the court shall order a former name restored or the court may, in its discretion, order a change to another name. [1989 1st ex.s. c 9 § 205; 1989 c 375 § 30; 1973 1st ex.s. c 157 § 15.]

Reviser's note: (1) This section was amended by 1989 c 375 § 30 and by 1989 1st ex.s. c 9 § 205, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

* (2) RCW 70.58.200 was repealed by 1991 c 96 § 6.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effect of entry of a decree of dissolution of marriage or a declaration of invalidity on nonprobate assets: RCW 11.07.010.

26.09.160 Failure to comply with decree or temporary injunction—Obligation to make support or maintenance payments or permit contact with children not suspended—Penalties. (1) The performance of parental functions and the duty to provide child support are distinct responsibilities in the care of a child. If a party fails to comply with a provision of a decree or temporary order of injunction, the obligation of the other party to make payments for support or maintenance or to permit contact with children is not suspended. An attempt by a parent, in either the negotiation or the performance of a parenting plan, to condition one aspect of the parenting plan upon another, to condition payment of child support upon an aspect of the parenting plan, to refuse to pay ordered child support, to refuse to perform the duties provided in the parenting plan, or to hinder the performance by the other parent of duties provided in the parenting plan, shall be deemed bad faith and shall be punished by the court by holding the party in contempt of court and by awarding to the aggrieved party reasonable attorneys' fees and costs incidental in bringing a motion for contempt of court.

(2)(a) A motion may be filed to initiate a contempt action to coerce a parent to comply with an order establishing residential provisions for a child. If the court finds there is reasonable cause to believe the parent has not complied with the order, the court may issue an order to show cause why the relief requested should not be granted.

(b) If, based on all the facts and circumstances, the court finds after hearing that the parent, in bad faith, has not complied with the order establishing residential provisions for the child, the court shall find the parent in contempt of court. Upon a finding of contempt, the court shall order:

(i) The noncomplying parent to provide the moving party additional time with the child. The additional time shall be equal to the time missed with the child, due to the parent's noncompliance;

(ii) The parent to pay, to the moving party, all court costs and reasonable attorneys' fees incurred as a result of the noncompliance, and any reasonable expenses incurred in locating or returning a child; and

(iii) The parent to pay, to the moving party, a civil penalty, not less than the sum of one hundred dollars.

The court may also order the parent to be imprisoned in the county jail, if the parent is presently able to comply with the provisions of the court-ordered parenting plan and is presently unwilling to comply. The parent may be imprisoned until he or she agrees to comply with the order, but in no event for more than one hundred eighty days.

(3) On a second failure within three years to comply with a residential provision of a court-ordered parenting plan, a motion may be filed to initiate contempt of court proceedings according to the procedure set forth in subsection (2)(a) and (b) of this section. On a finding of contempt under this subsection, the court shall order:

(a) The noncomplying parent to provide the other parent or party additional time with the child. The additional time shall be twice the amount of the time missed with the child, due to the parent's noncompliance;

(b) The noncomplying parent to pay, to the other parent or party, all court costs and reasonable attorneys' fees incurred as a result of the noncompliance, and any reasonable expenses incurred in locating or returning a child; and

(c) The noncomplying parent to pay, to the moving party, a civil penalty of not less than two hundred fifty dollars.

The court may also order the parent to be imprisoned in the county jail, if the parent is presently able to comply with the provisions of the court-ordered parenting plan and is presently unwilling to comply. The parent may be imprisoned until he or she agrees to comply with the order but in no event for more than one hundred eighty days.

(4) For purposes of subsections (1), (2), and (3) of this section, the parent shall be deemed to have the present ability to comply with the order establishing residential provisions unless he or she establishes otherwise by a preponderance of the evidence. The parent shall establish a reasonable excuse for failure to comply with the residential provision of a court-ordered parenting plan by a preponderance of the evidence.

(5) Any monetary award ordered under subsections (1), (2), and (3) of this section may be enforced, by the party to whom it is awarded, in the same manner as a civil judgment.

(6) Subsections (1), (2), and (3) of this section authorize the exercise of the court's power to impose remedial sanctions for contempt of court and is in addition to any other contempt power the court may possess.

(7) Upon motion for contempt of court under subsections (1) through (3) of this section, if the court finds the motion was brought without reasonable basis, the court shall order the moving party to pay to the nonmoving party, all costs, reasonable attorneys' fees, and a civil penalty of not less than one hundred dollars. [1991 c 367 § 4; 1989 c 318 § 1; 1987 c 460 § 12; 1973 1st ex.s. c 157 § 16.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Severability—1989 c 318: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 318 § 6.]

26.09.165 Court orders—Required language. All court orders containing parenting plan provisions or orders of contempt, entered pursuant to RCW 26.09.160, shall include the following language:

WARNING: VIOLATION OF THE RESIDENTIAL PROVISIONS OF THIS ORDER WITH ACTUAL KNOWLEDGE OF ITS TERMS IS PUNISHABLE BY CONTEMPT OF COURT, AND MAY BE A CRIMINAL OFFENSE UNDER RCW 9A.40.060(2) or 9A.40.070(2). VIOLATION OF THIS ORDER MAY SUBJECT A VIOLATOR TO ARREST.

[1994 c 162 § 2; 1989 c 318 § 4.]

Severability—1989 c 318: See note following RCW 26.09.160.

26.09.170 Modification of decree for maintenance or support, property disposition—Termination of maintenance obligation and child support—Grounds. (1) Except as otherwise provided in subsection (7) of RCW 26.09.070, the provisions of any decree respecting maintenance or support may be modified: (a) Only as to installments accruing subsequent to the petition for modification or motion for adjustment except motions to compel court-ordered adjustments, which shall be effective as of the first date specified in the decree for implementing the adjustment; and, (b) except as otherwise provided in subsections (4), (5), (8), and (9) of this section, only upon a showing of a substantial change of circumstances. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child.

(4) An order of child support may be modified one year or more after it has been entered without showing a substantial change of circumstances:

(a) If the order in practice works a severe economic hardship on either party or the child;

(b) If a party requests an adjustment in an order for child support which was based on guidelines which determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount was based;

(c) If a child is still in high school, upon a finding that there is a need to extend support beyond the eighteenth birthday to complete high school; or

(d) To add an automatic adjustment of support provision consistent with RCW 26.09.100.

(5) An order or decree entered prior to June 7, 1984, may be modified without showing a substantial change of circumstances if the requested modification is to:

(a) Require health insurance coverage for a child named therein; or

(b) Modify an existing order for health insurance coverage.

(6) An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.

(7) The department of social and health services may file an action to modify an order of child support if public assistance money is being paid to or for the benefit of the child and the child support order is twenty-five percent or more below the appropriate child support amount set forth in the standard calculation as defined in RCW 26.19.011 and reasons for the deviation are not set forth in the findings of fact or order. The determination of twenty-five percent or more shall be based on the current income of the parties and the department shall not be required to show a substantial change of circumstances if the reasons for the deviations were not set forth in the findings of fact or order.

(8)(a) All child support decrees may be adjusted once every twenty-four months based upon changes in the income of the parents without a showing of substantially changed circumstances. Either party may initiate the adjustment by filing a motion and child support worksheets.

(b) A party may petition for modification in cases of substantially changed circumstances under subsection (1) of this section at any time. However, if relief is granted under subsection (1) of this section, twenty-four months must pass before a motion for an adjustment under (a) of this subsection may be filed.

(c) If, pursuant to (a) of this subsection or subsection (9) of this section, the court adjusts or modifies a child support obligation by more than thirty percent and the change would cause significant hardship, the court may implement the change in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a motion for an adjustment under (a) of this subsection may be filed.

(d) A parent who is receiving transfer payments who receives a wage or salary increase may not bring a modification action pursuant to subsection (1) of this section alleging that increase constitutes a substantial change of circumstances.

(9) An order of child support may be adjusted twenty-four months from the date of the entry of the decree or the last adjustment or modification, whichever is later, based

upon changes in the economic table or standards in chapter 26.19 RCW. [1992 c 229 § 2; 1991 sp.s. c 28 § 2; 1990 1st ex.s. c 2 § 2; 1989 c 416 § 3; 1988 c 275 § 17; 1987 c 430 § 1; 1973 1st ex.s. c 157 § 17.]

Severability—Effective date—Captions not law—1991 sp.s. c 28: See notes following RCW 26.09.100.

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

Severability—1987 c 430: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 430 § 4.]

26.09.173 Modification of child support order—Child support order summary report. The party seeking the establishment or modification of a child support order shall file with the clerk of the court the child support order summary report. The summary report shall be on the form developed by the administrator for the courts pursuant to RCW 26.18.210. The party must complete the form and file the form with the court order. The clerk of the court must forward the form to the administrator for the courts on at least a monthly basis. [1990 1st ex.s. c 2 § 23.]

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

26.09.175 Modification of order of child support. (1) A proceeding for the modification of an order of child support shall commence with the filing of a petition and worksheets. The petition shall be in the form prescribed by the administrator for the courts. There shall be a fee of twenty dollars for the filing of a petition for modification of dissolution.

(2) The petitioner shall serve upon the other party the summons, a copy of the petition, and the worksheets in the form prescribed by the administrator for the courts. If the modification proceeding is the first action filed in this state, service shall be made by personal service. If the decree to be modified was entered in this state, service shall be by personal service or by any form of mail requiring a return receipt. If the support obligation has been assigned to the state pursuant to RCW 74.20.330 or the state has a subrogated interest under RCW 74.20A.030, the summons, petition, and worksheets shall also be served on the attorney general. Proof of service shall be filed with the court.

(3) The responding party's answer and worksheets shall be served and the answer filed within twenty days after service of the petition or sixty days if served out of state. The responding party's failure to file an answer within the time required shall result in entry of a default judgment for the petitioner.

(4) At any time after responsive pleadings are filed, either party may schedule the matter for hearing.

(5) Unless both parties stipulate to arbitration or the presiding judge authorizes oral testimony pursuant to subsection (6) of this section, a petition for modification of an order of child support shall be heard by the court on affidavits, the petition, answer, and worksheets only.

(6) A party seeking authority to present oral testimony on the petition to modify a support order shall file an

appropriate motion not later than ten days after the time of notice of hearing. Affidavits and exhibits setting forth the reasons oral testimony is necessary to a just adjudication of the issues shall accompany the petition. The affidavits and exhibits must demonstrate the extraordinary features of the case. Factors which may be considered include, but are not limited to: (a) Substantial questions of credibility on a major issue; (b) insufficient or inconsistent discovery materials not correctable by further discovery; or (c) particularly complex circumstances requiring expert testimony. [1992 c 229 § 3; 1991 c 367 § 6; 1990 1st ex.s. c 2 § 3; 1987 c 430 § 2.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

Severability—1987 c 430: See note following RCW 26.09.170.

26.09.181 Procedure for determining permanent parenting plan. (1) SUBMISSION OF PROPOSED PLANS. (a) In any proceeding under this chapter, except a modification, each party shall file and serve a proposed permanent parenting plan on or before the earliest date of:

(i) Thirty days after filing and service by either party of a notice for trial; or

(ii) One hundred eighty days after commencement of the action which one hundred eighty day period may be extended by stipulation of the parties.

(b) In proceedings for a modification of custody or a parenting plan, a proposed parenting plan shall be filed and served with the motion for modification and with the response to the motion for modification.

(c) No proposed permanent parenting plan shall be required after filing of an agreed permanent parenting plan, after entry of a final decree, or after dismissal of the cause of action.

(d) A party who files a proposed parenting plan in compliance with this section may move the court for an order of default adopting that party's parenting plan if the other party has failed to file a proposed parenting plan as required in this section.

(2) AMENDING PROPOSED PARENTING PLANS. Either party may file and serve an amended proposed permanent parenting plan according to the rules for amending pleadings.

(3) GOOD FAITH PROPOSAL. The parent submitting a proposed parenting plan shall attach a verified statement that the plan is proposed by that parent in good faith.

(4) AGREED PERMANENT PARENTING PLANS. The parents may make an agreed permanent parenting plan.

(5) MANDATORY SETTLEMENT CONFERENCE. Where mandatory settlement conferences are provided under court rule, the parents shall attend a mandatory settlement conference. The mandatory settlement conference shall be presided over by a judge or a court commissioner, who shall apply the criteria in RCW 26.09.187 and 26.09.191. The parents shall in good faith review the proposed terms of the parenting plans and any other issues relevant to the cause of action with the presiding judge or court commissioner. Facts and legal issues that are not then in dispute shall be entered as stipulations for purposes of final hearing or trial in the matter.

(6) **TRIAL SETTING.** Trial dates for actions involving minor children brought under this chapter shall receive priority.

(7) **ENTRY OF FINAL ORDER.** The final order or decree shall be entered not sooner than ninety days after filing and service.

This subsection does not apply to decrees of legal separation. [1989 2nd ex.s. c 2 § 1; 1989 c 375 § 8; 1987 c 460 § 7.]

26.09.184 Permanent parenting plan. (1) **OBJECTIVES.** The objectives of the permanent parenting plan are to:

- (a) Provide for the child's physical care;
- (b) Maintain the child's emotional stability;
- (c) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan;
- (d) Set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in RCW 26.09.187 and 26.09.191;
- (e) Minimize the child's exposure to harmful parental conflict;
- (f) Encourage the parents, where appropriate under RCW 26.09.187 and 26.09.191, to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and
- (g) To otherwise protect the best interests of the child consistent with RCW 26.09.002.

(2) **CONTENTS OF THE PERMANENT PARENTING PLAN.** The permanent parenting plan shall contain provisions for resolution of future disputes between the parents, allocation of decision-making authority, and residential provisions for the child.

(3) **DISPUTE RESOLUTION.** A process for resolving disputes, other than court action, shall be provided unless precluded or limited by RCW 26.09.187 or 26.09.191. A dispute resolution process may include counseling, mediation, or arbitration by a specified individual or agency, or court action. In the dispute resolution process:

- (a) Preference shall be given to carrying out the parenting plan;
- (b) The parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support, unless an emergency exists;
- (c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party;
- (d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the prevailing parent;
- (e) The parties have the right of review from the dispute resolution process to the superior court; and
- (f) The provisions of (a) through (e) of this subsection shall be set forth in the decree.

(4) **ALLOCATION OF DECISION-MAKING AUTHORITY.**

(a) The plan shall allocate decision-making authority to one or both parties regarding the children's education, health care, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the criteria in RCW 26.09.187 and 26.09.191. Regardless of the allocation of decision-making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child.

(b) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent.

(c) When mutual decision making is designated but cannot be achieved, the parties shall make a good-faith effort to resolve the issue through the dispute resolution process.

(5) **RESIDENTIAL PROVISIONS FOR THE CHILD.** The plan shall include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provision for holidays, birthdays of family members, vacations, and other special occasions, consistent with the criteria in RCW 26.09.187 and 26.09.191.

(6) **PARENTS' OBLIGATION UNAFFECTED.** If a parent fails to comply with a provision of a parenting plan or a child support order, the other parent's obligations under the parenting plan or the child support order are not affected. Failure to comply with a provision in a parenting plan or a child support order may result in a finding of contempt of court, under RCW 26.09.160.

(7) **PROVISIONS TO BE SET FORTH IN PERMANENT PARENTING PLAN.** The permanent parenting plan shall set forth the provisions of subsections (3)(a) through (c), (4)(b) and (c), and (6) of this section. [1991 c 367 § 7; 1989 c 375 § 9; 1987 c 460 § 8.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Custody, designation of for purposes of other statutes: RCW 26.09.285.

Failure to comply with decree or temporary injunction—Obligations not suspended: RCW 26.09.160.

26.09.187 Criteria for establishing permanent parenting plan. (1) **DISPUTE RESOLUTION PROCESS.** The court shall not order a dispute resolution process, except court action, when it finds that any limiting factor under RCW 26.09.191 applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process. If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

(a) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(b) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and

(c) Differences in the parents' financial circumstances that may affect their ability to participate fully in a given dispute resolution process.

(2) **ALLOCATION OF DECISION-MAKING AUTHORITY.**

(a) **AGREEMENTS BETWEEN THE PARTIES.** The court shall approve agreements of the parties allocating

decision-making authority, or specifying rules in the areas listed in RCW 26.09.184(4)(a), when it finds that:

(i) The agreement is consistent with any limitations on a parent's decision-making authority mandated by RCW 26.09.191; and

(ii) The agreement is knowing and voluntary.

(b) **SOLE DECISION-MAKING AUTHORITY.** The court shall order sole decision-making to one parent when it finds that:

(i) A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191;

(ii) Both parents are opposed to mutual decision making;

(iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection;

(c) **MUTUAL DECISION-MAKING AUTHORITY.** Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority:

(i) The existence of a limitation under RCW 26.09.191;

(ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(4)(a);

(iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(4)(a); and

(iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

(3) RESIDENTIAL PROVISIONS.

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

(i) The relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;

(iii) Each parent's past and potential for future performance of parenting functions;

(iv) The emotional needs and developmental level of the child;

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

(b) The court may order that a child frequently alternate his or her residence between the households of the parents

for brief and substantially equal intervals of time only if the court finds the following:

(i) No limitation exists under RCW 26.09.191;

(ii)(A) The parties have agreed to such provisions and the agreement was knowingly and voluntarily entered into; or

(B) The parties have a satisfactory history of cooperation and shared performance of parenting functions; the parties are available to each other, especially in geographic proximity, to the extent necessary to ensure their ability to share performance of the parenting functions; and

(iii) The provisions are in the best interests of the child. [1989 c 375 § 10; 1987 c 460 § 9.]

Custody, designation of for purposes of other statutes: RCW 26.09.285.

26.09.191 Restrictions in temporary or permanent parenting plans.

(1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making

progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court

approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a state-certified sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a state-certified sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional

abuse or harm that could result if the child has contact with the parent requesting residential time. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;

(c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;

(d) The absence or substantial impairment of emotional ties between the parent and the child;

(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;

(f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(5) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

(6) For the purposes of this section, a parent's child means that parent's natural child, adopted child, or stepchild. [1996 c 303 § 1; 1994 c 267 § 1. Prior: 1989 c 375 § 11; 1989 c 326 § 1; 1987 c 460 § 10.]

Effective date—1996 c 303: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 1996]." [1996 c 303 § 3.]

Effective date—1994 c 267: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 267 § 6.]

26.09.194 Proposed temporary parenting plan—Temporary order—Amendment—Vacation of order.

(1) A parent seeking a temporary order relating to parenting shall file and serve a proposed temporary parenting plan by motion. The other parent, if contesting the proposed temporary parenting plan, shall file and serve a responsive proposed parenting plan. Either parent may move to have a proposed temporary parenting plan entered as part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order. The proposed temporary parenting plan may be supported by relevant evidence and shall be accompanied by an affidavit or declaration which shall state at a minimum the following:

(a) The name, address, and length of residence with the person or persons with whom the child has lived for the preceding twelve months;

(b) The performance by each parent during the last twelve months of the parenting functions relating to the daily needs of the child;

(c) The parents' work and child-care schedules for the preceding twelve months;

(d) The parents' current work and child-care schedules; and

(e) Any of the circumstances set forth in RCW 26.09.191 that are likely to pose a serious risk to the child and that warrant limitation on the award to a parent of temporary residence or time with the child pending entry of a permanent parenting plan.

(2) At the hearing, the court shall enter a temporary parenting order incorporating a temporary parenting plan which includes:

(a) A schedule for the child's time with each parent when appropriate;

(b) Designation of a temporary residence for the child;

(c) Allocation of decision-making authority, if any. Absent allocation of decision-making authority consistent with RCW 26.09.187(2), neither party shall make any decision for the child other than those relating to day-to-day or emergency care of the child, which shall be made by the party who is present with the child;

(d) Provisions for temporary support for the child; and

(e) Restraining orders, if applicable, under RCW 26.09.060.

(3) A parent may make a motion for an order to show cause and the court may enter a temporary order, including a temporary parenting plan, upon a showing of necessity.

(4) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment conforms to the limitations of RCW 26.09.191 and is in the best interest of the child.

(5) If a proceeding for dissolution of marriage, legal separation, or declaration of invalidity is dismissed, any temporary order or temporary parenting plan is vacated. [1987 c 460 § 13.]

26.09.197 Issuance of temporary parenting plan—Criteria. After considering the affidavit required by RCW 26.09.194(1) and other relevant evidence presented, the court shall make a temporary parenting plan that is in the best interest of the child. In making this determination, the court shall give particular consideration to:

(1) Which parent has taken greater responsibility during the last twelve months for performing parenting functions relating to the daily needs of the child; and

(2) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

The court shall also consider the factors used to determine residential provisions in the permanent parenting plan. [1987 c 460 § 14.]

26.09.210 Parenting plans—Interview with child by court—Advice of professional personnel. The court may interview the child in chambers to ascertain the child's wishes as to the child's residential schedule in a proceeding for dissolution of marriage, legal separation, or declaration of invalidity. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be made part of the record in the case.

The court may seek the advice of professional personnel whether or not they are employed on a regular basis by the court. The advice given shall be in writing and shall be made available by the court to counsel upon request. Counsel may call for cross-examination any professional personnel consulted by the court. [1987 c 460 § 15; 1973 1st ex.s. c 157 § 21.]

26.09.220 Parenting arrangements—Investigation and report—Appointment of guardian ad litem. (1) The court may order an investigation and report concerning

parenting arrangements for the child, or may appoint a guardian ad litem pursuant to RCW 26.12.175, or both. The investigation and report may be made by the guardian ad litem, the staff of the juvenile court, or other professional social service organization experienced in counseling children and families.

(2) In preparing the report concerning a child, the investigator may consult any person who may have information about the child and the potential parenting or custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The investigator shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court for good cause shown. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing. [1993 c 289 § 1; 1989 c 375 § 12; 1987 c 460 § 16; 1973 1st ex.s. c 157 § 22.]

Authority to make reports to assist courts of other states: RCW 26.27.200.

26.09.225 Access to child's education and health care records. (1) Each parent shall have full and equal access to the education and health care records of the child absent a court order to the contrary. Neither parent may veto the access requested by the other parent.

(2) Educational records are limited to academic, attendance, and disciplinary records of public and private schools in all grades kindergarten through twelve and any form of alternative school for all periods for which child support is paid or the child is the dependent in fact of the parent requesting access to the records.

(3) Educational records of postsecondary educational institutions are limited to enrollment and academic records necessary to determine, establish, or continue support ordered pursuant to RCW 26.19.090. [1991 sp.s. c 28 § 3; 1990 1st ex.s. c 2 § 18; 1987 c 460 § 17.]

Severability—Effective date—Captions not law—1991 sp.s. c 28: See notes following RCW 26.09.100.

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

26.09.240 Visitation rights—Person other than parent—Grandparents' visitation rights. (1) A person other than a parent may petition the court for visitation with

a child at any time or may intervene in a pending dissolution, legal separation, or modification of parenting plan proceeding. A person other than a parent may not petition for visitation under this section unless the child's parent or parents have commenced an action under this chapter.

(2) A petition for visitation with a child by a person other than a parent must be filed in the county in which the child resides.

(3) A petition for visitation or a motion to intervene pursuant to this section shall be dismissed unless the petitioner or intervenor can demonstrate by clear and convincing evidence that a significant relationship exists with the child with whom visitation is sought. If the petition or motion is dismissed for failure to establish the existence of a significant relationship, the petitioner or intervenor shall be ordered to pay reasonable attorney's fees and costs to the parent, parents, other custodian, or representative of the child who responds to this petition or motion.

(4) The court may order visitation between the petitioner or intervenor and the child between whom a significant relationship exists upon a finding supported by the evidence that the visitation is in the child's best interests.

(5)(a) Visitation with a grandparent shall be presumed to be in the child's best interests when a significant relationship has been shown to exist. This presumption may be rebutted by a preponderance of evidence showing that visitation would endanger the child's physical, mental, or emotional health.

(b) If the court finds that reasonable visitation by a grandparent would be in the child's best interest except for hostilities that exist between the grandparent and one or both of the parents or person with whom the child lives, the court may set the matter for mediation under RCW 26.09.015.

(6) The court may consider the following factors when making a determination of the child's best interests:

(a) The strength of the relationship between the child and the petitioner;

(b) The relationship between each of the child's parents or the person with whom the child is residing and the petitioner;

(c) The nature and reason for either parent's objection to granting the petitioner visitation;

(d) The effect that granting visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;

(e) The residential time sharing arrangements between the parents;

(f) The good faith of the petitioner;

(g) Any criminal history or history of physical, emotional, or sexual abuse or neglect by the petitioner; and

(h) Any other factor relevant to the child's best interest.

(7) The restrictions of RCW 26.09.191 that apply to parents shall be applied to a petitioner or intervenor who is not a parent. The nature and extent of visitation, subject to these restrictions, is in the discretion of the court.

(8) The court may order an investigation and report concerning the proposed visitation or may appoint a guardian ad litem as provided in RCW 26.09.220.

(9) Visitation granted pursuant to this section shall be incorporated into the parenting plan for the child.

(10) The court may modify or terminate visitation rights granted pursuant to this section in any subsequent modifica-

tion action upon a showing that the visitation is no longer in the best interest of the child. [1996 c 177 § 1; 1989 c 375 § 13; 1987 c 460 § 18; 1977 ex.s. c 271 § 1; 1973 1st ex.s. c 157 § 24.]

26.09.255 Remedies when a child is taken, enticed, or concealed. A relative, as defined in RCW 9A.40.010, may bring civil action against any other relative if, with intent to deny access to a child by that relative of the child who has a right to physical custody of or visitation with the child or a parent with whom the child resides pursuant to a parenting plan order, the relative takes, entices, or conceals the child from that relative. The plaintiff may be awarded, in addition to any damages awarded by the court, the reasonable expenses incurred by the plaintiff in locating the child, including, but not limited to, investigative services and reasonable attorneys' fees. [1987 c 460 § 22; 1984 c 95 § 6.]

Severability—1984 c.95: See note following RCW 9A.40.060.

26.09.260 Modification of parenting plan or custody decree. (1) Except as otherwise provided in subsection (4) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child.

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

(a) The parents agree to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;

(c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.

(3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.

(4) The court may order adjustments to a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is only a:

(a) Modification in the dispute resolution process; or

(b) Minor modification in the residential schedule that:

(i) Does not change the residence the child is scheduled to reside in the majority of the time; and

(ii) Does not exceed twenty-four full days in a calendar year or five full days in a calendar month; or

(iii) Is based on a change of residence or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow.

(5) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party. [1991 c 367 § 9. Prior: 1989 c 375 § 14; 1989 c 318 § 3; 1987 c 460 § 19; 1973 1st ex.s. c 157 § 26.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Severability—1989 c 318: See note following RCW 26.09.160.

26.09.270 Child custody—Temporary custody order, temporary parenting plan, or modification of custody decree—Affidavits required. A party seeking a temporary custody order or a temporary parenting plan or modification of a custody decree or parenting plan shall submit together with his motion, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceedings, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted. [1989 c 375 § 15; 1973 1st ex.s. c 157 § 27.]

26.09.280 Parenting plan or child support modification or enforcement—Venue. Every action or proceeding to change, modify, or enforce any final order, judgment, or decree entered in any dissolution or legal separation or declaration concerning the validity of a marriage, whether under this chapter or prior law, regarding the parenting plan or child support for the minor children of the marriage may be brought in the county where the minor children are then residing, or in the court in which the final order, judgment, or decree was entered, or in the county where the parent or other person who has the care, custody, or control of the children is then residing. [1991 c 367 § 10; 1987 c 460 § 20; 1975 c 32 § 4; 1973 1st ex.s. c 157 § 28.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.09.285 Designation of custody for the purpose of other state and federal statutes. Solely for the purposes of all other state and federal statutes which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside a majority of the time as the custodian of the child. However, this designation shall not affect either parent's rights and responsibilities under the parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside the majority of the time shall be deemed to be the custodian of the child for the purposes of such federal and state statutes. [1989 c 375 § 16; 1987 c 460 § 21.]

26.09.290 Final decree of divorce nunc pro tunc.

Whenever either of the parties in a divorce action is, under the law, entitled to a final judgment, but by mistake, negligence, or inadvertence the same has not been signed, filed, or entered, if no appeal has been taken from the interlocutory order or motion for a new trial made, the court, on the motion of either party thereto or upon its own motion, may cause a final judgment to be signed, dated, filed, and entered therein granting the divorce as of the date when the same could have been given or made by the court if applied for. The court may cause such final judgment to be signed, dated, filed, and entered nunc pro tunc as aforesaid, even though a final judgment may have been previously entered where by mistake, negligence or inadvertence the same has not been signed, filed, or entered as soon as such final judgment, the parties to such action shall be deemed to have been restored to the status of single persons as of the date affixed to such judgment, and any marriage of either of such parties subsequent to six months after the granting of the interlocutory order as shown by the minutes of the court, and after the final judgment could have been entered under the law if applied for, shall be valid for all purposes as of the date affixed to such final judgment, upon the filing thereof. [1973 1st ex.s. c 157 § 29.]

26.09.300 Restraining orders—Notice—Refusal to comply—Arrest—Penalty—Defense—Peace officers, immunity. (1) Whenever a restraining order is issued under this chapter, and the person to be restrained knows of the order, a violation of the provisions restricting the person from acts or threats of violence or of a provision restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another is a misdemeanor.

(2) A person is deemed to have notice of a restraining order if:

(a) The person to be restrained or the person's attorney signed the order;

(b) The order recites that the person to be restrained or the person's attorney appeared in person before the court;

(c) The order was served upon the person to be restrained; or

(d) The peace officer gives the person oral or written evidence of the order by reading from it or handing to the person a certified copy of the original order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(3) A peace officer shall verify the existence of a restraining order by:

(a) Obtaining information confirming the existence and terms of the order from a law enforcement agency; or

(b) Obtaining a certified copy of the order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(4) A peace officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) A restraining order has been issued under this chapter;

(b) The respondent or person to be restrained knows of the order; and

(c) The person to be arrested has violated the terms of the order restraining the person from acts or threats of violence or restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another.

(5) It is a defense to prosecution under subsection (1) of this section that the court order was issued contrary to law or court rule.

(6) No peace officer may be held criminally or civilly liable for making an arrest under subsection (4) of this section if the officer acts in good faith and without malice. [1996 c 248 § 9; 1995 c 246 § 27; 1984 c 263 § 28; 1974 ex.s. c 99 § 1.]

Severability—1995 c 246: See note following RCW 26.50.010.

Effective date—Severability—1984 c 263: See RCW 26.50.901 and 26.50.902.

26.09.310 Provision of health care to minor—Immunity of health care provider. No health care provider or facility, or their agent, shall be liable for damages in any civil action brought by a parent or guardian based only on a lack of the parent or guardian's consent for medical care of a minor child, if consent to the care has been given by a parent or guardian of the minor. The immunity provided by this section shall apply regardless of whether:

(1) The parents are married, unmarried, or separated at the time of consent or treatment;

(2) The consenting parent is, or is not, a custodial parent of the minor;

(3) The giving of consent by a parent is, or is not, full performance of any agreement between the parents, or of any order or decree in any action entered pursuant to chapter 26.09 RCW;

(4) The action or suit is brought by or on behalf of the nonconsenting parent, the minor child, or any other person. [1989 c 377 § 1.]

26.09.900 Construction—Pending divorce actions. Notwithstanding the repeals of prior laws enumerated in section 30, chapter 157, Laws of 1973 1st ex. sess., actions for divorce which were properly and validly pending in the superior courts of this state as of the effective date of such repealer (July 15, 1973) shall be governed and may be pursued to conclusion under the provisions of law applicable thereto at the time of commencement of such action and all decrees and orders heretofore or hereafter in all other respects regularly entered in such proceedings are declared valid: PROVIDED, That upon proper cause being shown at any time before final decree, the court may convert such action to an action for dissolution of marriage as provided for in RCW 26.09.901. [1974 ex.s. c 15 § 1.]

26.09.901 Conversion of pending action to dissolution proceeding. Any divorce action which was filed prior to July 15, 1973 and for which a final decree has not been entered on February 11, 1974, may, upon order of the superior court having jurisdiction over such proceeding for good cause shown, be converted to a dissolution proceeding and

thereafter be continued under the provisions of this chapter. [1974 ex.s. c 15 § 2.]

26.09.902 RCW 26.09.900 and 26.09.901 deemed in effect on July 16, 1973. The provisions of RCW 26.09.900 and 26.09.901 are remedial and procedural and shall be construed to have been in effect as of July 16, 1973. [1974 ex.s. c 15 § 3.]

26.09.905 Construction of chapter with uniform child custody jurisdiction act (chapter 26.27 RCW). See RCW 26.27.900.

26.09.907 Construction—Pending actions as of January 1, 1988. Notwithstanding the repeals of prior laws, actions which were properly and validly pending in the superior courts of this state as of January 1, 1988, shall not be governed by chapter 460, Laws of 1987 but shall be governed by the provisions of law in effect on December 31, 1987. [1989 c 375 § 17; 1987 c 460 § 23.]

26.09.909 Decrees entered into prior to January 1, 1988. (1) Decrees under this chapter involving child custody, visitation, or child support entered in actions commenced prior to January 1, 1988, shall be deemed to be parenting plans for purposes of this chapter.

(2) The enactment of the 1987 revisions to this chapter does not constitute substantially changed circumstances for the purposes of modifying decrees entered under this chapter in actions commenced prior to January 1, 1988, involving child custody, visitation, or child support. Any action to modify any decree involving child custody, visitation, child support, or a parenting plan shall be governed by the provisions of this chapter.

(3) Actions brought for clarification or interpretation of decrees entered under this chapter in actions commenced prior to January 1, 1988, shall be determined under the law in effect immediately prior to January 1, 1988. [1990 1st ex.s. c 2 § 16; 1989 c 375 § 18; 1987 c 460 § 24.]

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

26.09.910 Short title—1987 c 460. This act shall be known as the parenting act of 1987. [1987 c 460 § 57.]

26.09.911 Section captions—1987 c 460. Section captions as used in this act do not constitute any part of the law. [1987 c 460 § 58.]

26.09.912 Effective date—1987 c 460. This act shall take effect on January 1, 1988. [1987 c 460 § 59.]

26.09.913 Severability—1987 c 460. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of this act or the application of the provision to other persons or circumstances is not affected. [1987 c 460 § 60.]

26.09.914 Severability—1989 c 375. If any provision of this act or its application to any person or circumstance is

held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 375 § 33.]

Chapter 26.10

NONPARENTAL ACTIONS FOR CHILD CUSTODY

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26.10.210	Venue.
26.10.220	Restraining orders—Notice—Refusal to comply—Arrest—Penalty—Defense—Peace officers, immunity.
26.10.910	Short title—1987 c 460.
26.10.911	Section captions—1987 c 460.
26.10.912	Effective date—1987 c 460.
26.10.913	Severability—1987 c 460.

Child support registry: Chapter 26.23 RCW.

26.10.010 Intent. It is the intent of the legislature to reenact and continue the law relating to third-party actions involving custody of minor children in order to distinguish that body of law from the *1987 parenting act amendments to chapter 26.09 RCW, which previously contained these provisions. [1987 c 460 § 25.]

***Reviser's note:** For codification of the 1987 parenting act, 1987 c 460, see Codification Tables, Volume 0.

26.10.015 Mandatory use of approved forms. (1) Effective January 1, 1992, a party shall not file any pleading with the clerk of the court in an action commenced under this chapter unless on forms approved by the administrator for the courts.

(2) The parties shall comply with requirements for submission to the court of forms as provided in RCW 26.18.220. [1992 c 229 § 4; 1990 1st ex.s. c 2 § 27.]

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

26.10.020 Civil practice to govern—Designation of proceedings—Decrees. (1) Except as otherwise specifically provided in this chapter, the practice in civil action shall govern all proceedings under this chapter, except that trial by jury is dispensed with.

(2) In cases where a party other than a parent seeks custody of a minor child, a separate custody proceeding shall be entitled "In re the custody of"

(3) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter shall be denominated as provided in the civil rules for superior court. [1987 c 460 § 26.]

26.10.030 Child custody proceeding—Commencement—Notice—Intervention. (1) Except as authorized for proceedings brought under chapter 26.50 RCW in district or municipal courts, a child custody proceeding is commenced in the superior court by a person other than a parent, by filing a petition seeking custody of the child in the county where the child is permanently resident or where the child is found, but only if the child is not in the physical custody of one of its parents or if the petitioner alleges that neither parent is a suitable custodian.

(2) Notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties. [1987 c 460 § 27.]

26.10.040 Provisions for child support, custody, and visitation—Federal tax exemption—Continuing restraining orders—Domestic violence or antiharassment protection orders. In entering an order under this chapter, the court shall consider, approve, or make provision for:

(1) Child custody, visitation, and the support of any child entitled to support;

(2) The allocation of the children as a federal tax exemption;

(3) Any necessary continuing restraining orders, including the provisions contained in RCW 9.41.800;

(4) A domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW. The court may grant any of the relief provided in RCW 26.50.060 except relief pertaining to residential provisions for the children which provisions shall be provided for under this chapter, and any of the relief provided in RCW 10.14.080;

(5) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER

WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.10 RCW AND WILL SUBJECT A VIOLATOR TO ARREST;

(6) The court shall order that any restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section, in addition to the law enforcement information sheet or proof of service of the order, be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state. [1995 c 93 § 3; 1994 sp.s. c 7 § 453; 1989 c 375 § 31; 1987 c 460 § 28.]

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

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Severability—1989 c 375: See RCW 26.09.914.

26.10.045 Child support schedule. A determination of child support shall be based upon the child support schedule and standards adopted under *RCW 26.19.040. [1988 c 275 § 12.]

***Reviser's note:** RCW 26.19.040 was repealed by 1991 sp.s. c 28 § 8, effective September 1, 1991.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

26.10.050 Child support by parents—Apportionment of expense. In a custody proceeding, the court may order either or both parents owing a duty of support to any child of the marriage dependent upon either or both spouses to pay an amount reasonable or necessary for the child's support. [1987 c 460 § 29.]

26.10.060 Health insurance coverage—Conditions. In entering or modifying a custody order under this chapter, the court shall require either or both parents to maintain or provide health insurance coverage for any dependent child if the following conditions are met:

(1) Health insurance that can be extended to cover the child is available to that parent through an employer or other organization; and

(2) The employer or other organization offering health insurance will contribute all or a part of the premium for coverage of the child.

A parent who is required to extend insurance coverage to a child under this section is liable for any covered health care costs for which the parent receives direct payment from an insurer.

This section shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of medical expenses, medical costs, or insurance premiums which are in addition to and not inconsistent with this section. "Health insurance" as used in this section does not include medical assistance provided

under chapter 74.09 RCW. [1989 c 375 § 19; 1987 c 460 § 30.]

Severability—1989 c 375: See RCW 26.09.914.

26.10.070 Minor or dependent child—Court appointed attorney to represent—Payment of costs, fees, and disbursements. The court may appoint an attorney to represent the interests of a minor or dependent child with respect to custody, support, and visitation. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against any or all parties, except that, if all parties are indigent, the costs, fees, and disbursements shall be borne by the county. [1989 c 375 § 20; 1987 c 460 § 31.]

Severability—1989 c 375: See RCW 26.09.914.

26.10.080 Payment of costs, attorney's fees, etc. The court from time to time, after considering the financial resources of all parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.

The court may order that the attorney's fees be paid directly to the attorney who may enforce the order in his or her name. [1987 c 460 § 35.]

26.10.090 Failure to comply with decree or temporary injunction—Obligation to make support payments or permit visitation not suspended—Motion. If a party fails to comply with a provision of an order or temporary order of injunction, the obligation of the other party to make payments for support or to permit visitation is not suspended, but the party may move the court to grant an appropriate order. [1987 c 460 § 36.]

26.10.100 Determination of custody—Child's best interests. The court shall determine custody in accordance with the best interests of the child. [1987 c 460 § 38.]

26.10.110 Temporary custody order—Vacation of order. A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in RCW 26.10.200. The court may award temporary custody after a hearing, or, if there is no objection, solely on the basis of the affidavits.

If a custody proceeding commenced under this chapter is dismissed, any temporary order is vacated. [1987 c 460 § 39.]

26.10.115 Temporary orders—Support—Restraining orders—Domestic violence or antiharassment protection orders—Preservation of support debt. (1) In

a proceeding under this chapter either party may file a motion for temporary support of children entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amount requested.

(2) In a proceeding under this chapter either party may file a motion for a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any person from:

(a) Molesting or disturbing the peace of the other party or of any child;

(b) Entering the family home or the home of the other party upon a showing of the necessity therefor;

(c) Removing a child from the jurisdiction of the court.

(3) Either party may request a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW on a temporary basis. The court may grant any of the relief provided in RCW 26.50.060 except relief pertaining to residential provisions for the children which provisions shall be provided for under this chapter, and any of the relief provided in RCW 10.14.080. Ex parte orders issued under this subsection shall be effective for a fixed period not to exceed fourteen days, or upon court order, not to exceed twenty-four days if necessary to ensure that all temporary motions in the case can be heard at the same time.

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

(5) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(6) The court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper in the circumstances.

(7) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.10 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(8) The court shall order that any temporary restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(9) A temporary order, temporary restraining order, or preliminary injunction:

(a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;

(b) May be revoked or modified;

(c) Terminates when the final order is entered or when the motion is dismissed;

(d) May be entered in a proceeding for the modification of an existing order.

(10) A support debt owed to the state for public assistance expenditures which has been charged against a party pursuant to RCW 74.20A.040 and/or 74.20A.055 shall not be merged in, or otherwise extinguished by, the final decree or order, unless the office of support enforcement has been given notice of the final proceeding and an opportunity to present its claim for the support debt to the court and has failed to file an affidavit as provided in this subsection. Notice of the proceeding shall be served upon the office of support enforcement personally, or by certified mail, and shall be given no fewer than thirty days prior to the date of the final proceeding. An original copy of the notice shall be filed with the court either before service or within a reasonable time thereafter. The office of support enforcement may present its claim, and thereby preserve the support debt, by filing an affidavit setting forth the amount of the debt with the court, and by mailing a copy of the affidavit to the parties or their attorney prior to the date of the final proceeding. [1995 c 246 § 29; 1994 sp.s. c 7 § 454; 1989 c 375 § 32.]

Severability—1995 c 246: See note following RCW 26.50.010.

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

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Severability—1989 c 375: See RCW 26.09.914.

26.10.120 Interview with child by court—Advice of professional personnel. The court may interview the child in chambers to ascertain the child's wishes as to his or her custodian and as to visitation privileges. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be made part of the record in the case.

The court may seek the advice of professional personnel whether or not they are employed on a regular basis by the court. The advice given shall be in writing and shall be made available by the court to counsel upon request. Counsel may call for cross-examination any professional personnel consulted by the court. [1987 c 460 § 40.]

26.10.130 Investigation and report. (1) In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodian arrangements for the child, or may appoint a guardian ad litem pursuant to RCW 26.12.175, or both. The investigation and report may be made by the guardian ad litem, the staff of the juvenile court, or other professional social service organization experienced in counseling children and families.

(2) In preparing the report concerning a child, the investigator may consult any person who may have informa-

tion about the child and potential custodian arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The investigator shall mail the investigator's report to counsel and to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court for good cause shown. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing. [1993 c 289 § 2; 1987 c 460 § 41.]

26.10.140 Hearing—Record—Expenses of witnesses. Custody proceedings shall receive priority in being set for hearing.

A party may petition the court to authorize the payment of necessary travel and other expenses incurred by any witness whose presence at the hearing the court deems necessary to determine the best interests of the child.

The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a custody hearing, but may admit any person who has a direct and legitimate interest in the work of the court.

If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record. [1987 c 460 § 42.]

26.10.150 Access to child's education and medical records. Each parent shall have full and equal access to the education and medical records of the child absent a court order to the contrary. [1987 c 460 § 43.]

26.10.160 Visitation rights—Limitations. (1) A parent not granted custody of the child is entitled to reasonable visitation rights except as provided in subsection (2) of this section.

(2)(a) Visitation with the child shall be limited if it is found that the parent seeking visitation has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of

acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's visitation with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from

contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

- (i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;
- (ii) RCW 9A.44.073;
- (iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;
- (iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;
- (v) RCW 9A.44.083;
- (vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;
- (vii) RCW 9A.44.100;
- (viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;
- (ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises visitation in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

- (i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;
- (ii) RCW 9A.44.073;
- (iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;
- (iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;
- (v) RCW 9A.44.083;
- (vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;
- (vii) RCW 9A.44.100;
- (viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;
- (ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

- (i) If the child was not the victim of the sex offense committed by the parent requesting visitation, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is

engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting visitation, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting visitation, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting visitation, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have visitation with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the

court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have visitation with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have visitation with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such visitation. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised visitation has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of visitation between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a state-certified sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised visitation has occurred for at least two years during which time the adjudicated juvenile has had no

further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of visitation between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a state-certified sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting visitation. If the court expressly finds based on the evidence that limitations on visitation with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting visitation, the court shall restrain the person seeking visitation from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits visitation under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) Any person may petition the court for visitation rights at any time including, but not limited to, custody proceedings. The court may order visitation rights for any person when visitation may serve the best interest of the child whether or not there has been any change of circumstances.

(4) The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child. Modification of a parent's visitation rights shall be subject to the requirements of subsection (2) of this section.

(5) For the purposes of this section, a parent's child means that parent's natural child, adopted child, or stepchild. [1996 c 303 § 2; 1994 c 267 § 2; 1989 c 326 § 2; 1987 c 460 § 44.]

Effective date—1996 c 303: See note following RCW 26.09.191.

Effective date—1994 c 267: See note following RCW 26.09.191.

26.10.170 Powers and duties of custodian—Supervision by appropriate agency when necessary. Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including education, health care, and religious training, unless the court after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical, mental, or emotional health would be endangered.

If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical, mental, or emotional health would be endangered, the court may order an appropriate agency which regularly deals with children to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out. Such order may be modified by the court at any time upon petition by either party. [1987 c 460 § 45.]

26.10.180 Remedies when a child is taken, enticed, or concealed. A relative, as defined in RCW 9A.40.010, may bring civil action against any other relative who, with intent to deny access to a child by another relative of the child who has a right to physical custody of or visitation with the child, takes, entices, or conceals the child from that relative. The plaintiff may be awarded, in addition to any damages awarded by the court, the reasonable expenses incurred by the plaintiff in locating the child, including, but

not limited to, investigative services and reasonable attorneys' fees. [1989 c 375 § 21; 1987 c 460 § 46.]

Severability—1989 c 375: See RCW 26.09.914.

26.10.190 Child custody decree—Modification. (1) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or the custodian and that the modification is necessary to serve the best interests of the child. In applying these standards, the court shall retain the custodian established by the prior decree unless:

(a) The custodian agrees to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the custodian; or

(c) The child's present environment is detrimental to his or her physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

(2) If the court finds that a motion to modify a prior custody decree has been brought in bad faith, the court shall assess the attorney's fees and court costs of the custodian against the petitioner. [1989 c 375 § 24; 1987 c 460 § 47.]

Severability—1989 c 375: See RCW 26.09.914.

26.10.195 Modification of child support order—Child support order summary report. The party seeking the establishment or modification of a child support order shall file with the clerk of the court the child support order summary report. The summary report shall be on the form developed by the administrator for the courts pursuant to RCW 26.18.210. The party must complete the form and file the form with the court order. The clerk of the court must forward the form to the administrator for the courts on at least a monthly basis. [1990 1st ex.s. c 2 § 24.]

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

26.10.200 Temporary custody order or modification of custody decree—Affidavits required. A party seeking a temporary custody order or modification of a custody decree shall submit together with his or her motion, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of the affidavit, to other parties to the proceedings, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted. [1987 c 460 § 48.]

26.10.210 Venue. Every action or proceeding to change, modify, or enforce any final order, judgment, or decree heretofore or hereafter entered, whether under this chapter or prior law, in relation to the care, custody, control, or support of the minor children may be brought in the county where the minor children are then residing, or in the court in which the final order, judgment, or decree was entered, or in the county where the parent or other person

who has the care, custody, or control of the children is then residing. [1987 c 460 § 49.]

26.10.220 Restraining orders—Notice—Refusal to comply—Arrest—Penalty—Defense—Peace officers, immunity. (1) Whenever a restraining order is issued under this chapter, and the person to be restrained knows of the order, a violation of the provisions restricting the person from acts or threats of violence or of a provision restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another is a misdemeanor.

(2) A person is deemed to have notice of a restraining order if:

(a) The person to be restrained or the person's attorney signed the order;

(b) The order recites that the person to be restrained or the person's attorney appeared in person before the court;

(c) The order was served upon the person to be restrained; or

(d) The peace officer gives the person oral or written evidence of the order by reading from it or handing to the person a certified copy of the original order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(3) A peace officer shall verify the existence of a restraining order by:

(a) Obtaining information confirming the existence and terms of the order from a law enforcement agency; or

(b) Obtaining a certified copy of the order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(4) A peace officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) A restraining order has been issued under this chapter;

(b) The respondent or person to be restrained knows of the order; and

(c) The person to be arrested has violated the terms of the order restraining the person from acts or threats of violence or restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another.

(5) It is a defense to prosecution under subsection (1) of this section that the court order was issued contrary to law or court rule.

(6) No peace officer may be held criminally or civilly liable for making an arrest under subsection (4) of this section if the officer acts in good faith and without malice. [1996 c 248 § 10; 1995 c 246 § 30; 1987 c 460 § 50.]

Severability—1995 c 246: See note following RCW 26.50.010.

26.10.910 Short title—1987 c 460. See RCW 26.09.910.

26.10.911 Section captions—1987 c 460. See RCW 26.09.911.

26.10.912 Effective date—1987 c 460. See RCW 26.09.912.

26.10.913 Severability—1987 c 460. See RCW 26.09.913.

Chapter 26.12 FAMILY COURT

Sections

- 26.12.010 Jurisdiction conferred on superior court—Family law proceeding defined.
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- 26.12.240 Courthouse facilitator program—Fee or surcharge.

Dissolution of marriage, legal separation, declarations concerning validity of marriage: Chapter 26.09 RCW.

Domestic violence prevention: Chapter 26.50 RCW.

Nonparental actions for child custody: Chapter 26.10 RCW.

26.12.010 Jurisdiction conferred on superior court—Family law proceeding defined. (1) Each superior court shall exercise the jurisdiction conferred by this chapter and while sitting in the exercise of such jurisdiction shall be known and referred to as the "family court." A family law proceeding under this chapter is any proceeding under this title or any proceeding in which the family court is requested to adjudicate or enforce the rights of the parties or their children regarding the determination or modification of parenting plans, child custody, visitation, or support, or the distribution of property or obligations.

(2) Superior court judges of a county may by majority vote, grant to the family court the power, authority, and jurisdiction, concurrent with the juvenile court, to hear and decide cases under Title 13 RCW. [1994 sp.s. c 7 § 537; 1991 c 367 § 11; 1983 c 219 § 1; 1949 c 50 § 1; Rem. Supp. 1949 § 997-30.]

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

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.12.020 Designation of judge—Number of sessions. In counties having more than one judge of the superior court the judges of such court shall annually, in the month of January, designate one or more of their number to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the family court in each week as are necessary for the prompt disposition of matters before the court. [1949 c 50 § 2; Rem. Supp. 1949 § 997-31.]

26.12.030 Transfer of cases to presiding judge. The judge of the family court may transfer any case before the family court pursuant to this chapter to the department of the presiding judge of the superior court for assignment for trial or other proceedings by another judge of the court, whenever in the opinion of the judge of the family court such transfer is necessary to expedite the business of the family court or to insure the prompt consideration of the case. When any case is so transferred, the judge to whom it is transferred shall act as the judge of the family court in the matter. [1949 c 50 § 3; Rem. Supp. 1949 § 997-32.]

26.12.040 Substitute judge of family court. In counties having more than one judge of the superior court the presiding judge may appoint a judge other than the judge of the family court to act as judge of the family court during any period when the judge of the family court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all the powers and authority of a judge of the family court in cases under this chapter. [1949 c 50 § 4; Rem. Supp. 1949 § 997-33.]

26.12.050 Family courts—Appointment of assistants. (1) Except as provided in subsection (2) of this section, in each county the superior court may appoint the following persons to assist the family court in disposing of its business:

(a) One or more attorneys to act as family court commissioners, and

(b) Such investigators, stenographers and clerks as the court shall find necessary to carry on the work of the family court.

(2) The county legislative authority must approve the creation of family court commissioner positions.

(3) The appointments provided for in this section shall be made by majority vote of the judges of the superior court of the county and may be made in addition to all other appointments of commissioners and other judicial attaches otherwise authorized by law. Family court commissioners and investigators shall serve at the pleasure of the judges appointing them and shall receive such compensation as the county legislative authority shall determine. The appointments may be full or part-time positions. A person appointed as a family court commissioner may also be appointed to any other commissioner position authorized by law. [1993 c 15 § 1; 1991 c 363 § 17; 1989 c 199 § 1; 1965 ex.s. c 83 § 1; 1949 c 50 § 5; Rem. Supp. 1949 § 997-34.]

Effective date—1993 c 15: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 12, 1993]." [1993 c 15 § 3.]

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

Court

*clerks, reporters, and bailiffs: Chapter 2.32 RCW.
commissioners and referees: Chapter 2.24 RCW.*

26.12.060 Court commissioners—Duties. The court commissioners shall: (1) Make appropriate referrals to county family court services program if the county has a family court services program or appoint a guardian ad litem pursuant to RCW 26.12.175; (2) order investigation and reporting of the facts upon which to base warrants, subpoenas, orders or directions in actions or proceedings under this chapter; (3) exercise all the powers and perform all the duties of court commissioners; (4) make written reports of all proceedings had which shall become a part of the record of the family court; (5) provide supervision over the exercise of its jurisdiction as the judge of the family court may order; (6) cause the orders and findings of the family court to be entered in the same manner as orders and findings are entered in cases in the superior court; (7) cause other reports to be made and records kept as will indicate the value and extent of reconciliation, mediation, investigation, and treatment services; and (8) conduct hearings under chapter 13.34 RCW as provided in RCW 13.04.021. [1993 c 289 § 3; 1991 c 367 § 12; 1988 c 232 § 4; 1949 c 50 § 6; Rem. Supp. 1949 § 997-35.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.12.070 Probation officers—Powers and duties. The probation officer in every county shall give such assistance to the family court as may be requested to carry out the purposes of this chapter and to that end the probation officer shall, upon request, make investigations and reports as requested, and in cases pursuant to this chapter shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers. [1949 c 50 § 7; Rem. Supp. 1949 § 997-36.]

Indeterminate sentences: Chapter 9.95 RCW.

Probation officers—Appointment—Powers—Compensation: RCW 13.04.040.

26.12.080 Protection of privacy of parties. Whenever the court before whom any matter arising under this chapter is pending, deems publication of any matter before the court contrary to public policy or injurious to the interests of children or to the public morals, the court may by order close the files or any part thereof in the matter and make such other orders to protect the privacy of the parties as is necessary. [1989 c 375 § 22; 1949 c 50 § 8; Rem. Supp. 1949 § 997-37.]

Severability—1989 c 375: See RCW 26.09.914.

26.12.160 When and where court may be convened. For the purpose of conducting hearings pursuant to this chapter the family court may be convened at any time and place within the county and the hearing may be had in chambers or otherwise. [1949 c 50 § 16; Rem. Supp. 1949 § 997-45.]

26.12.170 Authority of family court judges and court commissioners to order or recommend services—Report by court of child abuse or neglect. To facilitate and promote the purposes of this chapter, family court judges and court commissioners may order or recommend family court services, parenting seminars, drug and alcohol abuse evaluations and monitoring of the parties through public or private treatment services, other treatment services, the aid of physicians, psychiatrists, other specialists, or other services or may recommend the aid of the pastor or director of any religious denomination to which the parties may belong.

If the court has reasonable cause to believe that a child of the parties has suffered abuse or neglect it may file a report with the proper law enforcement agency or the department of social and health services as provided in RCW 26.44.040. Upon receipt of such a report the law enforcement agency or the department of social and health services will conduct an investigation into the cause and extent of the abuse or neglect. The findings of the investigation may be made available to the court if ordered by the court as provided in RCW 42.17.310(3). The findings shall be restricted to the issue of abuse and neglect and shall not be considered custody investigations. [1994 c 267 § 3; 1991 c 367 § 13; 1983 c 219 § 5; 1971 ex.s. c 151 § 2; 1949 c 50 § 17; Rem. Supp. 1949 § 997-46.]

Effective date—1994 c 267: See note following RCW 26.09.191.

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.12.172 Parenting seminars—Rules. Any court rules adopted for the implementation of parenting seminars shall include the following provisions:

(1) In no case shall opposing parties be required to attend seminars together;

(2) Upon a showing of domestic violence or abuse which would not require mutual decision making pursuant to RCW 26.09.191, or that a parent's attendance at the seminar is not in the children's best interests, the court shall either:

(a) Waive the requirement of completion of the seminar;

or

(b) Provide an alternative, voluntary parenting seminar for battered spouses; and

(3) The court may waive the seminar for good cause. [1994 c 267 § 5.]

Effective date—1994 c 267: See note following RCW 26.09.191.

26.12.175 Appointment of guardian ad litem—Court-appointed special advocate program—Background information—Review of appointment. (1)(a) The court may appoint a guardian ad litem to represent the interests of a minor or dependent child when the court believes the appointment of a guardian ad litem is necessary to protect the best interests of the child in any proceeding under this chapter. The family court services professionals may also make a recommendation to the court regarding whether a guardian ad litem should be appointed for the child. The court may appoint a guardian ad litem from the court-appointed special advocate program, if that program exists in the county.

(b) Unless otherwise ordered, the guardian ad litem's role is to investigate and report to the court concerning parenting arrangements for the child, and to represent the child's best interests. The court may require the guardian ad litem to provide periodic reports to the parties regarding the status of his or her investigation. The guardian ad litem shall file his or her report at least sixty days prior to trial.

(c) The court shall enter an order for costs, fees, and disbursements to cover the costs of the guardian ad litem. The court may order either or both parents to pay for the costs of the guardian ad litem, according to their ability to pay. If both parents are indigent, the county shall bear the cost of the guardian, subject to appropriation for guardians' ad litem services by the county legislative authority. Guardians ad litem who are not volunteers shall provide the parties with an itemized accounting of their time and billing for services each month.

(2)(a) If the guardian ad litem appointed is from the county court-appointed special advocate program, the program shall supervise any guardian ad litem assigned to the case. The court-appointed special advocate program shall be entitled to notice of all proceedings in the case.

(b) The legislative authority of each county may authorize creation of a court-appointed special advocate program. The county legislative authority may adopt rules of eligibility for court-appointed special advocate program services.

(3) Each guardian ad litem program shall maintain a background information record for each guardian ad litem in the program. The background file shall include, but is not limited to, the following information:

(a) Level of formal education;

(b) Training related to the guardian's duties;

(c) Number of years' experience as a guardian ad litem;

(d) Number of appointments as a guardian ad litem and county or counties of appointment; and

(e) Criminal history, as defined in RCW 9.94A.030.

The background information report shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program the person shall provide the background information to the court.

Upon appointment, the guardian ad litem, or guardian ad litem program, shall provide the parties or their attorneys with a statement containing his or her training relating to the duties as a guardian ad litem and criminal history as defined in RCW 9.94A.030 for the period covering ten years prior to the appointment. The background statement shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends and the appointment shall be effective immediately. The court shall appoint the person recommended by the program. If a party in a case reasonably believes the court-appointed special advocate or volunteer is inappropriate or unqualified, the party may request a review of the appointment by the

program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the court-appointed special advocate on the grounds the advocate or volunteer is inappropriate or unqualified. [1996 c 249 § 15; 1993 c 289 § 4; 1991 c 367 § 17.]

Intent—1996 c 249: See note following RCW 2.56.030.

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.12.177 Guardian ad litem—Training—Registry—Selection—Substitution—Exceptions. (1) All guardians ad litem, who have not previously served or been trained as a guardian ad litem in this state, who are appointed after January 1, 1998, must complete the curriculum developed by the office of the administrator for the courts under RCW 2.56.030(16), prior to their appointment in cases under Title 26 RCW except that volunteer guardians ad litem or court-appointed special advocates accepted into a volunteer program after January 1, 1998, may complete an alternative curriculum approved by the office of the administrator for the courts that meets or exceeds the state-wide curriculum.

(2)(a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information as specified in RCW 26.12.175(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem lacks the necessary expertise for the proceeding, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitution of the appointed guardian ad litem by filing a motion with the court.

(3) The rotational registry system shall not apply to court-appointed special advocate programs. [1996 c 249 § 18.]

Intent—1996 c 249: See note following RCW 2.56.030.

26.12.190 Family court jurisdiction as to pending actions—Use of family court services. (1) The family court shall have jurisdiction and full power in all pending cases to make, alter, modify, and enforce all temporary and permanent orders regarding the following: Parenting plans,

child support, custody of children, visitation, possession of property, maintenance, contempt, custodial interference, and orders for attorneys' fees, suit money or costs as may appear just and equitable. Court commissioners or judges shall not have authority to require the parties to mediate disputes concerning child support.

(2) Family court investigation, evaluation, mediation, treatment, and reconciliation services, and any other services may be used to assist the court to develop an order as the court deems necessary to preserve the marriage, implement an amicable settlement, and resolve the issues in controversy. [1991 c 367 § 14; 1983 c 219 § 7; 1949 c 50 § 19; Rem. Supp. 1949 § 997-48.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.12.205 Priority for proceedings involving children. The family court shall give proceedings involving children priority over cases without children. [1991 c 367 § 16.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.12.215 Revision by the superior court. All acts and proceedings of the court commissioners shall be subject to revision by the superior court as provided in RCW 2.24.050. [1991 c 367 § 18.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.12.220 Funding family court or family court services—Increase in marriage license fee authorized—Family court services program—Fees. (1) The legislative authority of any county may authorize family court services as provided in RCW 26.12.230. The legislative authority may impose a fee in excess of that prescribed in RCW 36.18.010 for the issuance of a marriage license. The fee shall not exceed eight dollars.

(2) In addition to any other funds used therefor, the governing body of any county shall use the proceeds from the fee increase authorized by this section to pay the expenses of the family court and the family court services under chapter 26.12 RCW. If there is no family court in the county, the legislative authority may provide such services through other county agencies or may contract with a public or private agency or person to provide such services. Family court services also may be provided jointly with other counties as provided in RCW 26.12.230.

(3) The family court services program may hire professional employees to provide the investigation, evaluation and reporting, and mediation services, or the county may contract for these services, or both. To facilitate and promote the purposes of this chapter, the court may order or recommend the aid of physicians, psychiatrists, or other specialists.

(4) The family court services program may provide or contract for: (a) Mediation; (b) investigation, evaluation, and reporting to the court; and (c) reconciliation; and may provide a referral mechanism for drug and alcohol testing, monitoring, and treatment; and any other treatment, parenting, or anger management programs the family court professional considers necessary or appropriate.

(5) Services other than family court investigation, evaluation, reconciliation, and mediation services shall be at the expense of the parties involved absent a court order to the contrary. The parties shall bear all or a portion of the cost of parenting seminars and family court investigation, evaluation, reconciliation, and mediation services according to the parties' ability to pay.

(6) The county legislative authority may establish rules of eligibility for the family court services funded under this section. The rules shall not conflict with rules of the court adopted under chapter 26.12 RCW or any other statute.

(7) The legislative authority may establish fees for family court investigation, evaluation, reconciliation, and mediation services under this chapter according to the parties' ability to pay for the services. Fees collected under this section shall be collected and deposited in the same manner as other county funds are collected and deposited, and shall be maintained in a separate account to be used as provided in this section. [1994 c 267 § 4; 1991 c 367 § 15; 1980 c 124 § 1.]

Effective date—1994 c 267: See note following RCW 26.09.191.

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.12.230 Joint family court services. (1) Any county may contract under chapter 39.34 RCW with any other county or counties to provide joint family court services.

(2) Any agreement between two or more counties for the operation of a joint family court service may provide that the treasurer of one participating county shall be the custodian of moneys made available for the purposes of the joint services, and that the treasurer may make payments from the moneys upon proper authorization.

(3) Any agreement between two or more counties for the operation of a joint family court service may also provide:

(a) For the joint provision or operation of services and facilities or for the provision or operation of services and facilities by one participating county under contract for the other participating counties;

(b) For appointments of members of the staff of the family court including the supervising counselor;

(c) That, for specified purposes, the members of the staff of the family court including the supervising counselor, but excluding the judges of the family court and other court personnel, shall be considered to be employees of one participating county;

(d) For other matters as are necessary to carry out the purposes of this chapter.

(4) The provisions of this chapter relating to family court services provided by a single county are equally applicable to counties which contract, under this section, to provide joint family court services. [1986 c 95 § 3.]

26.12.240 Courthouse facilitator program—Fee or surcharge. A county may create a courthouse facilitator program to provide basic services to pro se litigants in family law cases. The legislative authority of any county may impose user fees or may impose a surcharge of up to ten dollars on only those superior court cases filed under

Title 26 RCW, or both, to pay for the expenses of the courthouse facilitator program. Fees collected under this section shall be collected and deposited in the same manner as other county funds are collected and deposited, and shall be maintained in a separate account to be used as provided in this section. [1993 c 435 § 2.]

Chapter 26.16

HUSBAND AND WIFE—RIGHTS AND LIABILITIES—COMMUNITY PROPERTY

Sections

- 26.16.010 Separate property of husband.
- 26.16.020 Separate property of wife.
- 26.16.030 Community property defined—Management and control.
- 26.16.040 Community realty subject to liens, execution.
- 26.16.050 Conveyances between husband and wife.
- 26.16.060 Power of attorney between husband and wife.
- 26.16.070 Powers of attorney as to separate estate.
- 26.16.080 Execution of conveyance under power.
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Crimes and punishment

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Mental illness: Chapter 71.05 RCW.

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Privileged communications: RCW 5.60.060.

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Public assistance: Title 74 RCW.

Public health and safety—Vital statistics: Chapter 70.58 RCW.

Tenancy in dower and by curtesy abolished: RCW 11.04.060.

Unemployment compensation, benefits and claims: Chapter 50.20 RCW.

Worker's compensation

actions at law for injury or death: Chapter 51.24 RCW.

right to and amount: Chapter 51.32 RCW.

26.16.010 Separate property of husband. Property and pecuniary rights owned by the husband before marriage and that acquired by him afterwards by gift, bequest, devise or descent, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of his wife, and he may manage, lease, sell, convey, encumber or devise by will such property without the wife joining in such management, alienation or encumbrance, as fully and to the same effect as though he were unmarried. [Code 1881 § 2408; RRS § 6890. Prior: See Reviser's note below.]

Reviser's note: For prior laws dealing with this subject see Laws 1879 pp 77-81; 1873 pp 450-455; 1871 pp 67-74; 1869 pp 318-323.

Construction: "The rule of common law that statutes in derogation thereof are to be strictly construed has no application to this chapter. This chapter establishes the law of the state respecting the subject to which it relates, and its provisions and all proceedings under it shall be liberally construed with a view to effect its object." [Code 1881 § 2417.]

"This chapter shall not be construed to operate retrospectively and any right established, accrued or accruing or in any thing done prior to the time this chapter goes into effect shall be governed by the law in force at the time such right was established or accrued." [Code 1881 § 2418.] This applies to RCW 26.16.010 through 26.16.040, 26.16.060, 26.16.120, 26.16.140 through 26.16.160, and 26.16.180 through 26.16.210.

Descent of separate real property: RCW 11.04.015.

Distribution of separate personal estate: RCW 11.04.015.

Rights of married persons in general: RCW 26.16.150.

26.16.020 Separate property of wife. The property and pecuniary rights of every married woman at the time of her marriage or afterwards acquired by gift, devise or inheritance, with the rents, issues and profits thereof, shall not be subject to the debts or contracts of her husband, and she may manage, lease, sell, convey, encumber or devise by will such property to the same extent and in the same manner that her husband can, property belonging to him. [Code 1881 § 2400; RRS § 6891. Prior: See Reviser's note following RCW 26.16.010.]

Reviser's note: See notes following RCW 26.16.010.

Civil disabilities of wife abolished: RCW 26.16.160.

Earnings of parent and minor children living apart: RCW 26.16.140.

Exemption of separate property of married person from attachment and execution upon liability of spouse: RCW 6.15.040.

26.16.030 Community property defined—Management and control. Property not acquired or owned, as prescribed in RCW 26.16.010 and 26.16.020, acquired after marriage by either husband or wife or both, is community property. Either spouse, acting alone, may manage and control community property, with a like power of disposition as the acting spouse has over his or her separate property, except:

(1) Neither spouse shall devise or bequeath by will more than one-half of the community property.

(2) Neither spouse shall give community property without the express or implied consent of the other.

(3) Neither spouse shall sell, convey, or encumber the community real property without the other spouse joining in the execution of the deed or other instrument by which the real estate is sold, conveyed, or encumbered, and such deed or other instrument must be acknowledged by both spouses.

(4) Neither spouse shall purchase or contract to purchase community real property without the other spouse joining in

the transaction of purchase or in the execution of the contract to purchase.

(5) Neither spouse shall create a security interest other than a purchase money security interest as defined in RCW 62A.9-107 in, or sell, community household goods, furnishings, or appliances, or a community mobile home unless the other spouse joins in executing the security agreement or bill of sale, if any.

(6) Neither spouse shall acquire, purchase, sell, convey, or encumber the assets, including real estate, or the good will of a business where both spouses participate in its management without the consent of the other: PROVIDED, That where only one spouse participates in such management the participating spouse may, in the ordinary course of such business, acquire, purchase, sell, convey or encumber the assets, including real estate, or the good will of the business without the consent of the nonparticipating spouse. [1981 c 304 § 1; 1972 ex.s. c 108 § 3; Code 1881 § 2409; RRS § 6892.]

Severability—1981 c 304: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 304 § 46.]

Community property—Homestead selection: RCW 6.13.020.

Descent and distribution of community property: RCW 11.04.015.

Quasi-community property defined: RCW 26.16.220.

Simultaneous death, uniform act: Chapter 11.05 RCW.

26.16.040 Community realty subject to liens, execution. Community real estate shall be subject to the liens of mechanics and others for labor and materials furnished in erecting structures and improvements thereon as provided by law in other cases, to liens of judgments recovered for community debts, and to sale on execution issued thereon. [1972 ex.s. c 108 § 4; Code 1881 § 2410; RRS § 6893.]

Acknowledgments: Chapter 64.08 RCW.

Liens: Title 60 RCW.

26.16.050 Conveyances between husband and wife. A husband may give, grant, sell or convey directly to his wife, and a wife may give, grant, sell or convey directly to her husband his or her community right, title, interest or estate in all or any portion of their community real property: And every deed made from husband to wife, or from wife to husband, shall operate to divest the real estate therein recited from any or every claim or demand as community property and shall vest the same in the grantee as separate property[. The] grantor in all such deeds, or the party releasing such community interest or estate shall sign, seal, execute and acknowledge the deed as a single person without the joinder therein of the married party therein named as grantee: PROVIDED, HOWEVER, That the conveyances or transfers hereby authorized shall not affect any existing equity in favor of creditors of the grantor at the time of such transfer, gift or conveyance. AND PROVIDED FURTHER, That any deeds of gift conveyances or releases of community estate by or between husband and wife heretofore made but in which the husband and wife have not joined as grantors, said deeds[,] where made in good faith and without intent to hinder, delay or defraud creditors[,] shall be and the same

are hereby fully legalized as valid and binding. [1888 c 27 § 1; RRS § 10572.]

Validating—1888 c 27: "All powers of attorney heretofore made and executed by any married woman joined with her husband and duly acknowledged and certified and all powers of attorney heretofore made or executed by husband or wife to the other, authorizing the sale or other disposition of real estate, whether separate or community real estate duly acknowledged conformably with the previous sections, and all conveyances heretofore and hereafter executed under and by virtue of such powers of attorney and acknowledged and certified in the manner provided herein, shall be valid and binding; provided, that any rights vested in third persons shall not be affected by anything in this section contained." [1888 c 27 § 5.] This applies to RCW 26.16.050 and 26.16.070 through 26.16.090.

Acknowledgments: Chapter 64.08 RCW.

Burden of proof in transactions between husband and wife: RCW 26.16.210.

26.16.060 Power of attorney between husband and wife. A husband or wife may constitute the other his or her attorney in fact to manage, control or dispose of his or her property with the same power of revocation or substitution as could be exercised were they unmarried persons. [Code 1881 § 2403; No RRS.]

26.16.070 Powers of attorney as to separate estate. A husband or wife may make and execute powers of attorney for the sale, conveyance, transfer or encumbrance of his or her separate estate both real and personal, without the other spouse joining in the execution thereof. Such power of attorney shall be acknowledged and certified in the manner provided by law for the conveyance of real estate. Nor shall anything herein contained be so construed as to prevent either husband or wife from appointing the other his or her attorney in fact for the purposes provided in this section. [1888 c 27 § 2; RRS § 10573.]

26.16.080 Execution of conveyance under power. Any conveyance, transfer, deed, lease or other encumbrances executed under and by virtue of such power of attorney shall be executed, acknowledged and certified in the same manner as if the person making such power of attorney had been unmarried. [1888 c 27 § 3; RRS § 10574.]

26.16.090 Powers of attorney as to community estate. A husband may make and execute a letter of attorney to the wife, or the wife may make and execute a letter of attorney to the husband authorizing the sale or other disposition of his or her community interest or estate in the community property and as such attorney in fact to sign the name of such husband or wife to any deed, conveyance, mortgage, lease or other encumbrance or to any instrument necessary to be executed by which the property conveyed or transferred shall be released from any claim as community property. And either said husband or said wife may make and execute a letter of attorney to any third person to join with the other in the conveyance of any interest either in separate real estate of either, or in the community estate held by such husband or wife in any real property. And both husband and wife owning community property may jointly execute a power of attorney to a third person authorizing the sale, encumbrance or other disposition of community real property, and so execute the necessary conveyance or transfer of said real estate. [1888 c 27 § 4; RRS § 10575.]

(1996 Ed.)

26.16.095 Purchaser of community real property protected by record title. Whenever any person, married or single, having in his or her name the legal title of record to any real estate, shall sell or dispose of the same to an actual bona fide purchaser, a deed of such real estate from the person holding such legal record title to such actual bona fide purchaser shall be sufficient to convey to, and vest in, such purchaser the full legal and equitable title to such real estate free and clear of any and all claims of any and all persons whatsoever, not appearing of record in the auditor's office of the county in which such real estate is situated. [1891 c 151 § 1; RRS § 10577. Formerly RCW 64.04.080.] [SLC-RO-16]

Saving—1891 c 151: "In so far as this act affects married persons having already acquired and now holding real estate under existing laws, a period of three months from the date at which this act shall take effect is hereby allowed to such persons within which to comply with its provisions." [1891 c 151 § 4.] This applies to RCW 26.16.095 through 26.16.110.

26.16.100 Claim of spouse in community realty to be filed. A husband or wife having an interest in real estate, by virtue of the marriage relation, the legal title of record to which real estate is or shall be held by the other, may protect such interest from sale or disposition by the husband or wife, as the case may be, in whose name the legal title is held, by causing to be filed and recorded in the auditor's office of the county in which such real estate is situated an instrument in writing setting forth that the person filing such instrument is the husband or wife, as the case may be, of the person holding the legal title to the real estate in question, describing such real estate and the claimant's interest therein; and when thus presented for record such instrument shall be filed and recorded by the auditor of the county in which such real estate is situated, in the same manner and with like effect as regards notice to all the world, as deeds of real estate are filed and recorded. And if either husband or wife fails to cause such an instrument to be filed in the auditor's office in the county in which real estate is situated, the legal title to which is held by the other, within a period of ninety days from the date when such legal title has been made a matter of record, any actual bona fide purchaser of such real estate from the person in whose name the legal title stands of record, receiving a deed of such real estate from the person thus holding the legal title, shall be deemed and held to have received the full legal and equitable title to such real estate free and clear of all claim of the other spouse. [1891 c 151 § 2; RRS § 10578.] [SLC-RO-16]

Recording of real property by county auditor: Chapters 65.04 and 65.08 RCW.

26.16.110 Cloud on title—Removal. The instrument in writing provided for in RCW 26.16.100 shall be deemed to be a cloud upon the title of said real estate, and may be removed by the release of the party filing the same, or by any court having jurisdiction in the county where said real estate is situated, whenever it shall appear to said court that the real estate described in said instrument is the separate property of the person in whose name the title to the said real estate, or any part thereof, appears to be vested, from the conveyances on record in the office of the auditor of the county where said real estate is situated. [1891 c 151 § 3; RRS § 10579.]

26.16.120 Agreements as to status. Nothing contained in any of the provisions of *this chapter or in any law of this state, shall prevent the husband and wife from jointly entering into any agreement concerning the status or disposition of the whole or any portion of the community property, then owned by them or afterwards to be acquired, to take effect upon the death of either. But such agreement may be made at any time by the husband and wife by the execution of an instrument in writing under their hands and seals, and to be witnessed, acknowledged and certified in the same manner as deeds to real estate are required to be, under the laws of the state, and the same may at any time thereafter be altered or amended in the same manner: PROVIDED, HOWEVER, That such agreement shall not derogate from the right of creditors, nor be construed to curtail the powers of the superior court to set aside or cancel such agreement for fraud or under some other recognized head of equity jurisdiction, at the suit of either party. [Code 1881 § 2416; RRS § 6894.]

*Reviser's note: "this chapter", being Code 1881, chapter CLXXXIII, is codified as RCW 26.16.010 through 26.16.040, 26.16.060, 26.16.120, 26.16.140 through 26.16.160, and 26.16.180 through 26.16.210.

Acknowledgments: Chapter 64.08 RCW.

Descent and distribution of community property: RCW 11.04.015.

Private seals abolished: RCW 64.04.090.

26.16.125 Custody of children. Henceforth the rights and responsibilities of the parents in the absence of misconduct shall be equal, and the mother shall be as fully entitled to the custody, control and earnings of the children as the father, and in case of the father's death, the mother shall come into as full and complete control of the children and their estate as the father does in case of the mother's death. [Code 1881 § 2399; 1879 p 151 § 2; RRS § 6907. Formerly RCW 26.20.020.]

26.16.140 Earnings and accumulations of husband and wife living apart, minor children. When a husband and wife are living separate and apart, their respective earnings and accumulations shall be the separate property of each. The earnings and accumulations of minor children shall be the separate property of the spouse who has their custody or, if no custody award has been made, then the separate property of the spouse with whom said children are living. [1972 ex.s. c 108 § 5; Code 1881 § 2413; RRS § 6896.]

26.16.150 Rights of married persons in general. Every married person shall hereafter have the same right and liberty to acquire, hold, enjoy and dispose of every species of property, and to sue and be sued, as if he or she were unmarried. [Code 1881 § 2396; RRS § 6900.]

Separate property of husband: RCW 26.16.010.
of wife: RCW 26.16.020.

26.16.160 Civil disabilities of wife abolished. All laws which impose or recognize civil disabilities upon a wife, which are not imposed or recognized as existing as to the husband, are hereby abolished, and for any unjust usurpation of her natural or property rights, she shall have

the same right to appeal in her own individual name, to the courts of law or equity for redress and protection that the husband has: PROVIDED, ALWAYS, That nothing in *this chapter shall be construed to confer upon the wife any right to vote or hold office, except as otherwise provided by law. [Code 1881 § 2398; 1879 p 151 § 1; RRS § 6901.]

*Reviser's note: "this chapter," see note following RCW 26.16.120.

26.16.180 Husband and wife may sue each other. Should either husband or wife obtain possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, in the same manner and to the same extent as if they were unmarried. [Code 1881 § 2401; 1879 p 80 § 28; 1873 p 452 § 8; RRS § 6903.]

Privileged communications: RCW 5.60.060.

26.16.190 Liability for acts of other spouse. For all injuries committed by a married person, there shall be no recovery against the separate property of the other spouse except in cases where there would be joint responsibility if the marriage did not exist. [1972 ex.s. c 108 § 6; Code 1881 § 2402; RRS § 6904.]

26.16.200 Antenuptial and separate debts, liability for—Child support obligation, liability for. Neither husband or wife is liable for the debts or liabilities of the other incurred before marriage, nor for the separate debts of each other, nor is the rent or income of the separate property of either liable for the separate debts of the other: PROVIDED, That the earnings and accumulations of the husband shall be available to the legal process of creditors for the satisfaction of debts incurred by him prior to marriage, and the earnings and accumulations of the wife shall be available to the legal process of creditors for the satisfaction of debts incurred by her prior to marriage. For the purpose of this section, neither the husband nor the wife shall be construed to have any interest in the earnings of the other: PROVIDED FURTHER, That no separate debt, except a child support or maintenance obligation, may be the basis of a claim against the earnings and accumulations of either a husband or wife unless the same is reduced to judgment within three years of the marriage of the parties. The obligation of a parent or stepparent to support a child may be collected out of the parent's or stepparent's separate property, the parent's or stepparent's earnings and accumulations, and the parent's or stepparent's share of community personal and real property. Funds in a community bank account which can be identified as the earnings of the nonobligated spouse are exempt from satisfaction of the child support obligation of the debtor spouse. [1983 1st ex.s. c 41 § 2; 1969 ex.s. c 121 § 1; Code 1881 § 2405; 1873 p 452 § 10; RRS § 6905.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Collection actions against community bank account: RCW 74.20A.120.

26.16.205 Liability for family support—Termination of support obligation of stepparent, when. The expenses of the family and the education of the children, including stepchildren, are chargeable upon the property of both

husband and wife, or either of them, and they may be sued jointly or separately. When a petition for dissolution of marriage or a petition for legal separation is filed, the court may, upon motion of the stepparent, terminate the obligation to support the stepchildren. The obligation to support stepchildren shall cease upon the entry of a decree of dissolution, decree of legal separation, or death. [1990 1st ex.s. c 2 § 13; 1969 ex.s. c 207 § 1; Code 1881 § 2407; RRS § 6906. Formerly RCW 26.20.010.]

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

26.16.210 Burden of proof in transactions between husband and wife. In every case, where any question arises as to the good faith of any transaction between husband and wife, whether a transaction between them directly or by intervention of third person or persons, the burden of proof shall be upon the party asserting the good faith. [Code 1881 § 2397; RRS § 5828.]

26.16.220 Quasi-community property defined. (1) Unless the context clearly requires otherwise, as used in RCW 26.16.220 through 26.16.250 "quasi-community property" means all personal property wherever situated and all real property described in subsection (2) of this section that is not community property and that was heretofore or hereafter acquired:

(a) By the decedent while domiciled elsewhere and that would have been the community property of the decedent and of the decedent's surviving spouse had the decedent been domiciled in this state at the time of its acquisition; or

(b) In derivation or in exchange for real or personal property, wherever situated, that would have been the community property of the decedent and the surviving spouse if the decedent had been domiciled in this state at the time the original property was acquired.

(2) For purposes of this section, real property includes:

(a) Real property situated in this state;

(b) Real property situated outside this state if the law of the state where the real property is located provides that the law of the decedent's domicile at death shall govern the rights of the decedent's surviving spouse to a share of such property; and

(c) Leasehold interests in real property described in (a) or (b) of this subsection.

(3) For purposes of this section, all legal presumptions and principles applicable to the proper characterization of property as community property under the laws and decisions of this state shall apply in determining whether property would have been the community property of the decedent and the surviving spouse under the provisions of subsection (1) of this section. [1988 c 34 § 1; 1986 c 72 § 1.]

26.16.230 Quasi-community property—Disposition at death. Upon the death of any person domiciled in this state, one-half of any quasi-community property shall belong to the surviving spouse and the other one-half of such property shall be subject to disposition at death by the decedent, and in the absence thereof, shall descend in the

manner provided for community property under chapter 11.04 RCW. [1988 c 34 § 2; 1986 c 72 § 2.]

26.16.240 Quasi-community property—Effect of lifetime transfers—Claims by surviving spouse—Waiver.

(1) If a decedent domiciled in this state on the date of his or her death made a lifetime transfer of a property interest that is quasi-community property to a person other than the surviving spouse within three years of death, then within the time for filing claims against the estate as provided by RCW 11.40.010, the surviving spouse may require the transferee to restore to the decedent's estate one-half of such property interest, if the transferee retains the property interest, and, if not, one-half of its proceeds, or, if none, one-half of its value at the time of transfer, if:

(a) The decedent retained, at the time of death, the possession or enjoyment of or the right to income from the property interest;

(b) The decedent retained, at the time of death, a power, either alone or in conjunction with any other person, to revoke or to consume, invade or dispose of the property interest for the decedent's own benefit; or

(c) The decedent held the property interest at the time of death with another with the right of survivorship.

(2) Notwithstanding subsection (1) of this section, no such property interest, proceeds, or value may be required to be restored to the decedent's estate if:

(a) Such property interest was transferred for adequate consideration;

(b) Such property interest was transferred with the consent of the surviving spouse; or

(c) The transferee purchased such property interest in property from the decedent while believing in good faith that the property or property interest was the separate property of the decedent and did not constitute quasi-community property.

(3) All property interests, proceeds, or value restored to the decedent's estate under this section shall belong to the surviving spouse pursuant to RCW 26.16.230 as though the transfer had never been made.

(4) The surviving spouse may waive any right granted hereunder by written instrument filed in the probate proceedings. If the surviving spouse acts as personal representative of the decedent's estate and causes the estate to be closed before the time for exercising any right granted by this section expires, such closure shall act as a waiver by the surviving spouse of any and all rights granted by this section. [1988 c 34 § 3; 1986 c 72 § 3.]

26.16.250 Quasi-community property—Characterization limited to determination of disposition at death—Waiver by written agreement. The characterization of property as quasi-community property under this chapter shall be effective solely for the purpose of determining the disposition of such property at the time of a death, and such characterization shall not affect the rights of the decedent's creditors. For all other purposes property characterized as quasi-community property under this chapter shall be characterized without regard to the provisions of this chapter. A husband and wife may waive, modify, or relinquish any quasi-community property right granted or

created by this chapter by signed written agreement, wherever executed, before or after June 11, 1986, including without limitation, community property agreements, prenuptial and postnuptial agreements, or agreements as to status of property. [1988 c 34 § 4; 1986 c 72 § 4.]

Chapter 26.18

CHILD SUPPORT ENFORCEMENT

Sections

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- 26.18.040 Support or spousal maintenance proceedings.
- 26.18.050 Failure to comply with support or spousal maintenance order—Contempt action—Order to show cause—Bench warrant—Continuing jurisdiction.
- 26.18.070 Mandatory wage assignment—Petition or motion.
- 26.18.080 Wage assignment order—Issuance—Information transmitted to state support registry.
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- 26.18.110 Wage assignment order—Employer's answer, duties, and liability—Priorities.
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- 26.18.150 Bond or other security.
- 26.18.160 Costs.
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- 26.18.210 Child support order summary report form.
- 26.18.220 Standard court forms—Mandatory use.
- 26.18.900 Severability—1984 c 260.

Award in lieu of homestead subject to debts for child support or spousal maintenance: RCW 11.52.010.

Child support registry: Chapter 26.23 RCW.

Domestic violence prevention: Chapter 26.50 RCW.

Family abandonment, penalty: RCW 26.20.030.

Family nonsupport, penalty: RCW 26.20.035.

Homestead subject to execution for child support or spousal maintenance: RCW 6.13.080.

26.18.010 Legislative findings. The legislature finds that there is an urgent need for vigorous enforcement of child support and spousal maintenance obligations, and that stronger and more efficient statutory remedies need to be established to supplement and complement the remedies provided in chapters 26.09, 26.21, 26.26, 74.20, and 74.20A RCW. [1993 c 426 § 1; 1984 c 260 § 1.]

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

(1) "Dependent child" means any child for whom a support order has been established or for whom a duty of support is owed.

(2) "Duty of spousal maintenance" means the duty to provide for the needs of a spouse or former spouse imposed under chapter 26.09 RCW.

(3) "Duty of support" means the duty to provide for the needs of a dependent child, which may include necessary food, clothing, shelter, education, and health care. The duty includes any obligation to make monetary payments, to pay expenses, including spousal maintenance in cases in which there is a dependent child, or to reimburse another person or an agency for the cost of necessary support furnished a dependent child. The duty may be imposed by court order, by operation of law, or otherwise.

(4) "Obligee" means the custodian of a dependent child, the spouse or former spouse, or person or agency, to whom a duty of support or duty of spousal maintenance is owed, or the person or agency to whom the right to receive or collect support or spousal maintenance has been assigned.

(5) "Obligor" means the person owing a duty of support or duty of spousal maintenance.

(6) "Support or maintenance order" means any judgment, decree, or order of support or spousal maintenance issued by the superior court or authorized agency of the state of Washington; or a judgment, decree, or other order of support or spousal maintenance issued by a court or agency of competent jurisdiction in another state or country, which has been registered or otherwise made enforceable in this state.

(7) "Employer" includes the United States government, a state or local unit of government, and any person or entity who pays or owes earnings or remuneration for employment to the obligor.

(8) "Earnings" means compensation paid or payable for personal services or remuneration for employment; whether denominated as wages, salary, commission, bonus, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy support or spousal maintenance obligations, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(9) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(10) "Department" means the department of social and health services.

(11) "Health insurance coverage" includes any coverage under which medical services are provided by an employer or a union whether that coverage is provided through a self-insurance program, under the employee retirement income security act of 1974, a commercial insurer pursuant to chapters 48.20 and 48.21 RCW, a health care service contractor pursuant to chapter 48.44 RCW, or a health maintenance organization pursuant to chapter 48.46 RCW, and the state through chapter 41.05 RCW.

(12) "Insurer" means a commercial insurance company providing disability insurance under chapter 48.20 or 48.21 RCW, a health care service contractor providing health care coverage under chapter 48.44 RCW, a health maintenance organization providing comprehensive health care services under chapter 48.46 RCW, and shall also include any employer or union which is providing health insurance coverage on a self-insured basis.

(13) "Remuneration for employment" means moneys due from or payable by the United States to an individual within the scope of 42 U.S.C. Sec. 659 and 42 U.S.C. Sec. 662(f). [1993 c 426 § 2; 1989 c 416 § 2; 1987 c 435 § 17; 1984 c 260 § 2.]

Effective date—1987 c 435: See RCW 26.23.900.

26.18.030 Application—Liberal construction. (1) The remedies provided in this chapter are in addition to, and not in substitution for, any other remedies provided by law.

(2) This chapter applies to any dependent child, whether born before or after June 7, 1984, and regardless of the past or current marital status of the parents, and to a spouse or former spouse.

(3) This chapter shall be liberally construed to assure that all dependent children are adequately supported. [1993 c 426 § 3; 1984 c 260 § 3.]

26.18.035 Other civil and criminal remedies applicable. Nothing in this chapter limits the authority of the attorney general or prosecuting attorney to use any and all civil and criminal remedies to enforce child support obligations regardless of whether or not the custodial parent receives public assistance payments. [1984 c 260 § 24.]

26.18.040 Support or spousal maintenance proceedings. (1) A proceeding to enforce a duty of support or spousal maintenance is commenced:

(a) By filing a petition for an original action; or

(b) By motion in an existing action or under an existing cause number.

(2) Venue for the action is in the superior court of the county where the dependent child resides or is present, where the obligor or obligee resides, or where the prior support or maintenance order was entered. The petition or motion may be filed by the obligee, the state, or any agency providing care or support to the dependent child. A filing fee shall not be assessed in cases brought on behalf of the state of Washington.

(3) The court retains continuing jurisdiction under this chapter until all duties of either support or spousal maintenance, or both, of the obligor, including arrearages, have been satisfied. [1993 c 426 § 4; 1984 c 260 § 4.]

26.18.050 Failure to comply with support or spousal maintenance order—Contempt action—Order to show cause—Bench warrant—Continuing jurisdiction. (1) If an obligor fails to comply with a support or spousal maintenance order, a petition or motion may be filed without notice under RCW 26.18.040 to initiate a contempt action as provided in chapter 7.21 RCW. If the court finds there is reasonable cause to believe the obligor has failed to comply with a support or spousal maintenance order, the court may issue an order to show cause requiring the obligor to appear at a certain time and place for a hearing, at which time the obligor may appear to show cause why the relief requested should not be granted. A copy of the petition or motion shall be served on the obligor along with the order to show cause.

(2) Service of the order to show cause shall be by personal service, or in the manner provided in the civil rules of superior court or applicable statute.

(3) If the order to show cause served upon the obligor included a warning that an arrest warrant could be issued for failure to appear, the court may issue a bench warrant for the arrest of the obligor if the obligor fails to appear on the return date provided in the order.

(4) If the obligor contends at the hearing that he or she lacked the means to comply with the support or spousal maintenance order, the obligor shall establish that he or she exercised due diligence in seeking employment, in conserving assets, or otherwise in rendering himself or herself able to comply with the court's order.

(5) As provided in RCW 26.18.040, the court retains continuing jurisdiction under this chapter and may use a contempt action to enforce a support or maintenance order until the obligor satisfies all duties of support, including arrearages, that accrued pursuant to the support or maintenance order. [1993 c 426 § 5; 1989 c 373 § 22; 1984 c 260 § 5.]

Severability—1989 c 373: See RCW 7.21.900.

26.18.070 Mandatory wage assignment—Petition or motion. (1) A petition or motion seeking a mandatory wage assignment in an action under RCW 26.18.040 may be filed by an obligee if the obligor is:

(a) Subject to a support order allowing immediate income withholding; or

(b) More than fifteen days past due in child support or spousal maintenance payments in an amount equal to or greater than the obligation payable for one month.

(2) The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the wage assignment order, including:

(a) That the obligor, stating his or her name and residence, is:

(i) Subject to a support order allowing immediate income withholding; or

(ii) More than fifteen days past due in child support or spousal maintenance payments in an amount equal to or greater than the obligation payable for one month;

(b) A description of the terms of the order requiring payment of support or spousal maintenance, and the amount past due, if any;

(c) The name and address of the obligor's employer;

(d) That notice by personal service or any form of mail requiring a return receipt, has been provided to the obligor at least fifteen days prior to the obligee seeking a mandatory wage assignment, unless the order for support or maintenance states that the obligee may seek a mandatory wage assignment without notice to the obligor; and

(e) In cases not filed by the state, whether the obligee has received public assistance from any source and, if the obligee has received public assistance, that the department of social and health services has been notified in writing of the pending action.

(3) If the court in which a mandatory wage assignment is sought does not already have a copy of the support or maintenance order in the court file, then the obligee shall attach a copy of the support or maintenance order to the

petition or motion seeking the wage assignment. [1994 c 230 § 3; 1993 c 426 § 6; 1987 c 435 § 18; 1984 c 260 § 7.]

Effective date—1987 c 435: See RCW 26.23.900.

26.18.080 Wage assignment order—Issuance—Information transmitted to state support registry. (1) Upon receipt of a petition or motion seeking a mandatory wage assignment that complies with RCW 26.18.070, the court shall issue a wage assignment order, as provided in RCW 26.18.100 and including the information required in RCW 26.18.090(1), directed to the employer, and commanding the employer to answer the order on the forms served with the order that comply with RCW 26.18.120 within twenty days after service of the order upon the employer.

(2) The clerk of the court shall forward a copy of the mandatory wage assignment order, a true and correct copy of the support orders in the court file, and a statement containing the obligee's address and social security number shall be forwarded to the Washington state support registry within five days of the entry of the order. [1987 c 435 § 19; 1984 c 260 § 8.]

Effective date—1987 c 435: See RCW 26.23.900.

26.18.090 Wage assignment order—Contents—Amounts—Apportionment of disbursements. (1) The wage assignment order in RCW 26.18.080 shall include:

(a) The maximum amount of current support or spousal maintenance, if any, to be withheld from the obligor's earnings each month, or from each earnings disbursement; and

(b) The total amount of the arrearage or reimbursement judgment previously entered by the court, if any, together with interest, if any.

(2) The total amount to be withheld from the obligor's earnings each month, or from each earnings disbursement, shall not exceed fifty percent of the disposable earnings of the obligor. If the amounts to be paid toward the arrearage are specified in the support or spousal maintenance order, then the maximum amount to be withheld is the sum of: Either the current support or spousal maintenance ordered, or both; and the amount ordered to be paid toward the arrearage, or fifty percent of the disposable earnings of the obligor, whichever is less.

(3) The provisions of RCW 6.27.150 do not apply to wage assignments for child support or spousal maintenance authorized under this chapter, but fifty percent of the disposable earnings of the obligor are exempt, and may be disbursed to the obligor.

(4) If an obligor is subject to two or more attachments for child support on account of different obligees, the employer shall, if the nonexempt portion of the obligor's earnings is not sufficient to respond fully to all the attachments, apportion the obligor's nonexempt disposable earnings between or among the various obligees equally. Any obligee may seek a court order reapportioning the obligor's nonexempt disposable earnings upon notice to all interested obligees. Notice shall be by personal service, or in the manner provided by the civil rules of superior court or applicable statute.

(5) If an obligor is subject to two or more attachments for spousal maintenance on account of different obligees, the

employer shall, if the nonexempt portion of the obligor's earnings is not sufficient to respond fully to all the attachments, apportion the obligor's nonexempt disposable earnings between or among the various obligees equally. An obligee may seek a court order reapportioning the obligor's nonexempt disposable earnings upon notice to all interested obligees. Notice shall be by personal service, or in the manner provided by the civil rules of superior court or applicable statute. [1993 c 426 § 7; 1984 c 260 § 9.]

26.18.100 Wage assignment order—Form. The wage assignment order shall be substantially in the following form:

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON IN AND FOR THE
COUNTY OF
..... ,
Obligee No.
vs.
..... ,
Obligor WAGE ASSIGNMENT
ORDER
..... ,
Employer
THE STATE OF WASHINGTON TO:
Employer
AND TO:
Obligor

The above-named obligee claims that the above-named obligor is subject to a support order requiring immediate income withholding or is more than fifteen days past due in either child support or spousal maintenance payments, or both, in an amount equal to or greater than the child support or spousal maintenance payable for one month. The amount of the accrued child support or spousal maintenance debt as of this date is dollars, the amount of arrearage payments specified in the support or spousal maintenance order (if applicable) is dollars per, and the amount of the current and continuing support or spousal maintenance obligation under the order is dollars per

You are hereby commanded to answer this order by filling in the attached form according to the instructions, and you must mail or deliver the original of the answer to the court, one copy to the Washington state support registry, one copy to the obligee or obligee's attorney, and one copy to the obligor within twenty days after service of this wage assignment order upon you.

If you possess any earnings or other remuneration for employment due and owing to the obligor, then you shall do as follows:

(1) Withhold from the obligor's earnings or remuneration each month, or from each regular earnings disbursement, the lesser of:

(a) The sum of the accrued support or spousal maintenance debt and the current support or spousal maintenance obligation;

(b) The sum of the specified arrearage payment amount and the current support or spousal maintenance obligation; or

(c) Fifty percent of the disposable earnings or remuneration of the obligor.

(2) The total amount withheld above is subject to the wage assignment order, and all other sums may be disbursed to the obligor.

(3) Upon receipt of this wage assignment order you shall make immediate deductions from the obligor's earnings or remuneration and remit to the Washington state support registry or other address specified below the proper amounts at each regular pay interval.

You shall continue to withhold the ordered amounts from nonexempt earnings or remuneration of the obligor until notified by:

(a) The court that the wage assignment has been modified or terminated; or

(b) The addressee specified in the wage assignment order under this section that the accrued child support or spousal maintenance debt has been paid.

You shall promptly notify the court and the addressee specified in the wage assignment order under this section if and when the employee is no longer employed by you, or if the obligor no longer receives earnings or remuneration from you. If you no longer employ the employee, the wage assignment order shall remain in effect for one year after the employee has left your employment or you are no longer in possession of any earnings or remuneration owed to the employee, whichever is later. You shall continue to hold the wage assignment order during that period. If the employee returns to your employment during the one-year period you shall immediately begin to withhold the employee's earnings according to the terms of the wage assignment order. If the employee has not returned to your employment within one year, the wage assignment will cease to have effect at the expiration of the one-year period, unless you still owe the employee earnings or other remuneration.

You shall deliver the withheld earnings or remuneration to the Washington state support registry or other address stated below at each regular pay interval.

You shall deliver a copy of this order to the obligor as soon as is reasonably possible. This wage assignment order has priority over any other wage assignment or garnishment, except for another wage assignment or garnishment for child support or spousal maintenance, or order to withhold or deliver under chapter 74.20A RCW.

WHETHER OR NOT YOU OWE ANYTHING TO THE OBLIGOR, YOUR FAILURE TO ANSWER AS REQUIRED MAY MAKE YOU LIABLE FOR OBLIGOR'S CLAIMED SUPPORT OR SPOUSAL MAINTENANCE DEBT TO THE OBLIGEE OR SUBJECT TO CONTEMPT OF COURT.

NOTICE TO OBLIGOR: YOU HAVE A RIGHT TO REQUEST A HEARING IN THE SUPERIOR COURT THAT ISSUED THIS WAGE ASSIGNMENT ORDER, TO REQUEST THAT THE COURT QUASH, MODIFY, OR TERMINATE THE WAGE ASSIGNMENT ORDER.

DATED THIS day of, 19. . . .

..... Judge/Court Commissioner
Obligee, or obligee's attorney
Send withheld payments to:

[1994 c 230 § 4; 1993 c 426 § 8; 1991 c 367 § 20; 1989 c 416 § .10; 1987 c 435 § 20; 1984 c 260 § 10.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Effective date—1987 c 435: See RCW 26.23.900.

26.18.110 Wage assignment order—Employer's answer, duties, and liability—Priorities. (1) An employer upon whom service of a wage assignment order has been made shall answer the order by sworn affidavit within twenty days after the date of service. The answer shall state whether the obligor is employed by or receives earnings or other remuneration from the employer, whether the employer will honor the wage assignment order, and whether there are either multiple child support or spousal maintenance attachments, or both, against the obligor.

(2) If the employer possesses any earnings or remuneration due and owing to the obligor, the earnings subject to the wage assignment order shall be withheld immediately upon receipt of the wage assignment order. The withheld earnings shall be delivered to the Washington state support registry or, if the wage assignment order is to satisfy a duty of spousal maintenance, to the addressee specified in the assignment at each regular pay interval.

(3) The employer shall continue to withhold the ordered amounts from nonexempt earnings or remuneration of the obligor until notified by:

(a) The court that the wage assignment has been modified or terminated; or

(b) The Washington state support registry or obligee that the accrued child support or spousal maintenance debt has been paid, provided the wage assignment order contains the language set forth under RCW 26.18.100(3)(b). The employer shall promptly notify the addressee specified in the assignment when the employee is no longer employed. If the employer no longer employs the employee, the wage assignment order shall remain in effect for one year after the employee has left the employment or the employer has been in possession of any earnings or remuneration owed to the employee, whichever is later. The employer shall continue to hold the wage assignment order during that period. If the employee returns to the employer's employment during the one-year period the employer shall immediately begin to withhold the employee's earnings or remuneration according to the terms of the wage assignment order. If the employee has not returned within one year, the wage assignment shall cease to have effect at the expiration of the one-year period, unless the employer continues to owe remuneration for employment to the obligor.

(4) The employer may deduct a processing fee from the remainder of the employee's earnings after withholding under the wage assignment order, even if the remainder is exempt under RCW 26.18.090. The processing fee may not exceed (a) ten dollars for the first disbursement made by the

employer to the Washington state support registry; and (b) one dollar for each subsequent disbursement to the clerk.

(5) An order for wage assignment for support for a dependent child entered under this chapter shall have priority over any other wage assignment or garnishment, except for another wage assignment or garnishment for child support, or order to withhold and deliver under chapter 74.20A RCW. An order for wage assignment for spousal maintenance entered under this chapter shall have priority over any other wage assignment or garnishment, except for a wage assignment, garnishment, or order to withhold and deliver under chapter 74.20A RCW for support of a dependent child, and except for another wage assignment or garnishment for spousal maintenance.

(6) An employer who fails to withhold earnings as required by a wage assignment issued under this chapter may be held liable to the obligee for one hundred percent of the support or spousal maintenance debt, or the amount of support or spousal maintenance moneys that should have been withheld from the employee's earnings whichever is the lesser amount, if the employer:

- (a) Fails or refuses, after being served with a wage assignment order, to deduct and promptly remit from the unpaid earnings the amounts of money required in the order;
- (b) Fails or refuses to submit an answer to the notice of wage assignment after being served; or
- (c) Is unwilling to comply with the other requirements of this section.

Liability may be established in superior court. Awards in superior court shall include costs, interest under RCW 19.52.020 and 4.56.110, and reasonable attorneys' fees.

(7) No employer who complies with a wage assignment issued under this chapter may be liable to the employee for wrongful withholding.

(8) No employer may discharge, discipline, or refuse to hire an employee because of the entry or service of a wage assignment issued and executed under this chapter. If an employer discharges, disciplines, or refuses to hire an employee in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of damages suffered as a result of the violation and for costs and reasonable attorneys' fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual.

(9) For wage assignments payable to the Washington state support registry, an employer may combine amounts withheld from various employees into a single payment to the Washington state support registry, if the payment includes a listing of the amounts attributable to each employee and other information as required by the registry.

(10) An employer shall deliver a copy of the wage assignment order to the obligor as soon as is reasonably possible. [1994 c 230 § 5; 1993 c 426 § 9; 1991 c 367 § 21; 1989 c 416 § 11; 1987 c 435 § 21; 1984 c 260 § 11.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Effective date—1987 c 435: See RCW 26.23.900.

26.18.120 Wage assignment order—Employer's answer—Form. The answer of the employer shall be made on forms, served on the employer with the wage assignment order, substantially as follows:

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON IN AND FOR THE
COUNTY OF

.....	No.
Obligee	
vs.	ANSWER
.....	TO WAGE
Obligor	ASSIGNMENT ORDER
.....	
Employer	

1. At the time of the service of the wage assignment order on the employer, was the above-named obligor employed by or receiving earnings or other remuneration for employment from the employer?

Yes No (check one).

2. Are there any other attachments for child support or spousal maintenance currently in effect against the obligor?

Yes No (check one).

3. If the answer to question one is yes and the employer cannot comply with the wage assignment order, provide an explanation:

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

.....
Signature of employer	Date and place
.....

.....
Signature of person answering for employer	Address for future notice to employer
.....

.....
Connection with employer

[1993 c 426 § 10; 1984 c 260 § 12.]

26.18.130 Wage assignment order—Service. (1) Service of the wage assignment order on the employer is invalid unless it is served with five answer forms in substantial conformance with RCW 26.18.120, together with stamped envelopes addressed to, respectively, the clerk of the court where the order was issued, the Washington state support registry, the obligee's attorney or the obligee, and the obligor. The obligee shall also include an extra copy of the wage assignment order for the employer to deliver to the obligor. Service on the employer shall be in person or by any form of mail requiring a return receipt.

(2) On or before the date of service of the wage assignment order on the employer, the obligee shall mail or cause to be mailed by certified mail a copy of the wage assignment order to the obligor at the obligor's last known post office address; or, in the alternative, a copy of the wage assignment order shall be served on the obligor in the same manner as a summons in a civil action on, before, or within

two days after the date of service of the order on the employer. This requirement is not jurisdictional, but if the copy is not mailed or served as this subsection provides, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion, may quash the wage assignment order, upon motion of the obligor promptly made and supported by an affidavit showing that the obligor has suffered substantial injury due to the failure to mail or serve the copy. [1987 c 435 § 22; 1984 c 260 § 13.]

Effective date—1987 c 435: See RCW 26.23.900.

26.18.140 Hearing to quash, modify, or terminate wage assignment order—Grounds—Alternate payment plan. (1) Except as provided in subsection (2) of this section, in a hearing to quash, modify, or terminate the wage assignment order, the court may grant relief only upon a showing that the wage assignment order causes extreme hardship or substantial injustice. Satisfaction by the obligor of all past due payments subsequent to the issuance of the wage assignment order is not grounds to quash, modify, or terminate the wage assignment order. If a wage assignment order has been in operation for twelve consecutive months and the obligor's support or spousal maintenance obligation is current, the court may terminate the order upon motion of the obligor unless the obligee can show good cause as to why the wage assignment order should remain in effect.

(2) The court may enter an order delaying, modifying, or terminating the wage assignment order and order the obligor to make payments directly to the obligee as provided in RCW 26.23.050(2). [1994 c 230 § 6; 1993 c 426 § 11; 1991 c 367 § 22; 1984 c 260 § 14.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.18.150 Bond or other security. (1) In any action to enforce a support or spousal maintenance order under Title 26 RCW, the court may, in its discretion, order a parent obligated to pay support for a minor child or person owing a duty of spousal maintenance to post a bond or other security with the court. The bond or other security shall be in the amount of support or spousal maintenance due for a two-year period. The bond or other security is subject to approval by the court. The bond shall include the name and address of the issuer. If the bond is canceled, any person issuing a bond under this section shall notify the court and the person entitled to receive payment under the order.

(2) If the obligor fails to make payments as required under the court order, the person entitled to receive payment may recover on the bond or other security in the existing proceeding. The court may, after notice and hearing, increase the amount of the bond or other security. Failure to comply with the court's order to obtain and maintain a bond or other security may be treated as contempt of court. [1993 c 426 § 12; 1984 c 260 § 15.]

26.18.160 Costs. In any action to enforce a support or maintenance order under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorney fees. An obligor may not be considered a prevailing party under this section unless the obligee has

acted in bad faith in connection with the proceeding in question. [1993 c 426 § 13; 1984 c 260 § 25.]

26.18.170 Health insurance coverage—Enforcement.

(1) Whenever an obligor parent who has been ordered to provide health insurance coverage for a dependent child fails to provide such coverage or lets it lapse, the department or the obligee may seek enforcement of the coverage order as provided under this section.

(2)(a) If the obligor parent's order to provide health insurance coverage contains language notifying the obligor that failure to provide such coverage or proof that such coverage is unavailable may result in direct enforcement of the order and orders payments through, or has been submitted to, the Washington state support registry for enforcement, then the department may, without further notice to the obligor, send a notice of enrollment to the obligor's employer or union by certified mail, return receipt requested.

The notice shall require the employer or union to enroll the child in the health insurance plan as provided in subsection (3) of this section.

(b) If the obligor parent's order to provide health insurance coverage does not order payments through, and has not been submitted to, the Washington state support registry for enforcement:

(i) The obligee may, without further notice to the obligor send a certified copy of the order requiring health insurance coverage to the obligor's employer or union by certified mail, return receipt requested; and

(ii) The obligee shall attach a notarized statement to the order declaring that the order is the latest order addressing coverage entered by the court and require the employer or union to enroll the child in the health insurance plan as provided in subsection (3) of this section.

(3) Upon receipt of an order that provides for health insurance coverage, or a notice of enrollment:

(a) The obligor's employer or union shall answer the party who sent the order or notice within thirty-five days and confirm that the child:

(i) Has been enrolled in the health insurance plan;

(ii) Will be enrolled; or

(iii) Cannot be covered, stating the reasons why such coverage cannot be provided;

(b) The employer or union shall withhold any required premium from the obligor's income or wages;

(c) If more than one plan is offered by the employer or union, and each plan may be extended to cover the child, then the child shall be enrolled in the obligor's plan. If the obligor's plan does not provide coverage which is accessible to the child, the child shall be enrolled in the least expensive plan otherwise available to the obligor parent;

(d) The employer or union shall provide information about the name of the health insurance coverage provider or issuer and the extent of coverage available to the obligee or the department and shall make available any necessary claim forms or enrollment membership cards.

(4) If the order for coverage contains no language notifying the obligor that failure to provide health insurance coverage or proof that such coverage is unavailable may result in direct enforcement of the order, the department or the obligee may serve a written notice of intent to enforce

the order on the obligor by certified mail, return receipt requested, or by personal service. If the obligor fails to provide written proof that such coverage has been obtained or applied for or fails to provide proof that such coverage is unavailable within twenty days of service of the notice, the department or the obligee may proceed to enforce the order directly as provided in subsection (2) of this section.

(5) If the obligor ordered to provide health insurance coverage elects to provide coverage that will not be accessible to the child because of geographic or other limitations when accessible coverage is otherwise available, the department or the obligee may serve a written notice of intent to purchase health insurance coverage on the obligor by certified mail, return receipt requested. The notice shall also specify the type and cost of coverage.

(6) If the department serves a notice under subsection (5) of this section the obligor shall, within twenty days of the date of service:

(a) File an application for an adjudicative proceeding; or

(b) Provide written proof to the department that the obligor has either applied for, or obtained, coverage accessible to the child.

(7) If the obligee serves a notice under subsection (5) of this section, within twenty days of the date of service the obligor shall provide written proof to the obligee that the obligor has either applied for, or obtained, coverage accessible to the child.

(8) If the obligor fails to respond to a notice served under subsection (5) of this section to the party who served the notice, the party who served the notice may purchase the health insurance coverage specified in the notice directly. The amount of the monthly premium shall be added to the support debt and be collectible without further notice. The amount of the monthly premium may be collected or accrued until the obligor provides proof of the required coverage.

(9) The signature of the obligee or of a department employee shall be a valid authorization to the coverage provider or issuer for purposes of processing a payment to the child's health services provider. An order for health insurance coverage shall operate as an assignment of all benefit rights to the obligee or to the child's health services provider, and in any claim against the coverage provider or issuer, the obligee or the obligee's assignee shall be subrogated to the rights of the obligor. Notwithstanding the provisions of this section regarding assignment of benefits, this section shall not require a health care service contractor authorized under chapter 48.44 RCW or a health maintenance organization authorized under chapter 48.46 RCW to deviate from their contractual provisions and restrictions regarding reimbursement for covered services. If the coverage is terminated, the employer shall mail a notice of termination to the department or the obligee at the obligee's last known address within thirty days of the termination date.

(10) This section shall not be construed to limit the right of the obligor or the obligee to bring an action in superior court at any time to enforce, modify, or clarify the original support order.

(11) Where a child does not reside in the issuer's service area, an issuer shall cover no less than urgent and emergent care. Where the issuer offers broader coverage, whether by policy or reciprocal agreement, the issuer shall

provide such coverage to any child otherwise covered that does not reside in the issuer's service area.

(12) If an obligor fails to pay his or her portion of any deductible required under the health insurance coverage or fails to pay his or her portion of medical expenses incurred in excess of the coverage provided under the plan, the department or the obligee may enforce collection of the obligor's portion of the deductible or the additional medical expenses through a wage assignment order. The amount of the deductible or additional medical expenses shall be added to the support debt and be collectible without further notice if the obligor's share of the amount of the deductible or additional expenses is reduced to a sum certain in a court order. [1995 c 34 § 7; 1994 c 230 § 7; 1993 c 426 § 14; 1989 c 416 § 5.]

26.18.180 Liability of employer or union—Penalties.

(1) An obligated parent's employer or union shall be liable for a fine of up to one thousand dollars per occurrence, if the employer or union fails or refuses, within thirty-five days of receiving the order or notice for health insurance coverage to:

(a) Promptly enroll the obligated parent's child in the health insurance plan; or

(b) Make a written answer to the person or entity who sent the order or notice for health insurance coverage stating that the child:

(i) Will be enrolled in the next available open enrollment period; or

(ii) Cannot be covered and explaining the reasons why coverage cannot be provided.

(2) Liability may be established and the fine may be collected by the office of support enforcement under chapter 74.20A or 26.23 RCW using any of the remedies contained in those chapters.

(3) Any employer or union who enrolls a child in a health insurance plan in compliance with chapter 26.18 RCW shall be exempt from liability resulting from such enrollment. [1989 c 416 § 9.]

26.18.190 Compensation paid by agency, self-insurer, or social security administration on behalf of child.

(1) When the department of labor and industries or a self-insurer pays compensation under chapter 51.32 RCW on behalf of or on account of the child or children of the injured worker for whom the injured worker owes a duty of child support, the amount of compensation the department or self-insurer pays on behalf of the child or children shall be treated for all purposes as if the injured worker paid the compensation toward satisfaction of the injured worker's child support obligations.

(2) When the social security administration pays social security disability dependency benefits, retirement benefits, or survivors insurance benefits on behalf of or on account of the child or children of a disabled person, a retired person, or a deceased person, the amount of benefits paid for the child or children shall be treated for all purposes as if the disabled person, the retired person, or the deceased person paid the benefits toward the satisfaction of that person's child support obligation for that period for which benefits are paid.

(3) Under no circumstances shall the person who has the obligation to make the transfer payment have a right to reimbursement of any compensation paid under subsection (1) or (2) of this section. [1995 c 236 § 1; 1990 1st ex.s. c 2 § 17.]

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

26.18.210 Child support order summary report form. (1) The administrator for the courts shall develop a child support order summary report form to provide for the reporting of summary information in every case in which a child support order is entered or modified either judicially or administratively. The administrator for the courts shall attempt to the greatest extent possible to make the form simple and understandable by the parties. The form shall indicate the following:

- (a) The county in which the order was entered and the cause number;
- (b) Whether it was a judicial or administrative order;
- (c) Whether the order is an original order or from a modification;
- (d) The number of children of the parties and the children's ages;
- (e) The combined monthly net income of parties;
- (f) The monthly net income of the father as determined by the court;
- (g) The monthly net income of the mother as determined by the court;
- (h) The basic child support obligation for each child as determined from the economic table;
- (i) Whether or not the court deviated from the child support for each child;
- (j) The reason or reasons stated by the court for the deviation;
- (k) The amount of child support after the deviation;
- (l) Any amount awarded for day care;
- (m) Any other extraordinary amounts in the order;
- (n) Any amount ordered for postsecondary education;
- (o) The total amount of support ordered;
- (p) In the case of a modification, the amount of support in the previous order;
- (q) If the change in support was in excess of thirty percent, whether the change was phased in;
- (r) The amount of the transfer payment ordered;
- (s) Which parent was ordered to make the transfer payment; and
- (t) The date of the entry of the order.

(2) The administrator for the courts shall make the form available to the parties. [1990 1st ex.s. c 2 § 22.]

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

26.18.220 Standard court forms—Mandatory use.

(1) The administrator for the courts shall develop not later than July 1, 1991, standard court forms and format rules for mandatory use by litigants in all actions commenced under chapters 26.09, 26.10, and 26.26 RCW effective January 1, 1992. The administrator for the courts shall develop mandatory forms for financial affidavits for integration into the worksheets. The forms shall be developed and approved

not later than September 1, 1992. The parties shall use the mandatory form for financial affidavits for actions commenced on or after September 1, 1992. The administrator for the courts has continuing responsibility to develop and revise mandatory forms and format rules as appropriate.

(2) A party may delete unnecessary portions of the forms according to the rules established by the administrator for the courts. A party may supplement the mandatory forms with additional material.

(3) A party's failure to use the mandatory forms or follow the format rules shall not be a reason to dismiss a case, refuse a filing, or strike a pleading. However, the court may require the party to submit a corrected pleading and may impose terms payable to the opposing party or payable to the court, or both.

(4) The administrator for the courts shall distribute a master copy of the forms to all county court clerks. The administrator for the courts and county clerks shall distribute the mandatory forms to the public upon request and may charge for the cost of production and distribution of the forms. Private vendors may distribute the mandatory forms. Distribution may be in printed or electronic form. [1992 c 229 § 5; 1990 1st ex.s. c 2 § 25.]

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

26.18.900 Severability—1984 c 260. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 260 § 43.]

Chapter 26.19

CHILD SUPPORT SCHEDULE

Sections

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26.19.071	Standards for determination of income.
26.19.075	Standards for deviation from the standard calculation.
26.19.080	Allocation of child support obligation between parents— Court-ordered day care or special child rearing expenses.
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26.19.100	Federal income tax exemptions.

26.19.001 Legislative intent and finding. The legislature intends, in establishing a child support schedule, to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living. The legislature also intends that the child support obligation should be equitably apportioned between the parents.

The legislature finds that these goals will be best achieved by the adoption and use of a state-wide child

support schedule. Use of a state-wide schedule will benefit children and their parents by:

- (1) Increasing the adequacy of child support orders through the use of economic data as the basis for establishing the child support schedule;
- (2) Increasing the equity of child support orders by providing for comparable orders in cases with similar circumstances; and
- (3) Reducing the adversarial nature of the proceedings by increasing voluntary settlements as a result of the greater predictability achieved by a uniform state-wide child support schedule. [1988 c 275 § 1.]

Effective dates—1988 c 275: "Except for sections 4, 8, and 9 of this act, this act shall take effect July 1, 1988. Sections 4 and 8 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 24, 1988]." [1988 c 275 § 23.]

Severability—1988 c 275: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 275 § 24.]

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

(1) "Basic child support obligation" means the monthly child support obligation determined from the economic table based on the parties' combined monthly net income and the number of children for whom support is owed.

(2) "Child support schedule" means the standards, economic table, worksheets, and instructions, as defined in this chapter.

(3) "Court" means a superior court judge, court commissioner, and presiding and reviewing officers who administratively determine or enforce child support orders.

(4) "Deviation" means a child support amount that differs from the standard calculation.

(5) "Economic table" means the child support table for the basic support obligation provided in RCW 26.19.020.

(6) "Instructions" means the instructions developed by the office of the administrator for the courts pursuant to RCW 26.19.050 for use in completing the worksheets.

(7) "Standards" means the standards for determination of child support as provided in this chapter.

(8) "Standard calculation" means the presumptive amount of child support owed as determined from the child support schedule before the court considers any reasons for deviation.

(9) "Support transfer payment" means the amount of money the court orders one parent to pay to another parent or custodian for child support after determination of the standard calculation and deviations. If certain expenses or credits are expected to fluctuate and the order states a formula or percentage to determine the additional amount or credit on an ongoing basis, the term "support transfer payment" does not mean the additional amount or credit.

(10) "Worksheets" means the forms developed by the office of the administrator for the courts pursuant to RCW 26.19.050 for use in determining the amount of child support. [1991 sp.s. c 28 § 4.]

Severability—Effective date—Captions not law—1991 sp.s. c 28: See notes following RCW 26.09.100.

26.19.020 Child support economic table.

**ECONOMIC TABLE
MONTHLY BASIC SUPPORT OBLIGATION
PER CHILD**

KEY: A = AGE 0-11 B = AGE 12-18

COMBINED MONTHLY NET INCOME	ONE CHILD FAMILY		TWO CHILDREN FAMILY	
	A	B	A	B
0				
100				
200				
300				
400				
500				
600	133	164	103	127
700	155	191	120	148
800	177	218	137	170
900	199	246	154	191
1000	220	272	171	211
1100	242	299	188	232
1200	264	326	205	253
1300	285	352	221	274
1400	307	379	238	294
1500	327	404	254	313
1600	347	428	269	333
1700	367	453	285	352
1800	387	478	300	371
1900	407	503	316	390
2000	427	527	331	409
2100	447	552	347	429
2200	467	577	362	448
2300	487	601	378	467
2400	506	626	393	486
2500	526	650	408	505
2600	534	661	416	513
2700	542	670	421	520
2800	549	679	427	527
2900	556	686	431	533
3000	561	693	436	538
3100	566	699	439	543
3200	569	704	442	546
3300	573	708	445	549
3400	574	710	446	551
3500	575	711	447	552
3600	577	712	448	553
3700	578	713	449	554
3800	581	719	452	558
3900	596	736	463	572
4000	609	753	473	584
4100	623	770	484	598
4200	638	788	495	611
4300	651	805	506	625
4400	664	821	516	637
4500	677	836	525	649
4600	689	851	535	661

For income less than \$600 the obligation is based upon the resources and living expenses of each household. Minimum support shall not be less than \$25 per child per month.

Child Support Schedule

26.19.020

COMBINED MONTHLY NET INCOME	THREE CHILDREN FAMILY		FOUR CHILDREN FAMILY		FIVE CHILDREN FAMILY		2800	356	440	301	372	262	324
	A	B	A	B	A	B							
4700	701	866	545	673	2800	356	440	301	372	262	324		
4800	713	882	554	685	2900	360	445	305	376	266	328		
4900	726	897	564	697	3000	364	449	308	380	268	331		
5000	738	912	574	708	3100	367	453	310	383	270	334		
5100	751	928	584	720	3200	369	457	312	386	272	336		
5200	763	943	593	732	3300	371	459	314	388	273	339		
5300	776	959	602	744	3400	372	460	315	389	274	340		
5400	788	974	612	756	3500	373	461	316	390	275	341		
5500	800	989	622	768	3600	374	462	317	391	276	342		
5600	812	1004	632	779	3700	375	463	318	392	277	343		
5700	825	1019	641	791	3800	377	466	319	394	278	344		
5800	837	1035	650	803	3900	386	477	326	404	284	352		
5900	850	1050	660	815	4000	395	488	334	413	291	360		
6000	862	1065	670	827	4100	404	500	341	422	298	368		
6100	875	1081	680	839	4200	413	511	350	431	305	377		
6200	887	1096	689	851	4300	422	522	357	441	311	385		
6300	899	1112	699	863	4400	431	532	364	449	317	392		
6400	911	1127	709	875	4500	438	542	371	458	323	400		
6500	924	1142	718	887	4600	446	552	377	467	329	407		
6600	936	1157	728	899	4700	455	562	384	475	335	414		
6700	949	1172	737	911	4800	463	572	391	483	341	422		
6800	961	1188	747	923	4900	470	581	398	491	347	429		
6900	974	1203	757	935	5000	479	592	404	500	353	437		
7000	986	1218	767	946	5100	487	602	411	509	359	443		
					5200	494	611	418	517	365	451		
					5300	503	621	425	525	371	458		
					5400	511	632	432	533	377	466		
					5500	518	641	439	542	383	473		
					5600	527	651	446	551	389	480		
					5700	535	661	452	559	395	488		
					5800	543	671	459	567	401	495		
					5900	551	681	466	575	407	502		
					6000	559	691	473	584	413	509		
					6100	567	701	479	593	418	517		
					6200	575	710	486	601	424	524		
					6300	583	721	493	609	430	532		
					6400	591	731	500	617	436	539		
					6500	599	740	506	626	442	546		
					6600	607	750	513	635	448	554		
					6700	615	761	520	643	454	561		
					6800	623	770	527	651	460	568		
					6900	631	780	533	659	466	575		
					7000	639	790	540	668	472	583		

For income less than \$600 the obligation is based upon the resources and living expenses of each household. Minimum support shall not be less than \$25 per child per month.

The economic table is presumptive for combined monthly net incomes up to and including five thousand dollars. When combined monthly net income exceeds five thousand dollars, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of five thousand dollars unless the court finds a reason to deviate below that amount. The economic table is advisory but not presumptive for combined monthly net incomes that exceed five thousand dollars. When combined monthly net income exceeds seven thousand dollars, the court may set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may exceed the advisory amount of support set for combined monthly net incomes of seven thousand dollars upon written findings of fact. [1991 c 367 § 25; 1990 1st ex.s. c 2 § 19; 1989 c 175 § 76; 1988 c 275 § 3.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

26.19.025 Legislative review of support schedule.

The legislature shall review the support schedule every four years to determine if the application of the support schedule results in appropriate support orders. [1991 c 367 § 26.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.19.035 Standards for application of the child support schedule. (1) **Application of the child support schedule.** The child support schedule shall be applied:

- (a) In each county of the state;
- (b) In judicial and administrative proceedings under this title or Title 13 or 74 RCW;
- (c) In all proceedings in which child support is determined or modified;
- (d) In setting temporary and permanent support;
- (e) In automatic modification provisions or decrees entered pursuant to RCW 26.09.100; and
- (f) In addition to proceedings in which child support is determined for minors, to adult children who are dependent on their parents and for whom support is ordered pursuant to RCW 26.09.100.

The provisions of this chapter for determining child support and reasons for deviation from the standard calculation shall be applied in the same manner by the court, presiding officers, and reviewing officers.

(2) **Written findings of fact supported by the evidence.** An order for child support shall be supported by written findings of fact upon which the support determination is based and shall include reasons for any deviation from the standard calculation and reasons for denial of a party's request for deviation from the standard calculation. The court shall enter written findings of fact in all cases whether or not the court: (a) Sets the support at the presumptive amount, for combined monthly net incomes below five thousand dollars; (b) sets the support at an advisory amount, for combined monthly net incomes between five thousand and seven thousand dollars; or (c) deviates from the presumptive or advisory amounts.

(3) **Completion of worksheets.** Worksheets in the form developed by the office of the administrator for the courts shall be completed under penalty of perjury and filed in every proceeding in which child support is determined. The court shall not accept incomplete worksheets or worksheets that vary from the worksheets developed by the office of the administrator for the courts.

(4) **Court review of the worksheets and order.** The court shall review the worksheets and the order setting support for the adequacy of the reasons set forth for any deviation or denial of any request for deviation and for the adequacy of the amount of support ordered. Each order shall state the amount of child support calculated using the standard calculation and the amount of child support actually ordered. Worksheets shall be attached to the decree or order

or if filed separately shall be initialed or signed by the judge and filed with the order. [1992 c 229 § 6; 1991 c 367 § 27.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.19.045 Veterans' disability pensions, compensation for disability, and aid and attendant care payments.

Veterans' disability pensions or regular compensation for disability incurred in or aggravated by service in the United States armed forces paid by the veterans' administration shall be disclosed to the court. The court may consider either type of compensation as disposable income for purposes of calculating the child support obligation. Aid and attendant care payments to prevent hospitalization paid by the veterans' administration solely to provide physical home care for a disabled veteran, and special medical compensation paid under 38 U.S.C. Sec. 314 (k) through (r) to provide either special care or special aids, or both, to assist with routine daily functions shall also be disclosed. The court may not include either aid and attendant care or special medical compensation payments in gross income for purposes of calculating the child support obligation or for purposes of deviating from the standard calculation. [1991 c 367 § 30.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.19.050 Worksheets and instructions. (1) The administrator for the courts shall develop and adopt worksheets and instructions to assist the parties and courts in establishing the appropriate child support level and apportionment of support. The administrator for the courts shall attempt to the greatest extent possible to make the worksheets and instructions understandable by persons who are not represented by legal counsel.

(2) The administrator for the courts shall develop and adopt standards for the printing of worksheets and shall establish a process for certifying printed worksheets. The administrator may maintain a register of sources for approved worksheets.

(3) The administrator for the courts should explore methods to assist pro se parties and judges in the courtroom to calculate support payments through automated software, equipment, or personal assistance. [1990 1st ex.s. c 2 § 5; 1988 c 275 § 6.]

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

26.19.055 Payments for attendant services in cases of disability.

Payments from any source, other than veterans' aid and attendance allowances or special medical compensation paid under 38 U.S.C. Sec. 314 (k) through (r), for services provided by an attendant in case of a disability when the disability necessitates the hiring of the services of an attendant shall be disclosed but shall not be included in gross income and shall not be a reason to deviate from the standard calculation. [1991 c 367 § 31.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.19.065 Standards for establishing lower and upper limits on child support amounts. (1) **Limit at forty-five percent of a parent's net income.** Neither parent's total child support obligation may exceed forty-five percent of net income except for good cause shown. Good cause includes but is not limited to possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families.

(2) **Income below six hundred dollars.** When combined monthly net income is less than six hundred dollars, a support order of not less than twenty-five dollars per child per month shall be entered for each parent. A parent's support obligation shall not reduce his or her net income below the need standard for one person established pursuant to RCW 74.04.770, except for the mandatory minimum payment of twenty-five dollars per child per month as required in this section or in cases where the court finds reasons for deviation under *section 32 of this act. This section shall not be construed to require monthly substantiation of income.

(3) **Income above five thousand and seven thousand dollars.** The economic table is presumptive for combined monthly net incomes up to and including five thousand dollars. When combined monthly net income exceeds five thousand dollars, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of five thousand dollars unless the court finds a reason to deviate below that amount. The economic table is advisory but not presumptive for combined monthly net incomes that exceed five thousand dollars. When combined monthly net income exceeds seven thousand dollars, the court may set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may exceed the advisory amount of support set for combined monthly net incomes of seven thousand dollars upon written findings of fact. [1991 c 367 § 33.]

*Reviser's note: "Section 32 of this act" was vetoed by the governor.

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.19.071 Standards for determination of income.

(1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) **Income sources included in gross monthly income.** Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:

(a) Salaries;

- (b) Wages;
- (c) Commissions;
- (d) Deferred compensation;
- (e) Overtime;
- (f) Contract-related benefits;
- (g) Income from second jobs;
- (h) Dividends;
- (i) Interest;
- (j) Trust income;
- (k) Severance pay;
- (l) Annuities;
- (m) Capital gains;
- (n) Pension retirement benefits;
- (o) Workers' compensation;
- (p) Unemployment benefits;
- (q) Spousal maintenance actually received;
- (r) Bonuses;
- (s) Social security benefits; and
- (t) Disability insurance benefits.

(4) **Income sources excluded from gross monthly income.** The following income and resources shall be disclosed but shall not be included in gross income:

- (a) Income of a new spouse or income of other adults in the household;
- (b) Child support received from other relationships;
- (c) Gifts and prizes;
- (d) Aid to families with dependent children;
- (e) Supplemental security income;
- (f) General assistance; and
- (g) Food stamps.

Receipt of income and resources from aid to families with dependent children, supplemental security income, general assistance, and food stamps shall not be a reason to deviate from the standard calculation.

(5) **Determination of net income.** The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

- (a) Federal and state income taxes;
- (b) Federal insurance contributions act deductions;
- (c) Mandatory pension plan payments;
- (d) Mandatory union or professional dues;
- (e) State industrial insurance premiums;
- (f) Court-ordered spousal maintenance to the extent actually paid;
- (g) Up to two thousand dollars per year in voluntary pension payments actually made if the contributions were made for the two tax years preceding the earlier of the (i) tax year in which the parties separated with intent to live separate and apart or (ii) tax year in which the parties filed for dissolution; and

(h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) **Imputation of income.** The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work

history, education, health, and age, or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. In the absence of information to the contrary, a parent's imputed income shall be based on the median income of year-round full-time workers as derived from the United States bureau of census, current populations reports, or such replacement report as published by the bureau of census. [1993 c 358 § 4; 1991 sp.s. c 28 § 5.]

Severability—Effective date—Captions not law—1991 sp.s. c 28:
See notes following RCW 26.09.100.

26.19.075 Standards for deviation from the standard calculation. (1) Reasons for deviation from the standard calculation include but are not limited to the following:

(a) **Sources of income and tax planning.** The court may deviate from the standard calculation after consideration of the following:

(i) Income of a new spouse if the parent who is married to the new spouse is asking for a deviation based on any other reason. Income of a new spouse is not, by itself, a sufficient reason for deviation;

(ii) Income of other adults in the household if the parent who is living with the other adult is asking for a deviation based on any other reason. Income of the other adults in the household is not, by itself, a sufficient reason for deviation;

(iii) Child support actually received from other relationships;

(iv) Gifts;

(v) Prizes;

(vi) Possession of wealth, including but not limited to savings, investments, real estate holdings and business interests, vehicles, boats, pensions, bank accounts, insurance plans, or other assets;

(vii) Extraordinary income of a child; or

(viii) Tax planning considerations. A deviation for tax planning may be granted only if the child would not receive a lesser economic benefit due to the tax planning.

(b) **Nonrecurring income.** The court may deviate from the standard calculation based on a finding that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. Depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses, or income from second jobs. Deviations for nonrecurring income shall be based on a review of the nonrecurring income received in the previous two calendar years.

(c) **Debt and high expenses.** The court may deviate from the standard calculation after consideration of the following expenses:

(i) Extraordinary debt not voluntarily incurred;

(ii) A significant disparity in the living costs of the parents due to conditions beyond their control;

(iii) Special needs of disabled children;

(iv) Special medical, educational, or psychological needs of the children; or

(v) Costs incurred or anticipated to be incurred by the parents in compliance with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child.

(d) **Residential schedule.** The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving aid to families with dependent children. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

(e) **Children from other relationships.** The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.

(i) The child support schedule shall be applied to the mother, father, and children of the family before the court to determine the presumptive amount of support.

(ii) Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.

(iii) When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.

(iv) When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.

(2) All income and resources of the parties before the court, new spouses, and other adults in the households shall be disclosed and considered as provided in this section. The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.

(3) The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.

(4) When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.

(5) Agreement of the parties is not by itself adequate reason for any deviations from the standard calculation. [1993 c 358 § 5; 1991 sp.s. c 28 § 6.]

Severability—Effective date—Captions not law—1991 sp.s. c 28: See notes following RCW 26.09.100.

26.19.080 Allocation of child support obligation between parents—Court-ordered day care or special child rearing expenses. (1) The basic child support obligation derived from the economic table shall be allocated between the parents based on each parent's share of the combined monthly net income.

(2) Ordinary health care expenses are included in the economic table. Monthly health care expenses that exceed five percent of the basic support obligation shall be considered extraordinary health care expenses. Extraordinary health care expenses shall be shared by the parents in the same proportion as the basic child support obligation.

(3) Day care and special child rearing expenses, such as tuition and long-distance transportation costs to and from the parents for visitation purposes, are not included in the economic table. These expenses shall be shared by the parents in the same proportion as the basic child support obligation. If an obligor pays court or administratively ordered day care or special child rearing expenses that are not actually incurred, the obligee must reimburse the obligor for the overpayment if the overpayment amounts to at least twenty percent of the obligor's annual day care or special child rearing expenses. The obligor may institute an action in the superior court or file an application for an adjudicative hearing with the department of social and health services for reimbursement of day care and special child rearing expense overpayments that amount to twenty percent or more of the obligor's annual day care and special child rearing expenses. Any ordered overpayment reimbursement shall be applied first as an offset to child support arrearages of the obligor. If the obligor does not have child support arrearages, the reimbursement may be in the form of a direct reimbursement by the obligee or a credit against the obligor's future support payments. If the reimbursement is in the form of a credit against the obligor's future child support payments, the credit shall be spread equally over a twelve-month period. Absent agreement of the obligee, nothing in this section entitles an obligor to pay more than his or her proportionate share of day care or other special child rearing expenses in advance and then deduct the overpayment from future support transfer payments.

(4) The court may exercise its discretion to determine the necessity for and the reasonableness of all amounts ordered in excess of the basic child support obligation. [1996 c 216 § 1; 1990 1st ex.s. c 2 § 7.]

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

26.19.090 Standards for postsecondary educational support awards. (1) The child support schedule shall be advisory and not mandatory for postsecondary educational support.

(2) When considering whether to order support for postsecondary educational expenses, the court shall determine whether the child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court shall exercise its discretion when determining whether and for how long to award postsecondary educational support based upon consideration of factors that include but are not limited to the following: Age of the child; the child's needs; the expectations of the parties for their children when the parents were together; the child's prospects, desires, aptitudes, abilities or disabilities; the nature of the postsecondary education sought; and the parents' level of education, standard of living, and current and future resources. Also to be considered are the amount and type of support that the child would have been afforded if the parents had stayed together.

(3) The child must enroll in an accredited academic or vocational school, must be actively pursuing a course of study commensurate with the child's vocational goals, and must be in good academic standing as defined by the institution. The court-ordered postsecondary educational support shall be automatically suspended during the period or periods the child fails to comply with these conditions.

(4) The child shall also make available all academic records and grades to both parents as a condition of receiving postsecondary educational support. Each parent shall have full and equal access to the postsecondary education records as provided in RCW 26.09.225.

(5) The court shall not order the payment of postsecondary educational expenses beyond the child's twenty-third birthday, except for exceptional circumstances, such as mental, physical, or emotional disabilities.

(6) The court shall direct that either or both parents' payments for postsecondary educational expenses be made directly to the educational institution if feasible. If direct payments are not feasible, then the court in its discretion may order that either or both parents' payments be made directly to the child if the child does not reside with either parent. If the child resides with one of the parents the court may direct that the parent making the support transfer payments make the payments to the child or to the parent who has been receiving the support transfer payments. [1991 sp.s. c 28 § 7; 1990 1st ex.s. c 2 § 9.]

Severability—Effective date—Captions not law—1991 sp.s. c 28: See notes following RCW 26.09.100.

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

26.19.100 Federal income tax exemptions. The parties may agree which parent is entitled to claim the child or children as dependents for federal income tax exemptions. The court may award the exemption or exemptions and order a party to sign the federal income tax dependency exemption waiver. The court may divide the exemptions between the parties, alternate the exemptions between the parties, or both. [1990 1st ex.s. c 2 § 10.]

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

Chapter 26.20

FAMILY ABANDONMENT OR NONSUPPORT

(Formerly: Family desertion)

Sections

- 26.20.030 Family abandonment—Penalty.
 26.20.035 Family nonsupport—Penalty.
 26.20.071 Evidence—Spouse as witness.
 26.20.080 Proof of wilfulness—Application of penalty provisions.

*Child support enforcement: Chapter 26.18 RCW.**Child support registry: Chapter 26.23 RCW.**Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.**Uniform interstate family support act: Chapter 26.21 RCW.*

26.20.030 Family abandonment—Penalty. (1) Any person who has a child dependent upon him or her for care, education or support and deserts such child in any manner whatever with intent to abandon it is guilty of the crime of family abandonment.

(2) The crime of family abandonment is a class C felony under chapter 9A.20 RCW. [1984 c 260 § 26; 1973 1st ex.s. c 154 § 34; 1969 ex.s. c 207 § 2; 1955 c 249 § 1; 1953 c 255 § 1; 1943 c 158 § 1; 1913 c 28 § 1; Rem. Supp. 1943 § 6908. Prior: 1907 c 103 § 1, part.]

Severability—1984 c 260: See RCW 26.18.900.**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.*Leaving children unattended in parked automobile: RCW 9.91.060.*

26.20.035 Family nonsupport—Penalty. (1) Any person who is able to provide support, or has the ability to earn the means to provide support, and who:

(a) Wilfully omits to provide necessary food, clothing, shelter, or medical attendance to a child dependent upon him or her; or

(b) Wilfully omits to provide necessary food, clothing, shelter, or medical attendance to his or her spouse, is guilty of the crime of family nonsupport.

(2) The crime of family nonsupport is a gross misdemeanor under chapter 9A.20 RCW. [1984 c 260 § 27.]

Severability—1984 c 260: See RCW 26.18.900.

26.20.071 Evidence—Spouse as witness. In any proceedings relating to nonsupport or family desertion the laws attaching a privilege against the disclosure of communications between husband and wife shall be inapplicable and both husband and wife in such proceedings shall be competent witnesses to testify to any relevant matter, including marriage and parentage. [1963 c 10 § 1.]

Uniform criminal extradition act: Chapter 10.88 RCW.

26.20.080 Proof of wilfulness—Application of penalty provisions. Proof of the nonsupport of a spouse or of a child or children, or the omission to furnish necessary food, clothing, shelter, or medical attendance for a spouse, or for a child or children, is prima facie evidence that the nonsupport or omission to furnish food, clothing, shelter, or medical attendance is wilful. The provisions of RCW 26.20.030 and 26.20.035 are applicable regardless of the marital status of the person who has a child dependent upon

him or her, and regardless of the nonexistence of any decree requiring payment of support or maintenance. [1984 c 260 § 28; 1973 1st ex.s. c 154 § 36; 1913 c 28 § 3; RRS § 6910. Formerly RCW 26.20.080 and 26.20.090.]

Severability—1984 c 260: See RCW 26.18.900.**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

Chapter 26.21

UNIFORM INTERSTATE FAMILY SUPPORT ACT

(Formerly: Uniform reciprocal enforcement of support act)

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Child support registry: Chapter 26.23 RCW.

Family abandonment or nonsupport: Chapter 26.20 RCW.

ARTICLE 1
GENERAL PROVISIONS

26.21.005 Definitions. In this chapter:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support" means an obligation imposed or imposed by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(6) "Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, as defined by chapter 6.27 RCW, to withhold support from the income of the obligor.

(7) "Initiating state" means a state in which a proceeding under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act is filed for forwarding to a responding state.

(8) "Initiating tribunal" means the authorized tribunal in an initiating state.

(9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(11) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(12) "Obligee" means:

(a) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(b) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(c) An individual seeking a judgment determining parentage of the individual's child.

(13) "Obligor" means an individual, or the estate of a decedent:

(a) Who owes or is alleged to owe a duty of support;

(b) Who is alleged but has not been adjudicated to be a parent of a child; or

(c) Who is liable under a support order.

(14) "Register" means to record or file in the appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically, a support order or judgment determining parentage.

(15) "Registering tribunal" means a tribunal in which a support order is registered.

(16) "Responding state" means a state to which a proceeding is forwarded under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(17) "Responding tribunal" means the authorized tribunal in a responding state.

(18) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(19) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe and includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this chapter.

(20) "Support enforcement agency" means a public official or agency authorized to seek:

(a) Enforcement of support orders or laws relating to the duty of support;

(b) Establishment or modification of child support;

(c) Determination of parentage; or

(d) Location of obligors or their assets.

(21) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, that provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorneys' fees, and other relief.

(22) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage. [1993 c 318 § 101.]

26.21.015 Tribunal of this state. The superior court is the state tribunal for judicial proceedings and the department of social and health services office of support enforcement is the state tribunal for administrative proceedings. [1993 c 318 § 102.]

26.21.025 Remedies cumulative. Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law. [1993 c 318 § 103.]

26.21.065 Child support schedule. A determination of child support shall be based upon the child support schedule and standards adopted under *RCW 26.19.040. [1988 c 275 § 13.]

*Reviser's note: RCW 26.19.040 was repealed by 1991 sp.s. c 28 § 8, effective September 1, 1991.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

ARTICLE 2 JURISDICTION

PART A

EXTENDED PERSONAL JURISDICTION

26.21.075 Bases for jurisdiction over nonresident. In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) The individual is personally served with summons within this state;

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

(3) The individual resided with the child in this state;

(4) The individual resided in this state and provided prenatal expenses or support for the child;

(5) The child resides in this state as a result of the acts or directives of the individual;

(6) The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(7) There is any other basis consistent with the Constitutions of this state and the United States for the exercise of personal jurisdiction. [1993 c 318 § 201.]

26.21.085 Procedure when exercising jurisdiction over nonresident. A tribunal of this state exercising personal jurisdiction over a nonresident under RCW 26.21.075 may apply RCW 26.21.355 to receive evidence from another state, and RCW 26.21.375 to obtain discovery through a tribunal of another state. In all other respects, Articles 3 through 7 do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter. [1993 c 318 § 202.]

PART B

PROCEEDINGS INVOLVING TWO OR MORE STATES

26.21.095 Initiating and responding tribunal of this state. Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state. [1993 c 318 § 203.]

26.21.105 Simultaneous proceedings in another state. (1) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if:

(a) The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(b) The contesting party timely challenges the exercise of jurisdiction in the other state; and

(c) If relevant, this state is the home state of the child.

(2) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

(a) The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(b) The contesting party timely challenges the exercise of jurisdiction in this state; and

(c) If relevant, the other state is the home state of the child. [1993 c 318 § 204.]

26.21.115 Continuing, exclusive jurisdiction. (1) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

(a) As long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(b) Until each individual party has filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(2) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this chapter.

(3) If a child support order of this state is modified by a tribunal of another state pursuant to a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:

(a) Enforce the order that was modified as to amounts accruing before the modification;

(b) Enforce nonmodifiable aspects of that order; and

(c) Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(4) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state that has issued a child support order pursuant to a law substantially similar to this chapter.

(5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(6) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state. [1993 c 318 § 205.]

26.21.125 Orders—Compliance with RCW 26.23.050. Every court order or decree establishing a child support obligation shall be entered in compliance with RCW 26.23.050. [1987 c 435 § 23; 1986 c 138 § 2; 1984 c 260 § 22.]

Effective date—1987 c 435: See RCW 26.23.900.

Severability—1984 c 260: See RCW 26.18.900.

26.21.127 Enforcement and modification of support order by tribunal having continuing jurisdiction. (1) A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(2) A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings

the tribunal may apply RCW 26.21.355 to receive evidence from another state and RCW 26.21.375 to obtain discovery through a tribunal of another state.

(3) A tribunal of this state that lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state. [1993 c 318 § 206.]

PART C RECONCILIATION WITH ORDERS OF OTHER STATES

26.21.135 Recognition of child support orders. (1) If a proceeding is brought under this chapter, and one or more child support orders have been issued in this or another state with regard to an obligor and a child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(a) If only one tribunal has issued a child support order, the order of that tribunal must be recognized.

(b) If two or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal must be recognized.

(c) If two or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.

(d) If two or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state may issue a child support order, which must be recognized.

(2) The tribunal that has issued an order recognized under subsection (1) of this section is the tribunal having continuing, exclusive jurisdiction. [1993 c 318 § 207.]

26.21.145 Multiple child support orders for two or more obligees. In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state. [1993 c 318 § 208.]

26.21.155 Credit for payments. Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this state. [1993 c 318 § 209.]

ARTICLE 3
CIVIL PROVISIONS OF GENERAL APPLICATION

26.21.205 Proceedings under this chapter. (1) Except as otherwise provided in this chapter, this article applies to all proceedings under this chapter.

(2) This chapter provides for the following proceedings:

- (a) Establishment of an order for spousal support or child support pursuant to Article 4;
- (b) Enforcement of a support order and income-withholding order of another state without registration pursuant to Article 5;
- (c) Registration of an order for spousal support or child support of another state for enforcement pursuant to Article 6;
- (d) Modification of an order for child support or spousal support issued by a tribunal of this state pursuant to Article 2, Part B;
- (e) Registration of an order for child support of another state for modification pursuant to Article 6;
- (f) Determination of parentage pursuant to Article 7; and
- (g) Assertion of jurisdiction over nonresidents pursuant to Article 2, Part A.

(3) An individual petitioner or a support enforcement agency may commence a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent. [1993 c 318 § 301.]

26.21.215 Action by minor parent. A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child. [1993 c 318 § 302.]

26.21.225 Application of law of this state. Except as otherwise provided by this chapter, a responding tribunal of this state:

(1) Shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) Shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this state. [1993 c 318 § 303.]

26.21.235 Duties of initiating tribunal. Upon the filing of a petition authorized by this chapter, an initiating tribunal of this state shall forward three copies of the petition and its accompanying documents:

(1) To the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged. [1993 c 318 § 304.]

26.21.245 Duties and powers of responding tribunal. (1) When a responding tribunal of this state receives a

petition or comparable pleading from an initiating tribunal or directly pursuant to RCW 26.21.205(3), it shall cause the petition or pleading to be filed and notify the petitioner by first class mail where and when it was filed.

(2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

- (a) Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;
- (b) Order an obligor to comply with a support order, specifying the amount and the manner of compliance;
- (c) Order income withholding;
- (d) Determine the amount of any arrearages, and specify a method of payment;
- (e) Enforce orders by civil or criminal contempt, or both;
- (f) Set aside property for satisfaction of the support order;
- (g) Place liens and order execution on the obligor's property;
- (h) Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(i) Issue a bench warrant or writ of arrest for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant or writ of arrest in any local and state computer systems for criminal warrants;

(j) Order the obligor to seek appropriate employment by specified methods;

(k) Award reasonable attorneys' fees and other fees and costs; and

(l) Grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

(5) If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order by first class mail to the petitioner and the respondent and to the initiating tribunal, if any. [1993 c 318 § 305.]

26.21.255 Inappropriate tribunal. If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner by first class mail where and when the pleading was sent. [1993 c 318 § 306.]

26.21.265 Duties of support enforcement agency.

(1) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.

(2) A support enforcement agency that is providing services to the petitioner as appropriate shall:

(a) Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(b) Request an appropriate tribunal to set a date, time, and place for a hearing;

(c) Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice by first class mail to the petitioner;

(e) Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication by first class mail to the petitioner; and

(f) Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency. [1993 c 318 § 307.]

26.21.275 Duty of attorney general. If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this chapter or may provide those services directly to the individual. [1993 c 318 § 308.]

26.21.285 Private counsel. An individual may employ private counsel to represent the individual in proceedings authorized by this chapter. [1993 c 318 § 309.]

26.21.295 Duties of department as state information agency. (1) The department of social and health services office of support enforcement is the state information agency under this chapter.

(2) The state information agency shall:

(a) Compile and maintain a current list, including addresses, of the tribunals in this state that have jurisdiction under this chapter and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(b) Maintain a register of tribunals and support enforcement agencies received from other states;

(c) Forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state; and

(d) Obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those

relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security. [1993 c 318 § 310.]

26.21.305 Pleadings and accompanying documents.

(1) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise ordered under RCW 26.21.315, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

(2) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency. [1993 c 318 § 311.]

26.21.315 Nondisclosure of information—Circumstances. Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter. [1993 c 318 § 312.]

26.21.325 Costs—Fees. (1) The petitioner may not be required to pay a filing fee or other costs.

(2) If an obligee prevails in a support enforcement proceeding, a responding tribunal may assess against an obligor filing fees, reasonable attorneys' fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal in a support enforcement proceeding may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by RCW 4.84.080, civil rule 11 or, if the obligee or the support enforcement agency has acted in bad faith.

(3) A responding tribunal may assess filing fees, reasonable attorneys' fees, and other costs to either party, and necessary travel and other reasonable costs incurred by the obligee and the obligee's witnesses to the obligee, in a proceeding to establish or modify support. Assessments under this section shall be made in accordance with RCW 4.84.080 and 26.09.140 and civil rule 11.

(4) Attorneys' fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses.

(5) The tribunal shall order the payment of costs and reasonable attorneys' fees if it determines that a hearing was requested primarily for delay. [1993 c 318 § 313.]

26.21.335 Limited immunity of petitioner. (1) Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(2) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.

(3) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in this state to participate in the proceeding. [1993 c 318 § 314.]

26.21.345 Nonparentage as defense. A party whose parentage of a child has been previously determined by order of a tribunal may not plead nonparentage as a defense to a proceeding under this chapter. [1993 c 318 § 315.]

26.21.355 Special rules of evidence and procedure. (1) The physical presence of the petitioner in a responding tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(2) A verified petition, affidavit, document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(3) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.

(4) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(5) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

(6) In a proceeding under this chapter, a tribunal of this state may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(7) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(8) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

(9) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter. [1993 c 318 § 316.]

26.21.365 Communications between tribunals. A tribunal of this state may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state. [1993 c 318 § 317.]

26.21.375 Assistance with discovery. A tribunal of this state may:

(1) Request a tribunal of another state to assist in obtaining discovery; and

(2) Upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state. [1993 c 318 § 318.]

26.21.385 Receipt and disbursement of payments. A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received. [1993 c 318 § 319.]

ARTICLE 4

ESTABLISHMENT OF SUPPORT ORDER

26.21.420 Petition to establish support order—Notice—Hearing—Orders. (1) If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a support order if:

(a) The individual seeking the order resides in another state; or

(b) The support enforcement agency seeking the order is located in another state.

(2) The tribunal may issue a temporary child support order if:

(a) The respondent has signed a verified statement acknowledging parentage;

(b) The respondent has been determined by order of a tribunal to be the parent; or

(c) There is other clear, cogent, and convincing evidence that the respondent is the child's parent.

(3) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to RCW 26.21.245. [1993 c 318 § 401.]

ARTICLE 5

DIRECT ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION

26.21.450 Recognition of income-withholding order of another state. (1) An income-withholding order issued in another state may be sent by first class mail to the person or entity defined as the obligor's employer under chapter 6.27 RCW without first filing a petition or comparable pleading or registering the order with a tribunal of this state. Upon receipt of the order, the employer shall:

(a) Treat an income-withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state;

(b) Immediately provide a copy of the order to the obligor; and

(c) Distribute the funds as directed in the income-withholding order.

(2) An obligor may contest the validity or enforcement of an income-withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this state. RCW 26.21.510 applies to the contest. The obligor shall give notice of the contest to any support enforcement agency providing services to the obligee and to:

(a) The person or agency designated to receive payments in the income-withholding order; or

(b) If no person or agency is designated, the obligee. [1993 c 318 § 501.]

26.21.460 Administrative enforcement of orders.

(1) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

(2) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter. [1993 c 318 § 502.]

ARTICLE 6

ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION

PART A

REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER

26.21.480 Registration of order for enforcement. A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement. [1993 c 318 § 601.]

26.21.490 Procedure to register order for enforcement. (1) A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the superior court of any county in this state where the obligor resides, works, or has property:

(a) A letter of transmittal to the tribunal requesting registration and enforcement;

(b) Two copies, including one certified copy, of all orders to be registered, including any modification of an order;

(c) A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(d) The name of the obligor and, if known:

(i) The obligor's address and social security number;

(ii) The name and address of the obligor's employer and any other source of income of the obligor; and

(iii) A description and the location of property of the obligor in this state not exempt from execution; and

(e) The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(2) On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(3) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought. [1993 c 318 § 602.]

26.21.500 Effect of registration for enforcement.

(1) A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.

(2) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(3) Except as otherwise provided in this article, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction. [1993 c 318 § 603.]

26.21.510 Choice of law—Statute of limitations for arrearages. (1) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(2) In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies. [1993 c 318 § 604.]

PART B

CONTEST OF VALIDITY OR ENFORCEMENT

26.21.520 Notice of registration of order. (1) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by certified or registered mail or by any means of personal service authorized by the law of this state. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(2) The notice must inform the nonregistering party:

(a) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(b) That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after the date of receipt by certified or registered mail or personal service of the notice given to a nonregistering party within the state and within sixty days after the date of receipt by certified or registered mail or personal service of the notice on a nonregistering party outside of the state;

(c) That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(d) Of the amount of any alleged arrearages.

(3) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income-withholding law of this state. [1993 c 318 § 605.]

26.21.530 Procedure to contest validity or enforcement of registered order. (1) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after the date of receipt of certified or registered mail or the date of personal service of notice of the registration on the nonmoving party within this state, or, within sixty days after the receipt of certified or registered mail or personal service of the notice on the nonmoving party outside of the state. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to RCW 26.21.540.

(2) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(3) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties by first class mail of the date, time, and place of the hearing. [1993 c 318 § 606.]

26.21.540 Contest of registration or enforcement.

(1) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(a) The issuing tribunal lacked personal jurisdiction over the contesting party;

(b) The order was obtained by fraud;

(c) The order has been vacated, suspended, or modified by a later order;

(d) The issuing tribunal has stayed the order pending appeal;

(e) There is a defense under the law of this state to the remedy sought;

(f) Full or partial payment has been made; or

(g) The statute of limitation under RCW 26.21.510 precludes enforcement of some or all of the arrearages.

(2) If a party presents evidence establishing a full or partial defense under subsection (1) of this section, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant

evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(3) If the contesting party does not establish a defense under subsection (1) of this section to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order. [1993 c 318 § 607.]

26.21.550 Confirmed order. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration. [1993 c 318 § 608.]

**PART C
REGISTRATION AND MODIFICATION OF
CHILD SUPPORT ORDER**

26.21.560 Procedure to register child support order of another state for modification. A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in Part A of this article if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification. [1993 c 318 § 609.]

26.21.570 Effect of registration for modification— Authority to enforce registered order. A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of RCW 26.21.580 have been met. [1993 c 318 § 610.]

26.21.580 Modification of child support order of another state. (1) After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if, after notice and hearing, it finds that:

(a) The following requirements are met:

(i) The child, the individual obligee, and the obligor do not reside in the issuing state;

(ii) A petitioner who is a nonresident of this state seeks modification; and

(iii) The respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) An individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this state may modify the support order and assume continuing, exclusive jurisdiction over the order.

(2) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(3) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state.

(4) On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.

(5) Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that earlier order has been registered. [1993 c 318 § 611.]

26.21.590 Recognition of order modified in another state—Enforcement. A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction pursuant to a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

(1) Enforce the order that was modified only as to amounts accruing before the modification;

(2) Enforce only nonmodifiable aspects of that order;

(3) Provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and

(4) Recognize the modifying order of the other state, upon registration, for the purpose of enforcement. [1993 c 318 § 612.]

ARTICLE 7 DETERMINATION OF PARENTAGE

26.21.620 Proceeding to determine parentage. (1) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

(2) In a proceeding to determine parentage, a responding tribunal of this state shall apply the Uniform Parentage Act, chapter 26.26 RCW, procedural and substantive law of this state, and the rules of this state on choice of law. [1993 c 318 § 701.]

ARTICLE 8 INTERSTATE RENDITION

26.21.640 Grounds for rendition. (1) For purposes of this article, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

(2) The governor of this state may:

(a) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(b) On the demand by the governor of another state, surrender an individual found in this state who is charged

criminally in the other state with having failed to provide for the support of an obligee.

(3) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled from the demanding state. [1993 c 318 § 801.]

26.21.650 Surrender of individual charged criminally with failure to support an obligee—Conditions of rendition. (1) Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

(2) If, under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order. [1993 c 318 § 802.]

ARTICLE 9 MISCELLANEOUS PROVISIONS

26.21.910 Severability—1963 c 45. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1963 c 45 § 35.]

26.21.912 Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1993 c 318 § 901.]

26.21.913 Short title. This chapter may be cited as the uniform interstate family support act. [1993 c 318 § 902.]

26.21.914 Severability—1993 c 318. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 318 § 903.]

26.21.915 Captions, part headings, articles not law—1993 c 318. Captions, part headings, and article designations as used in this act constitute no part of the law. [1993 c 318 § 906.]

26.21.916 Effective date—1993 c 318. This act shall take effect July 1, 1994. [1993 c 318 § 907.]

Chapter 26.23

STATE SUPPORT REGISTRY

Sections

- 26.23.010 Intent.
- 26.23.020 Definitions.
- 26.23.030 Registry—Creation—Duties—Interest on unpaid child support—Record retention.
- 26.23.035 Distribution of support received.
- 26.23.040 Employment reporting requirements—Exceptions—Penalties—Retention of records.
- 26.23.0401 Study of reporting program—Data, assistance to be provided—Report to legislature.
- 26.23.045 Support enforcement services.
- 26.23.050 Support orders—Provisions—Enforcement.
- 26.23.060 Notice of payroll deduction—Answer—Processing fee.
- 26.23.070 Payments to registry—Methods—Immunity from civil liability.
- 26.23.080 Certain acts by employers prohibited—Penalties.
- 26.23.090 Employer liability for failure or refusal to respond or remit earnings.
- 26.23.100 Motion to quash, modify, or terminate payroll deduction—Grounds for relief.
- 26.23.110 Procedures when amount of support obligation needs to be determined—Notice—Adjudicative proceeding.
- 26.23.120 Information and records—Confidentiality—Disclosure—Rules—Penalties.
- 26.23.130 Notice to department of child support or maintenance orders.
- 26.23.900 Effective date—1987 c 435.

Authority of office of support enforcement to take support enforcement action against earnings within the state: RCW 74.20A.095.

26.23.010 Intent. The legislature recognizes the financial impact on custodial parents and children when child support is not received on time, or in the correct amount. The legislature also recognizes the burden placed upon the responsible parent and the second family when enforcement action must be taken to collect delinquent support.

It is the intent of the legislature to create a central Washington state support registry to improve the recordkeeping of support obligations and payments, thereby providing protection for both parties, and reducing the burden on employers by creating a single standardized process through which support payments are deducted from earnings.

It is also the intent of the legislature that child support payments be made through mandatory wage assignment or payroll deduction if the responsible parent becomes delinquent in making support payments under a court or administrative order for support.

To that end, it is the intent of the legislature to interpret all existing statutes and processes to give effect to, and to implement, one central registry for recording and distributing support payments in this state. [1987 c 435 § 1.]

26.23.020 Definitions. (1) The definitions contained in RCW 74.20A.020 shall be incorporated into and made a part of this chapter.

(2) "Support order" means a superior court order or administrative order, as defined in RCW 74.20A.020.

(3) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy support obligations, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW. Earnings shall specifically include all gain from capital, from labor, or from both combined, not including profit gained through sale or conversion of capital assets.

(4) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of an amount required by law to be withheld.

(5) "Employer" means any person or entity who pays or owes earnings in employment as defined in Title 50 RCW to the responsible parent including but not limited to the United States government, or any state or local unit of government.

(6) "Employee" means a person in employment as defined in Title 50 RCW to whom an employer is paying, owes or anticipates paying earnings as a result of services performed. [1987 c 435 § 2.]

26.23.030 Registry—Creation—Duties—Interest on unpaid child support—Record retention. (1) There is created a Washington state support registry within the office of support enforcement as the agency designated in Washington state to administer the child support program under Title IV-D of the federal social security act. The registry shall:

(a) Account for and disburse all support payments received by the registry;

(b) Maintain the necessary records including, but not limited to, information on support orders, support debts, the date and amount of support due; the date and amount of payments; and the names, social security numbers, and addresses of the parties;

(c) Develop procedures for providing information to the parties regarding action taken by, and support payments collected and distributed by the registry;

(2) The office of support enforcement may assess and collect interest at the rate of twelve percent per year on unpaid child support that has accrued under any support order entered into the registry. This interest rate shall not apply to those support orders already specifying an interest assessment at a different rate.

(3) The secretary of social and health services shall adopt rules for the maintenance and retention of records of support payments and for the archiving and destruction of

such records when the support obligation terminates or is satisfied. When a support obligation established under court order entered in a superior court of this state has been satisfied, a satisfaction of judgment form shall be prepared by the registry and filed with the clerk of the court in which the order was entered. [1989 c 360 § 6; 1988 c 275 § 18; 1987 c 435 § 3.]

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

26.23.035 Distribution of support received. (1) The department of social and health services shall adopt rules for the distribution of support money collected by the office of support enforcement. These rules shall:

- (a) Comply with 42 U.S.C. Sec. 657;
- (b) Direct the office of support enforcement to distribute support money within eight days of receipt, unless one of the following circumstances, or similar circumstances specified in the rules, prevents prompt distribution:
 - (i) The location of the custodial parent is unknown;
 - (ii) The support debt is in litigation;
 - (iii) The office of support enforcement cannot identify the responsible parent or the custodian;
- (c) Provide for proportionate distribution of support payments if the responsible parent owes a support obligation or a support debt for two or more Title IV-D cases; and
- (d) Authorize the distribution of support money, except money collected under 42 U.S.C. Sec. 664, to satisfy a support debt owed to the IV-D custodian before the debt owed to the state when the custodian stops receiving a public assistance grant.

(2) The office of support enforcement may distribute support payments to the payee under the support order or to another person who has lawful physical custody of the child or custody with the payee's consent. The payee may file an application for an adjudicative proceeding to challenge distribution to such other person. Prior to distributing support payments to any person other than the payee, the registry shall:

- (a) Obtain a written statement from the child's physical custodian, under penalty of perjury, that the custodian has lawful custody of the child or custody with the payee's consent;
- (b) Mail to the responsible parent and to the payee at the payee's last known address a copy of the physical custodian's statement and a notice which states that support payments will be sent to the physical custodian; and
- (c) File a copy of the notice with the clerk of the court that entered the original support order.

(3) If the Washington state support registry distributes a support payment to a person in error, the registry may obtain restitution by means of a set-off against future payments received on behalf of the person receiving the erroneous payment, or may act according to RCW 74.20A.270 as deemed appropriate. Any set-off against future support payments shall be limited to amounts collected on the support debt and ten percent of amounts collected as current support. [1991 c 367 § 38; 1989 c 360 § 34.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.23.040 Employment reporting requirements—Exceptions—Penalties—Retention of records. (1) Except as provided in subsection (3) of this section, all employers doing business in the state of Washington, and to whom the department of employment security has assigned the standard industrial classification sic codes listed in subsection (2) of this section, shall report to the Washington state support registry:

(a) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings; and

(b) The rehiring or return to work of any employee who was laid off, furloughed, separated, granted a leave without pay, or terminated from employment.

(2) Employers in the standard industrial classifications that shall report to the Washington state support registry include:

(a) Construction industry sic codes: 15, general building; 16, heavy construction; and 17, special trades;

(b) Manufacturing industry sic code 37, transportation equipment;

(c) Business services sic codes: 73, except sic code 7363 (temporary help supply services); and health services sic code 80.

(3) Employers are not required to report the hiring of any person who:

(a) Will be employed for less than one months duration;

(b) Will be employed sporadically so that the employee will be paid for less than three hundred fifty hours during a continuous six-month period; or

(c) Will have gross earnings less than three hundred dollars in every month.

The secretary of the department of social and health services may adopt rules to establish additional exemptions if needed to reduce unnecessary or burdensome reporting.

(4) Employers may report by mailing the employee's copy of the W-4 form, or other means authorized by the registry which will result in timely reporting.

(5) Employers shall submit reports within thirty-five days of the hiring, rehiring, or return to work of the employee. The report shall contain:

(a) The employee's name, address, social security number, and date of birth; and

(b) The employer's name, address, and employment security reference number or unified business identifier number.

(6) An employer who fails to report as required under this section shall be given a written warning for the first violation and shall be subject to a civil penalty of up to two hundred dollars per month for each subsequent violation after the warning has been given. All violations within a single month shall be considered a single violation for purposes of assessing the penalty. The penalty may be imposed and collected by the office of support enforcement under RCW 74.20A.270.

(7) The registry shall retain the information for a particular employee only if the registry is responsible for establishing, enforcing, or collecting a support obligation or debt of the employee. If the employee does not owe such an obligation or a debt, the registry shall not create a record regarding the employee and the information contained in the notice shall be promptly destroyed. Prior to the destruction

of the notice, the department of social and health services shall make the information contained in the notice available to other state agencies, based upon the written request of an agency's director or chief executive, specifically for comparison with records or information possessed by the requesting agency to detect improper or fraudulent claims. If, after comparison, no such situation is found or reasonably suspected to exist, the information shall be promptly destroyed by the requesting agency. Requesting agencies that obtain information from the department of social and health services under this section shall maintain the confidentiality of the information received, except as necessary to implement the agencies' responsibilities. [1994 c 127 § 1; 1993 c 480 § 1; 1989 c 360 § 39; 1987 c 435 § 4.]

Effective date—1993 c 480: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993]." [1993 c 480 § 2.]

Effective dates—1989 c 360 §§ 9, 10, 16, and 39: See note following RCW 74.20A.060.

26.23.0401 Study of reporting program—Data, assistance to be provided—Report to legislature. The *legislative budget committee shall conduct a study of the effectiveness of the reporting program contained in RCW 26.23.040. The study shall include a cost-benefit analysis using accepted accounting practices, control group comparisons of responsible parent work history and support payment history between industries and employers who report and those who do not, statistical detail by standard industrial code to describe (1) the percentage of reports made to the support registry, (2) the percentage of resulting matches with open support enforcement cases, and (3) the level of recovery of delinquent child support, a review of alternative or expedited reporting procedures utilizing new hire data from other public or private sources, control group comparisons regarding the responsible parent work history and support payment history using existing or expedited data sources compared with the employer reporting program, and recommendations as to expansion, termination, or enhancement of the reporting program.

The secretary of the department of social and health services and the commissioner of employment security shall provide necessary data and assistance to conduct the employer reporting program and the study and participate in the review of alternative reporting procedures. The department of social and health services shall reimburse the employment security department for necessary expenses subject to the approval of the office of financial management.

The *committee shall prepare and submit a report to the appropriate committees of the house of representatives and senate by November 7, 1992. [1989 c 360 § 40.]

***Reviser's note:** The "legislative budget committee" was redesignated the "joint legislative audit and review committee" by 1996 c 288 § 3.

26.23.045 Support enforcement services. (1) The office of support enforcement, Washington state support registry, shall provide support enforcement services under the following circumstances:

(a) Whenever public assistance under RCW 74.20.330 is paid;

(b) Whenever a request for nonassistance support enforcement services under RCW 74.20.040(2) is received;

(c) Whenever a request for support enforcement services under RCW 74.20.040(3) is received;

(d) When a support order which contains language directing a responsible parent to make support payments to the Washington state support registry under RCW 26.23.050 is submitted;

(e) When a support order is forwarded to the Washington state support registry by the clerk of a superior court under RCW 26.23.050(5);

(f) When the obligor submits a support order or support payment to the Washington state support registry.

(2) The office of support enforcement shall continue to provide support enforcement services for so long as and under such conditions as the department shall establish by regulation or until the superior court enters an order removing the requirement that the obligor make support payments to the Washington state support registry as provided for in RCW 26.23.050(2). [1994 c 230 § 8; 1989 c 360 § 33.]

26.23.050 Support orders—Provisions—Enforcement. (1) If the office of support enforcement is providing support enforcement services under RCW 26.23.045, or if a party is applying for support enforcement services by signing the application form on the bottom of the support order, the superior court shall include in all court orders that establish or modify a support obligation:

(a) A provision that orders and directs the responsible parent to make all support payments to the Washington state support registry;

(b) A statement that a notice of payroll deduction may be issued, or other income withholding action under chapter 26.18 or 74.20A RCW may be taken, without further notice to the responsible parent at any time after entry of the court order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement; and

(c) A statement that the receiving parent might be required to submit an accounting of how the support is being spent to benefit the child.

As used in this subsection and subsection (3) of this section, "good cause not to require immediate income withholding" means a written determination of why implementing immediate wage withholding would not be in the child's best interests and, in modification cases, proof of timely payment of previously ordered support.

(2) In all other cases not under subsection (1) of this section, the court may order the responsible parent to make payments directly to the person entitled to receive the payments, to the Washington state support registry, or may order that payments be made in accordance with an alternate arrangement agreed upon by the parties.

(a) The superior court shall include in all orders under this subsection that establish or modify a support obligation:

(i) A statement that a notice of payroll deduction may be issued or other income withholding action under chapter 26.18 or 74.20A RCW may be taken, without further notice to the responsible parent at any time after entry of the court order, unless:

(A) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(B) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement; and

(ii) A statement that the receiving parent may be required to submit an accounting of how the support is being spent to benefit the child.

As used in this subsection, "good cause not to require immediate income withholding" is any reason that the court finds appropriate.

(b) The superior court may order immediate or delayed income withholding as follows:

(i) Immediate income withholding may be ordered if the responsible parent has earnings. If immediate income withholding is ordered under this subsection, all support payments shall be paid to the Washington state support registry. The superior court shall issue a mandatory wage assignment order as set forth in chapter 26.18 RCW when the support order is signed by the court. The parent entitled to receive the transfer payment is responsible for serving the employer with the order and for its enforcement as set forth in chapter 26.18 RCW.

(ii) If immediate income withholding is not ordered, the court shall require that income withholding be delayed until a payment is past due. The support order shall contain a statement that a notice of payroll deduction may be issued, or other income-withholding action under chapter 26.18 or 74.20A RCW may be taken, without further notice to the responsible parent, after a payment is past due.

(c) If a mandatory wage withholding order under chapter 26.18 RCW is issued under this subsection and the office of support enforcement provides support enforcement services under RCW 26.23.045, the existing wage withholding assignment is prospectively superseded upon the office of support enforcement's subsequent service of an income withholding notice.

(3) The office of administrative hearings and the department of social and health services shall require that all support obligations established as administrative orders include a provision which orders and directs that the responsible parent shall make all support payments to the Washington state support registry. All administrative orders shall also state that a notice of payroll deduction may be issued, or other income withholding action taken without further notice to the responsible parent at any time after entry of the order, unless:

(a) One of the parties demonstrates, and the presiding officer finds, that there is good cause not to require immediate income withholding; or

(b) The parties reach a written agreement that is approved by the presiding officer that provides for an alternate agreement.

(4) If the support order does not include the provision ordering and directing that all payments be made to the

Washington state support registry and a statement that a notice of payroll deduction may be issued if a support payment is past due or at any time after the entry of the order, the office of support enforcement may serve a notice on the responsible parent stating such requirements and authorizations. Service may be by personal service or any form of mail requiring a return receipt.

(5) Every support order shall state:

(a) The address where the support payment is to be sent;

(b) That a notice of payroll deduction may be issued or other income withholding action under chapter 26.18 or 74.20A RCW may be taken, without further notice to the responsible parent at any time after entry of an order by the court, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement;

(c) The income of the parties, if known, or that their income is unknown and the income upon which the support award is based;

(d) The support award as a sum certain amount;

(e) The specific day or date on which the support payment is due;

(f) The social security number, residence address, and name and address of the employer of the responsible parent;

(g) The social security number and residence address of the physical custodian except as provided in subsection (6) of this section;

(h) The names, dates of birth, and social security numbers, if any, of the dependent children;

(i) In cases requiring payment to the Washington state support registry, that the parties are to notify the Washington state support registry of any change in residence address. The responsible parent shall notify the registry of the name and address of his or her current employer, whether he or she has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information;

(j) That any parent owing a duty of child support shall be obligated to provide health insurance coverage for his or her child if coverage that can be extended to cover the child is or becomes available to that parent through employment or is union-related as provided under RCW 26.09.105;

(k) That if proof of health insurance coverage or proof that the coverage is unavailable is not provided within twenty days, the obligee or the department may seek direct enforcement of the coverage through the obligor's employer or union without further notice to the obligor as provided under chapter 26.18 RCW; and

(1) The reasons for not ordering health insurance coverage if the order fails to require such coverage.

(6) The physical custodian's address:

(a) Shall be omitted from an order entered under the administrative procedure act. When the physical custodian's address is omitted from an order, the order shall state that the custodian's address is known to the office of support enforcement.

(b) A responsible parent may request the physical custodian's residence address by submission of a request for

disclosure under RCW 26.23.120 to the office of support enforcement.

(7) The superior court clerk, the office of administrative hearings, and the department of social and health services shall, within five days of entry, forward to the Washington state support registry, a true and correct copy of all superior court orders or administrative orders establishing or modifying a support obligation which provide that support payments shall be made to the support registry. If a superior court order entered prior to January 1, 1988, directs the responsible parent to make support payments to the clerk, the clerk shall send a true and correct copy of the support order and the payment record to the registry for enforcement action when the clerk identifies that a payment is more than fifteen days past due. The office of support enforcement shall reimburse the clerk for the reasonable costs of copying and sending copies of court orders to the registry at the reimbursement rate provided in Title IV-D of the social security act.

(8) Receipt of a support order by the registry or other action under this section on behalf of a person or persons who have not made a written application for support enforcement services to the office of support enforcement and who are not recipients of public assistance is deemed to be a request for payment services only.

(9) After the responsible parent has been ordered or notified to make payments to the Washington state support registry under this section, the responsible parent shall be fully responsible for making all payments to the Washington state support registry and shall be subject to payroll deduction or other income withholding action. The responsible parent shall not be entitled to credit against a support obligation for any payments made to a person or agency other than to the Washington state support registry except as provided under RCW 74.20.101. A civil action may be brought by the payor to recover payments made to persons or agencies who have received and retained support moneys paid contrary to the provisions of this section. [1994 c 230 § 9; 1993 c 207 § 1; 1991 c 367 § 39; 1989 c 360 § 15; 1987 c 435 § 5.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.23.060 Notice of payroll deduction—Answer—Processing fee. (1) The office of support enforcement may issue a notice of payroll deduction:

(a) As authorized by a support order that contains the income withholding notice provisions in RCW 26.23.050 or a substantially similar notice; or

(b) After service of a notice containing an income withholding provision under this chapter or chapter 74.20A RCW.

(2) The office of support enforcement shall serve a notice of payroll deduction upon a responsible parent's employer or upon the employment security department for the state in possession of or owing any benefits from the unemployment compensation fund to the responsible parent pursuant to Title 50 RCW by personal service or by any form of mail requiring a return receipt.

(3) Service of a notice of payroll deduction upon an employer or employment security department requires the employer or employment security department to immediately

make a mandatory payroll deduction from the responsible parent's unpaid disposable earnings or unemployment compensation benefits. The employer or employment security department shall thereafter deduct each pay period the amount stated in the notice divided by the number of pay periods per month. The payroll deduction each pay period shall not exceed fifty percent of the responsible parent's disposable earnings.

(4) A notice of payroll deduction for support shall have priority over any wage assignment, garnishment, attachment, or other legal process.

(5) The notice of payroll deduction shall be in writing and include:

(a) The name and social security number of the responsible parent;

(b) The amount to be deducted from the responsible parent's disposable earnings each month, or alternate amounts and frequencies as may be necessary to facilitate processing of the payroll deduction;

(c) A statement that the total amount withheld shall not exceed fifty percent of the responsible parent's disposable earnings; and

(d) The address to which the payments are to be mailed or delivered.

(6) An informational copy of the notice of payroll deduction shall be mailed to the last known address of the responsible parent by regular mail.

(7) An employer or employment security department that receives a notice of payroll deduction shall make immediate deductions from the responsible parent's unpaid disposable earnings and remit proper amounts to the Washington state support registry on each date the responsible parent is due to be paid.

(8) An employer, or the employment security department, upon whom a notice of payroll deduction is served, shall make an answer to the office of support enforcement within twenty days after the date of service. The answer shall confirm compliance and institution of the payroll deduction or explain the circumstances if no payroll deduction is in effect. The answer shall also state whether the responsible parent is employed by or receives earnings from the employer or receives unemployment compensation benefits from the employment security department, whether the employer or employment security department anticipates paying earnings or unemployment compensation benefits and the amount of earnings. If the responsible parent is no longer employed, or receiving earnings from the employer, the answer shall state the present employer's name and address, if known. If the responsible parent is no longer receiving unemployment compensation benefits from the employment security department, the answer shall state the present employer's name and address, if known.

(9) The employer or employment security department may deduct a processing fee from the remainder of the responsible parent's earnings after withholding under the notice of payroll deduction, even if the remainder is exempt under RCW 26.18.090. The processing fee may not exceed: (a) Ten dollars for the first disbursement made to the Washington state support registry; and (b) one dollar for each subsequent disbursement to the registry.

(10) The notice of payroll deduction shall remain in effect until released by the office of support enforcement, the

court enters an order terminating the notice and approving an alternate arrangement under RCW 26.23.050(2), or one year has expired since the employer has employed the responsible parent or has been in possession of or owing any earnings to the responsible parent or the employment security department has been in possession of or owing any unemployment compensation benefits to the responsible parent. [1994 c 230 § 10; 1991 c 367 § 40; 1989 c 360 § 32; 1987 c 435 § 6.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.23.070 Payments to registry—Methods—Immunity from civil liability. (1) The employer or the employment security department may combine amounts withheld from the earnings of more than one responsible parent in a single payment to the Washington state support registry, listing separately the amount of the payment which is attributable to each individual.

(2) No employer nor employment security department that complies with a notice of payroll deduction under this chapter shall be civilly liable to the responsible parent for complying with a notice of payroll deduction under this chapter. [1991 c 367 § 41; 1987 c 435 § 7.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.23.080 Certain acts by employers prohibited—Penalties. No employer shall discipline or discharge an employee or refuse to hire a person by reason of an action authorized in this chapter. If an employer disciplines or discharges an employee or refuses to hire a person in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of lost wages and any other damages suffered as a result of the violation and for costs and reasonable attorney fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual. [1987 c 435 § 9.]

26.23.090 Employer liability for failure or refusal to respond or remit earnings. (1) The employer shall be liable to the Washington state support registry for one hundred percent of the amount of the support debt, or the amount of support moneys which should have been withheld from the employee's earnings, whichever is the lesser amount, if the employer:

(a) Fails or refuses, after being served with a notice of payroll deduction, to deduct and promptly remit from unpaid earnings the amounts of money required in the notice;

(b) Fails or refuses to submit an answer to the notice of payroll deduction after being served; or

(c) Is unwilling to comply with the other requirements of RCW 26.23.060.

(2) Liability may be established in superior court or may be established pursuant to RCW 74.20A.270. Awards in superior court and in actions pursuant to RCW 74.20A.270 shall include costs, interest under RCW 19.52.020 and 4.56.110, and reasonable attorney fees and staff costs as a part of the award. Debts established pursuant to this section may be collected pursuant to chapter 74.20A RCW utilizing

any of the remedies contained in that chapter. [1990 c 165 § 2; 1987 c 435 § 10.]

26.23.100 Motion to quash, modify, or terminate payroll deduction—Grounds for relief. (1) The responsible parent subject to a payroll deduction pursuant to this chapter, may file a motion in superior court to quash, modify, or terminate the payroll deduction.

(2) Except as provided in subsections (4) and (5) of this section, the court may grant relief only upon a showing: (a) That the payroll deduction causes extreme hardship or substantial injustice; or (b) that the support payment was not past due under the terms of the order when the notice of payroll deduction was served on the employer.

(3) Satisfaction by the obligor of all past due payments subsequent to the issuance of the notice of payroll deduction is not grounds to quash, modify, or terminate the notice of payroll deduction.

(4) If a notice of payroll deduction has been in operation for twelve consecutive months and the obligor's support obligation is current, upon motion of the obligor, the court may order the office of support enforcement to terminate the payroll deduction, unless the obligee can show good cause as to why the payroll deduction should remain in effect.

(5) Subsection (2) of this section shall not prevent the court from ordering an alternative arrangement as provided under RCW 26.23.050(2). [1994 c 230 § 11; 1991 c 367 § 42; 1989 c 360 § 31; 1987 c 435 § 8.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.23.110 Procedures when amount of support obligation needs to be determined—Notice—Adjudicative proceeding. (1) The department may serve a notice of support owed on a responsible parent when a support order:

(a) Does not state the current and future support obligation as a fixed dollar amount; or

(b) Contains an escalation clause or adjustment provision for which additional information not contained in the support order is needed to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation, or both.

(2) The notice of support owed shall facilitate enforcement of the support order and implement and effectuate the terms of the support order, rather than modify those terms. When the office of support enforcement issues a notice of support owed, the office shall inform the payee under the support order.

(3) The notice of support owed shall be served on a responsible parent by personal service or any form of mailing requiring a return receipt. The notice of support owed shall contain an initial finding of the fixed dollar amount of current and future support obligation that should be paid or the fixed dollar amount of the support debt owed under the support order, or both.

(4) A responsible parent who objects to the fixed dollar amounts stated in the notice of support owed has twenty days from the date of the service of the notice of support owed to file an application for an adjudicative proceeding or initiate an action in superior court.

(5) The notice of support owed shall state that the responsible parent may:

(a) File an application for an adjudicative proceeding governed by chapter 34.05 RCW, the administrative procedure act, in which the responsible parent will be required to appear and show cause why the fixed dollar amount of support debt or current and future support obligation, or both, stated in the notice of support owed is incorrect and should not be ordered; or

(b) Initiate an action in superior court.

(6) If the responsible parent does not file an application for an adjudicative proceeding or initiate an action in superior court, the fixed dollar amount of current and future support obligation or support debt, or both, stated in the notice of support owed shall become final and subject to collection action.

(7) If an adjudicative proceeding is requested, the department shall mail a copy of the notice of adjudicative proceeding to the payee under the support order at the payee's last known address. A payee who appears for the adjudicative proceeding is entitled to participate. Participation includes, but is not limited to, giving testimony, presenting evidence, being present for or listening to other testimony offered in the adjudicative proceeding, and offering rebuttal to other testimony. Nothing in this section shall preclude the administrative law judge from limiting participation to preserve the confidentiality of information protected by law.

(8) If the responsible parent does not initiate an action in superior court, and serve notice of the action on the department within the twenty-day period, the responsible parent shall be deemed to have made an election of remedies and shall be required to exhaust administrative remedies under this chapter with judicial review available as provided for in RCW 34.05.510 through 34.05.598.

(9) An adjudicative order entered in accordance with this section shall state the basis, rationale, or formula upon which the fixed dollar amounts established in the adjudicative order were based. The fixed dollar amount of current and future support obligation or the amount of the support debt, or both, determined under this section shall be subject to collection under this chapter and other applicable state statutes.

(10) The department shall also provide for:

(a) An annual review of the support order if either the office of support enforcement or the responsible parent requests such a review; and

(b) A late adjudicative proceeding if the responsible parent fails to file an application for an adjudicative proceeding in a timely manner under this section.

(11) If an annual review or late adjudicative proceeding is requested under subsection (10) of this section, the department shall mail a copy of the notice of adjudicative proceeding to the payee at the payee's last known address. A payee who appears for the adjudicative proceeding is entitled to participate. Participation includes, but is not limited to, giving testimony, presenting evidence, being present for or listening to other testimony offered in the adjudicative proceeding, and offering rebuttal to other testimony. The administrative law judge may limit participation to preserve the confidentiality of information protected

by law. [1993 c 12 § 1. Prior: 1989 c 360 § 16; 1989 c 175 § 77; 1987 c 435 § 11.]

Effective dates—1989 c 360 §§ 9, 10, 16, and 39: See note following RCW 74.20A.060.

Effective date—1989 c 175: See note following RCW 34.05.010.

26.23.120 Information and records—Confidentiality—Disclosure—Rules—Penalties. (1) Any information or records concerning individuals who owe a support obligation or for whom support enforcement services are being provided which are obtained or maintained by the Washington state support registry, the office of support enforcement, or under chapter 74.20 RCW shall be private and confidential and shall only be subject to public disclosure as provided in subsection (2) of this section.

(2) The secretary of the department of social and health services shall adopt rules which specify the individuals or agencies to whom this information and these records may be disclosed, the purposes for which the information may be disclosed, and the procedures to obtain the information or records. The rules adopted under this section shall provide for disclosure of the information and records, under appropriate circumstances, which shall include, but not be limited to:

(a) When authorized or required by federal statute or regulation governing the support enforcement program;

(b) To the person the subject of the records or information, unless the information is exempt from disclosure under RCW 42.17.310;

(c) To government agencies, whether state, local, or federal, and including federally recognized tribes, law enforcement agencies, prosecuting agencies, and the executive branch, if the disclosure is necessary for child support enforcement purposes;

(d) To the parties in a judicial or adjudicative proceeding upon a specific written finding by the presiding officer that the need for the information outweighs any reason for maintaining the privacy and confidentiality of the information or records;

(e) To private persons, federally recognized tribes, or organizations if the disclosure is necessary to permit private contracting parties to assist in the management and operation of the department;

(f) Disclosure of address and employment information to the parties to an action for purposes relating to a child support order;

(g) Disclosure of information or records when necessary to the efficient administration of the support enforcement program or to the performance of functions and responsibilities of the support registry and the office of support enforcement as set forth in state and federal statutes; or

(h) Disclosure of the information or records when authorized under RCW 74.04.060.

(3) Prior to disclosing the physical custodian's address under subsection (2)(f) of this section, a notice shall be mailed, if appropriate under the circumstances, to the physical custodian at the physical custodian's last known address. The notice shall advise the physical custodian that a request for disclosure has been made and will be complied with unless the department receives a copy of a court order which enjoins the disclosure of the information or restricts

or limits the requesting party's right to contact or visit the physical custodian or the child, or the custodial parent requests a hearing to contest the disclosure. The administrative law judge shall determine whether the address of the custodial parent should be disclosed based on the same standard as a claim of "good cause" as defined in 42 U.S.C. Sec. 602(a)(26)(c).

(4) Nothing in this section shall be construed as limiting or restricting the effect of *RCW 42.17.260(6). Nothing in this section shall be construed to prevent the disclosure of information and records if all details identifying an individual are deleted or the individual consents to the disclosure.

(5) It shall be unlawful for any person or agency in violation of this section to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists of names for commercial or political purposes or the use of any information for purposes other than those purposes specified in this section. A violation of this section shall be a gross misdemeanor as provided in chapter 9A.20 RCW. [1994 c 230 § 12. Prior: 1989 c 360 § 17; 1989 c 175 § 78; 1987 c 435 § 12.]

***Reviser's note:** RCW 42.17.260 was amended by 1992 c 139 § 3, changing subsection (6) to subsection (7). RCW 42.17.260 was subsequently amended by 1995 c 341 § 1, changing subsection (7) to subsection (9).

Effective date—1989 c 175: See note following RCW 34.05.010.

26.23.130 Notice to department of child support or maintenance orders. The department shall be given twenty calendar days prior notice of the entry of any final order and five days prior notice of the entry of any temporary order in any proceeding involving child support or maintenance if the department has a financial interest based on an assignment of support rights under RCW 74.20.330 or the state has a subrogated interest under RCW 74.20A.030. Service of this notice upon the department shall be by personal service on, or mailing by any form of mail requiring a return receipt to, the office of the attorney general. The department shall not be entitled to terms for a party's failure to serve the department within the time requirements for this section, unless the department proves that the party knew that the department had an assignment of support rights or a subrogated interest and that the failure to serve the department was intentional. [1991 c 367 § 4.3.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

26.23.900 Effective date—1987 c 435. Sections 1 through 3 and 5 through 36 of this act shall take effect January 1, 1988. [1987 c 435 § 37.]

Chapter 26.26

UNIFORM PARENTAGE ACT

Sections

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26.26.030	How parent and child relationship established.
26.26.035	Default.
26.26.040	Presumption of paternity.
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26.26.065	Mandatory use of approved forms.
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Child support enforcement: Chapter 26.18 RCW.

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26.26.010 "Parent and child relationship" defined.

As used in this chapter, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship. [1975-'76 2nd ex.s. c 42 § 2.]

26.26.020 Relationship not dependent on marriage.

The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents. [1975-'76 2nd ex.s. c 42 § 3.]

26.26.030 How parent and child relationship established. The parent and child relationship between a child and

(1) the natural mother may be established by proof of her having given birth to the child, or under this chapter;

(2) the natural father may be established under this chapter;

(3) an adoptive parent may be established by proof of adoption or under the provisions of chapter 26.33 RCW. [1985 c 7 § 86; 1975-'76 2nd ex.s. c 42 § 4.]

26.26.035 Default. In any action brought under this chapter, if the requirements of civil rule 55 are met, the superior court shall enter an order of default. [1994 c 230 § 13.]

26.26.040 Presumption of paternity. (1) A man is presumed to be the natural father of a child for all intents and purposes if:

(a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or dissolution, or after a decree of separation is entered by a court; or

(b) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the child is born within three hundred days after the termination of cohabitation;

(c) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(i) He has acknowledged his paternity of the child in writing filed with the registrar of vital statistics,

(ii) With his consent, he is named as the child's father on the child's birth certificate, or

(iii) He is obligated to support the child under a written voluntary promise or by court order;

(d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his child;

(e) He acknowledges his paternity of the child pursuant to RCW 70.58.080 or in a writing filed with the state office of vital statistics, which shall promptly inform the mother of the filing of the acknowledgment, if she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the registrar of vital statistics. In order to enforce rights of residential time, custody, and visitation, a man presumed to be the father as a result of filing a written acknowledgement must seek appropriate judicial orders under this title;

(f) The United States immigration and naturalization service made or accepted a determination that he was the father of the child at the time of the child's entry into the United States and he had the opportunity at the time of the child's entry into the United States to admit or deny the paternal relationship; or

(g) Genetic testing indicates a ninety-eight percent or greater probability of paternity.

(2) A presumption under this section may be rebutted in an appropriate action only by clear, cogent, and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing paternity of the child by another man. [1994 c 230 § 14; 1990 c 175 § 2; 1989 c 55 § 4; 1975-'76 2nd ex.s. c 42 § 5.]

26.26.050 Artificial insemination. (1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the registrar of vital statistics, where it shall be kept confidential and in a sealed file.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived unless the donor and the woman agree in writing that said donor shall be the father. The agreement must be in writing and signed by the donor and the woman. The physician shall certify their signatures and the date of the insemination and file the agreement with the registrar of vital statistics, where it shall be kept confidential and in a sealed file.

(3) The failure of the licensed physician to perform any administrative act required by this section shall not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only in exceptional cases upon an order of the court for good cause shown. [1975-'76 2nd ex.s. c 42 § 6.]

26.26.060 Determination of father and child relationship—Who may bring action—When action may be brought. (1)(a) A child, a child's natural mother, a man alleged or alleging himself to be the father, a child's guardian, a child's personal representative, the state of Washington, or any interested party may bring an action at any time for the purpose of declaring the existence or nonexistence of the father and child relationship.

(b) A man presumed to be a child's father under RCW 26.26.040 may bring an action for the purpose of declaring the nonexistence of the father and child relationship only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(2) In an action brought by the state pursuant to this chapter, the state may be represented by either the prosecuting attorney for the county where the action is brought or by the attorney general.

(3) Regardless of its terms, no agreement between an alleged or presumed father and the mother or child, shall bar an action under this section.

(4) If an action under this section is brought before the birth of the child, all proceedings may be stayed until after the birth, except service of process and discovery, including the taking of depositions to perpetuate testimony.

(5) Actions under this chapter may be maintained as to any child, whether born before or after the enactment of this chapter. [1983 1st ex.s. c 41 § 5; 1975-'76 2nd ex.s. c 42 § 7.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

26.26.065 Mandatory use of approved forms. (1) Effective January 1, 1992, a party shall not file any pleading with the clerk of the court in an action commenced under this chapter unless on forms approved by the administrator for the courts.

(2) The parties shall comply with requirements for submission to the court of forms as provided in RCW 26.18.220. [1992 c 229 § 7; 1990 1st ex.s. c 2 § 28.]

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

26.26.070 Determination of father and child relationship—Petition to arrest alleged father—Warrant of arrest—Issuance—Grounds—Hearing. (1) The petitioner in an action to determine the existence of the father and child relationship may petition the court to issue a warrant for the arrest of the alleged father at any stage of the proceeding including after a judgment has been entered. When such petition is filed, the court shall examine on oath the petitioner and any witnesses the court may require, take their statements, and cause the statements and the petition to be subscribed under oath by the person or persons making such.

(2) If it appears from such evidence that there is reasonable cause to believe that the father and child relationship exists as alleged in the petition the court shall issue a warrant for the arrest of the alleged father: **PROVIDED,** That in the case of a prejudgment petition, a warrant shall only be issued if there is reasonable cause to believe that: (a) The alleged father will not appear in response to a summons; or (b) the summons cannot be served; or (c) the alleged father is likely to leave the jurisdiction; or (d) the safety of the petitioner would be endangered if the warrant did not issue.

(3) In the case of a petition for the arrest of a person pursuant to the continuing jurisdiction of the court described in RCW 26.26.160 or as an aid to enforcement of a judgment and order previously rendered under this chapter, a warrant shall issue only if there is reasonable cause to believe that: (a) The respondent is delinquent in complying with court's order and conceals himself or has absconded or absented himself from his usual place of abode in this state so that ordinary process of law may not be served upon him; or (b) the respondent has or is about to remove any of his property from this state with the intent to delay or otherwise frustrate the court's order; or (c) the respondent has or is about to assign, secrete, convert, or dispose of any of his property with the intent to delay or otherwise frustrate the court's order.

(4) Any person arrested pursuant to this section shall be entitled upon request to a preliminary hearing as soon as practically possible, and in any event not later than the close of business of the next judicial day following the day of arrest. The court may, for good cause stated, enlarge the time prior to preliminary hearing.

(5) If a person arrested pursuant to this section is not afforded a preliminary hearing upon request as required by subsection (4) of this section, the court shall order such person brought before the court forthwith, and in default thereof, the court shall order his immediate release unless good cause to the contrary be shown.

(6) Any person arrested pursuant to this section shall at this first court appearance be ordered released on his personal recognizance pending trial, unless the court determines that such recognizance will not reasonably assure (a) his appearance, when required, or (b) compliance with the court's order. When such determination is made the court shall order the person returned to custody or impose such other conditions as will reasonably assure his appearance or compliance with the court's order. [1975-'76 2nd ex.s. c 42 § 8.]

26.26.080 Jurisdiction—Venue. (1) The superior courts have jurisdiction of an action brought under this chapter. The action may be joined with an action for divorce, dissolution, annulment, declaration of invalidity, separate maintenance, filiation, support, or any other civil action in which paternity is an issue including proceedings in juvenile court.

(2) A person who has sexual intercourse in this state thereby submits to the jurisdiction of the courts of this state as to an action brought under this chapter with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by statute, personal jurisdiction may be acquired by personal service of summons outside this state or by service in accordance with RCW 4.28.185 as now or hereafter amended.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced. [1975-'76 2nd ex.s. c 42 § 9.]

26.26.090 Parties. (1) The child shall be made a party to the action. If the child is a minor, the child shall be represented by the child's general guardian or a guardian ad litem appointed by the court subject to RCW 74.20.310. The child's mother or father may not represent the child as guardian or otherwise. The natural mother, each man presumed to be the father under RCW 26.26.040, and a man or men alleged to be the natural father shall be made parties or, if not subject to the jurisdiction of the court, shall, if possible, be given actual notice of the action and an opportunity to be heard in a manner as the court may prescribe.

(2) Any party may cause to be joined as additional parties other men alleged to be the father of the child or any other person necessary for a full adjudication of the issues.

(3) The failure or inability to join as a party an alleged or presumed father does not deprive the court of jurisdiction to adjudicate some or all of the issues based on the evidence and parties available to it.

(4) If more than one party is alleged to be the father of the child, the default of a party shall not preclude the court from finding any other party to be the father of the child. [1984 c 260 § 31; 1983 1st ex.s. c 41 § 6; 1975-'76 2nd ex.s. c 42 § 10.]

Severability—1984 c 260: See RCW 26.18.900.

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

26.26.100 Blood or genetic tests. (1) The court may, and upon request of a party shall, require the child, mother,

and any alleged father who has been made a party to submit to blood tests or genetic tests of blood, tissues, or other bodily fluids. If an alleged father objects to a proposed order requiring him to submit to paternity blood or genetic tests, the court may require the party making the allegation of possible paternity to provide sworn testimony, by affidavit or otherwise, stating the facts upon which the allegation is based. The court shall order blood or genetic tests if it appears that a reasonable possibility exists that the requisite sexual contact occurred. The tests shall be performed by an expert in paternity blood or genetic testing appointed by the court. The expert's verified report identifying the blood or genetic characteristics observed is admissible in evidence in any hearing or trial in the parentage action, if (a) the alleged or presumed father has had the opportunity to gain information about the security, validity, and interpretation of the tests and the qualifications of any experts, and (b) the report is accompanied by an affidavit from the expert which describes the expert's qualifications as an expert and analyzes and interprets the results. Verified documentation of the chain of custody of the blood or genetic samples tested is admissible to establish the chain of custody. The court may consider published sources as aids to interpretation of the test results.

(2)(a) Any objection to genetic testing results must be made in writing and served upon the opposing party, within twenty days before any hearing at which such results may be introduced into evidence.

(b) If an objection is not made as provided in this subsection, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

(3) The court, upon request by a party, shall order that additional blood or genetic tests be performed by the same or other experts qualified in paternity blood or genetic testing, if the party requesting additional tests advances the full costs of the additional testing within a reasonable time. The court may order additional testing without requiring that the requesting party advance the costs only if another party agrees to advance the costs or if the court finds, after hearing, that (a) the requesting party is indigent, and (b) the laboratory performing the initial tests recommends additional testing or there is substantial evidence to support a finding as to paternity contrary to the initial blood or genetic test results. The court may later order any other party to reimburse the party who advanced the costs of additional testing for all or a portion of the costs.

(4) In all cases, the court shall determine the number and qualifications of the experts. [1994 c 230 § 15; 1994 c 146 § 1; 1984 c 260 § 32; 1983 1st ex.s. c 41 § 7; 1975-'76 2nd ex.s. c 42 § 11.]

Reviser's note: This section was amended by 1994 c 146 § 1 and by 1994 c 230 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1984 c 260: See RCW 26.18.900.

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

26.26.110 Evidence relating to paternity. Evidence relating to paternity may include:

(1) Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) An expert's opinion concerning the impossibility or the statistical probability of the alleged father's paternity based upon blood or genetic test results;

(4) Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(5) All other evidence relevant to the issue of paternity of the child. [1994 c 146 § 2; 1984 c 260 § 33; 1975-'76 2nd ex.s. c 42 § 12.]

Severability—1984 c 260: See RCW 26.18.900.

26.26.120 Civil action—Testimony—Evidence—Jury. (1) An action under this chapter is a civil action governed by the rules of civil procedures. The mother of the child and the alleged father are competent to testify and may be compelled to testify.

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence of any other kind on the ground that the witness may be incriminated thereby, and if a prosecuting attorney requests the court to order that person to testify or provide the evidence, the court shall then hold a hearing and shall so order, unless it finds that to do so would be clearly contrary to the public interest, and that person shall comply with the order.

If, but for this section, the witness would have been privileged to withhold the answer given or the evidence produced, the witness may not refuse to comply with the order on the basis of the privilege against self-incrimination; but the witness shall not be prosecuted or subjected to criminal penalty or forfeiture for or on account of any transaction, matter, or fact concerning which the witness has been ordered to testify pursuant to this section. The witness may nevertheless be prosecuted for failing to comply with the order to answer, or for perjury or for offering false evidence to the court.

(3) Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

(4) In an action against an alleged father, evidence offered by the alleged father with respect to a man who has not been joined as a party concerning the nonparty's sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the nonparty has undergone and made available to the court blood or genetic tests, the results of which do not exclude the possibility of the nonparty's paternity of the child.

(5) The trial shall be by the court without a jury. [1994 c 146 § 3; 1984 c 260 § 34; 1975-'76 2nd ex.s. c 42 § 13.]

Severability—1984 c 260: See RCW 26.18.900.

Nurse-patient privilege subject to RCW 26.26.120: RCW 5.62.030.

26.26.130 Judgment or order determining parent and child relationship—Support judgment and orders—

Residential provisions—Custody—Restraining orders. (1) The judgment and order of the court determining the existence or nonexistence of the parent and child relationship shall be determinative for all purposes.

(2) If the judgment and order of the court is at variance with the child's birth certificate, the court shall order that an amended birth certificate be issued.

(3) The judgment and order shall contain other appropriate provisions directed to the appropriate parties to the proceeding, concerning the duty of current and future support, the extent of any liability for past support furnished to the child if that issue is before the court, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment and order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement. The judgment and order may include a continuing restraining order or injunction. In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(4) Support judgment and orders shall be for periodic payments which may vary in amount. The court may limit the father's liability for the past support to the child to the proportion of the expenses already incurred as the court deems just. The court shall not limit or affect in any manner the right of nonparties including the state of Washington to seek reimbursement for support and other services previously furnished to the child.

(5) After considering all relevant factors, the court shall order either or both parents to pay an amount determined pursuant to the schedule and standards contained in chapter 26.19 RCW.

(6) On the same basis as provided in chapter 26.09 RCW, the court shall make residential provisions with regard to minor children of the parties, except that a parenting plan shall not be required unless requested by a party.

(7) In any dispute between the natural parents of a child and a person or persons who have (a) commenced adoption proceedings or who have been granted an order of adoption, and (b) pursuant to a court order, or placement by the department of social and health services or by a licensed agency, have had actual custody of the child for a period of one year or more before court action is commenced by the natural parent or parents, the court shall consider the best welfare and interests of the child, including the child's need for situation stability, in determining the matter of custody, and the parent or person who is more fit shall have the superior right to custody.

(8) In entering an order under this chapter, the court may issue any necessary continuing restraining orders, including the restraint provisions of domestic violence protection orders under chapter 26.50 RCW or antiharassment protection orders under chapter 10.14 RCW.

(9) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child shall prominently bear on the front page of the order the legend: **VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.26 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.**

(10) The court shall order that any restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state. [1995 c 246 § 31; 1994 sp.s. c 7 § 455. Prior: 1989 c 375 § 23; 1989 c 360 § 18; 1987 c 460 § 56; 1983 1st ex.s. c 41 § 8; 1975-'76 2nd ex.s. c 42 § 14.]

Severability—1995 c 246: See note following RCW 26.50.010.

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

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Severability—1989 c 375: See RCW 26.09.914.

Short title—Section captions—Effective date—Severability—1987 c 460: See RCW 26.09.910 through 26.09.913.

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

26.26.132 Support orders—Compliance with RCW 26.23.050. Every court order or decree establishing a child support obligation shall be entered in compliance with RCW 26.23.050. [1987 c 435 § 27; 1986 c 138 § 3; 1984 c 260 § 23.]

Effective date—1987 c 435: See RCW 26.23.900.

Severability—1984 c 260: See RCW 26.18.900.

26.26.134 Support orders—Time limit, exception. A court may not order payment for support provided or expenses incurred more than five years prior to the commencement of the action. Any period of time in which the responsible party has concealed himself or avoided the jurisdiction of the court under this chapter shall not be included within the five-year period. [1983 1st ex.s. c 41 § 11.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

26.26.137 Temporary support—Temporary restraining order—Preliminary injunction—Domestic violence or antiharassment protection order—Support debts, notice. (1) If the court has made a finding as to the paternity of a child, or if a party's acknowledgment of paternity has been filed with the court, or a party alleges he is the father of the child, any party may move for temporary support for the child prior to the date of entry of the final order. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) Any party may request the court to issue a temporary restraining order or preliminary injunction, providing relief proper in the circumstances, and restraining or enjoining any party from:

(a) Molesting or disturbing the peace of another party;

(b) Going onto the grounds of or entering the home, workplace, or school of another party or the day care or school of any child; or

(c) Removing a child from the jurisdiction of the court.

(3) Either party may request a domestic violence protection order under chapter 26.50 RCW or an antiharassment protection order under chapter 10.14 RCW on a temporary basis. The court may grant any of the relief provided in RCW 26.50.060 except relief pertaining to residential provisions for the children which provisions shall be provided for under this chapter, and any of the relief provided in RCW 10.14.080. Ex parte orders issued under this subsection shall be effective for a fixed period not to exceed fourteen days, or upon court order, not to exceed twenty-four days if necessary to ensure that all temporary motions in the case can be heard at the same time.

(4) Restraining orders issued under this section restraining the person from molesting or disturbing another party or from going onto the grounds of or entering the home, workplace, or school of the other party or the day care or school of any child shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.26 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(5) The court shall order that any temporary restraining order bearing a criminal offense legend, any domestic violence protection order, or any antiharassment protection order granted under this section be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order. Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order is fully enforceable in any county in the state.

(6) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(7) The court may issue a temporary restraining order or preliminary injunction and an order for temporary support in such amounts and on such terms as are just and proper in the circumstances. In issuing the order, the court shall consider the provisions of RCW 9.41.800.

(8) A temporary order, temporary restraining order, or preliminary injunction:

(a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding;

(b) May be revoked or modified;

(c) Terminates when the final order is entered or when the petition is dismissed; and

(d) May be entered in a proceeding for the modification of an existing order.

(9) A support debt owed to the state for public assistance expenditures which has been charged against a party pursuant to RCW 74.20A.040 and/or 74.20A.055 shall not be merged in, or otherwise extinguished by, the final decree or order, unless the office of support enforcement has been given notice of the final proceeding and an opportunity to

present its claim for the support debt to the court and has failed to file an affidavit as provided in this subsection. Notice of the proceeding shall be served upon the office of support enforcement personally, or by certified mail, and shall be given no fewer than thirty days prior to the date of the final proceeding. An original copy of the notice shall be filed with the court either before service or within a reasonable time thereafter. The office of support enforcement may present its claim, and thereby preserve the support debt, by filing an affidavit setting forth the amount of the debt with the court, and by mailing a copy of the affidavit to the parties or their attorney prior to the date of the final proceeding. [1995 c 246 § 32; 1994 sp.s. c 7 § 456; 1983 1st ex.s. c 41 § 12.]

Severability—1995 c 246: See note following RCW 26.50.010.

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

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

26.26.138 Restraining order—Knowing violation—Penalty—Law enforcement immunity. (1) Whenever a restraining order is issued under this chapter, and the person to be restrained knows of the order, a violation of the provisions restricting the person from acts or threats of violence or of a provision restraining the person from going onto the grounds of or entering the residence, workplace, school, or day care of another is a misdemeanor.

(2) A person is deemed to have notice of a restraining order if:

(a) The person to be restrained or the person's attorney signed the order;

(b) The order recites that the person to be restrained or the person's attorney appeared in person before the court;

(c) The order was served upon the person to be restrained; or

(d) The peace officer gives the person oral or written evidence of the order by reading from it or handing to the person a certified copy of the original order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(3) A peace officer shall verify the existence of a restraining order by:

(a) Obtaining information confirming the existence and terms of the order from a law enforcement agency; or

(b) Obtaining a certified copy of the order, certified to be an accurate copy of the original by a notary public or by the clerk of the court.

(4) A peace officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) A restraining order has been issued under this chapter;

(b) The respondent or person to be restrained knows of the order; and

(c) The person to be arrested has violated the terms of the order restraining the person from acts or threats of violence or restraining the person from going onto the

grounds of or entering the residence, workplace, school, or day care of another.

(5) It is a defense to prosecution under subsection (1) of this section that the court order was issued contrary to law or court rule.

(6) No peace officer may be held criminally or civilly liable for making an arrest under subsection (4) of this section if the officer acts in good faith and without malice. [1996 c 248 § 11; 1995 c 246 § 33.]

Severability—1995 c 246: See note following RCW 26.50.010.

26.26.140 Costs. The court may order reasonable fees of experts and the child's guardian ad litem, and other costs of the action, including blood or genetic test costs, to be paid by the parties in proportions and at times determined by the court. The court may order that all or a portion of a party's reasonable attorney's fees be paid by another party, except that an award of attorney's fees assessed against the state or any of its agencies or representatives shall be under RCW 4.84.185. [1994 c 146 § 4; 1984 c 260 § 35; 1975-'76 2nd ex.s. c 42 § 15.]

Severability—1984 c 260: See RCW 26.18.900.

26.26.150 Enforcement of judgments or orders. (1) If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this chapter or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the state of Washington, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

(2) The court shall order support payments to be made to the Washington state support registry, or the person entitled to receive the payments under an alternate arrangement approved by the court as provided in RCW 26.23.050(2).

(3) All remedies for the enforcement of judgments apply. [1994 c 230 § 16; 1987 c 435 § 28; 1975-'76 2nd ex.s. c 42 § 16.]

Effective date—1987 c 435: See RCW 26.23.900.

26.26.160 Modification of judgment or order—Continuing jurisdiction. (1) Except as provided in subsection (2) of this section the court has continuing jurisdiction to prospectively modify a judgment and order for future education and future support, and with respect to matters listed in RCW 26.26.130 (3) and (4), and RCW 26.26.150(2) upon showing a substantial change of circumstances. The procedures set forth in RCW 26.09.175 shall be used in modification proceedings under this section.

(2) A judgment or order entered under this chapter may be modified without a showing of substantial change of circumstances upon the same grounds as RCW 26.09.170 permits support orders to be modified without a showing of a substantial change of circumstance.

(3) The court may modify a parenting plan or residential provisions adopted pursuant to RCW 26.26.130(6) in accordance with the provisions of chapter 26.09 RCW.

(1996 Ed.)

[1992 c 229 § 8; 1989 c 360 § 36; 1975-'76 2nd ex.s. c 42 § 17.]

26.26.165 Health insurance coverage. (1) In entering or modifying a support order under this chapter, the court shall require either or both parents to maintain or provide health insurance coverage for any dependent child as provided under RCW 26.09.105.

(2) This section shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of uninsured health expenses, health costs, or insurance premiums which are in addition to and not inconsistent with this section. "Health insurance coverage" as used in this section does not include medical assistance provided under chapter 74.09 RCW.

(3) A parent ordered to provide health insurance coverage shall provide proof of such coverage or proof that such coverage is unavailable within twenty days of the entry of the order to:

(a) The physical custodian; or

(b) The department of social and health services if the parent has been notified or ordered to make support payments to the Washington state support registry.

(4) Every order requiring a parent to provide health insurance coverage shall be entered in compliance with *RCW 26.23.050 and be subject to direct enforcement as provided under chapter 26.18 RCW. [1994 c 230 § 17; 1989 c 416 § 4.]

***Reviser's note:** The reference to RCW 26.23.050 appears to refer to the amendments made by 1989 c 416 § 8, which was vetoed by the governor.

26.26.170 Action to determine mother and child relationship. Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this chapter applicable to the father and child relationship apply. [1975-'76 2nd ex.s. c 42 § 18.]

26.26.180 Promise to render support. Any promise in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to RCW 26.26.060(3). [1983 1st ex.s. c 41 § 9; 1975-'76 2nd ex.s. c 42 § 19.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

26.26.190 Relinquishment of child for adoption—Notice to other parent. If a parent relinquishes or proposes to relinquish for adoption a child, the other parent shall be given notice of the adoption proceeding and have the rights provided under the provisions of chapter 26.33 RCW. [1985 c 7 § 87; 1975-'76 2nd ex.s. c 42 § 20.]

26.26.200 Hearing or trials to be in closed court—Records confidential. Notwithstanding any other rule of law concerning public hearings and records, any hearing or trial held under this chapter shall be held in closed court without admittance of any person other than those necessary to the action or proceeding or for the orderly administration

of justice. All papers and records, other than the final judgment and matters related to the enforcement of the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in the department of social and health services, are subject to inspection by a nonparty only upon an order of the court for good cause shown following reasonable notice to all parties of the hearing where such order is to be sought. [1983 1st ex.s. c 41 § 10; 1975-'76 2nd ex.s. c 42 § 21.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

26.26.210 Surrogate parenting—Definitions. As used in RCW 26.26.210 through 26.26.260:

(1) "Compensation" means a payment of money, objects, services, or anything else having monetary value except payment of expenses incurred as a result of the pregnancy and the actual medical expenses of a surrogate mother, and the payment of reasonable attorney fees for the drafting of a surrogate parentage contract.

(2) "Surrogate gestation" means the implantation in a female of an embryo not genetically related to that female and subsequent gestation of a child by that female.

(3) "Surrogate mother" means a female, who is not married to the contributor of the sperm, and who is naturally or artificially inseminated and who subsequently gestates a child conceived through the insemination pursuant to a surrogate parentage contract.

(4) "Surrogate parentage contract" means a contract, agreement, or arrangement in which a female, not married to the contributor of the sperm, agrees to conceive a child through natural or artificial insemination or in which a female agrees to surrogate gestation, and to voluntarily relinquish her parental rights to the child. [1989 c 404 § 1.]

26.26.220 Surrogate parenting—Persons excluded from contracting. A person shall not enter into, induce, arrange, procure, or otherwise assist in the formation of a surrogate parentage contract under which an unemancipated minor female or a female diagnosed as being mentally retarded or as having a mental illness or developmental disability is the surrogate mother. [1989 c 404 § 2.]

26.26.230 Surrogate parenting—Compensation prohibited. No person, organization, or agency shall enter into, induce, arrange, procure, or otherwise assist in the formation of a surrogate parentage contract, written or unwritten, for compensation. [1989 c 404 § 3.]

26.26.240 Surrogate parenting—Contract for compensation void. A surrogate parentage contract entered into for compensation, whether executed in the state of Washington or in another jurisdiction, shall be void and unenforceable in the state of Washington as contrary to public policy. [1989 c 404 § 4.]

26.26.250 Surrogate parenting—Provisions violated—Penalty. Any person, organization, or agency who intentionally violates any provision of RCW 26.26.210 through 26.26.260 shall be guilty of a gross misdemeanor. [1989 c 404 § 5.]

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26.26.260 Surrogate parenting—Custody of child.

If a child is born to a surrogate mother pursuant to a surrogate parentage contract, and there is a dispute between the parties concerning custody of the child, the party having physical custody of the child may retain physical custody of the child until the superior court orders otherwise. The superior court shall award legal custody of the child based upon the factors listed in RCW 26.09.187(3) and 26.09.191. [1989 c 404 § 6.]

26.26.270 Parenting plan—Designation of parent for other state and federal purposes. Solely for the purposes of all other state and federal statutes which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside a majority of the time as the custodian of the child. However, this designation shall not affect either parent's rights and responsibilities under the parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside the majority of the time shall be deemed to be the custodian of the child for the purposes of such federal and state statutes. [1989 c 375 § 25.]

Severability—1989 c 375: See RCW 26.09.914.

26.26.900 Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1975-'76 2nd ex.s. c 42 § 42.]

26.26.901 Short title. This act may be cited as the Uniform Parentage Act. [1975-'76 2nd ex.s. c 42 § 43.]

26.26.905 Severability—1975-'76 2nd ex.s. c 42. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 42 § 44.]

Chapter 26.27

UNIFORM CHILD CUSTODY JURISDICTION ACT

Sections

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26.27.010 Purposes of chapter—Construction of provisions. (1) The general purposes of this chapter are to:

(a) Avoid jurisdiction competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) Assure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(d) Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) Deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) Avoid relitigation of custody decisions of other states in this state insofar as feasible;

(g) Facilitate the enforcement of custody decrees of other states;

(h) Promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) Make uniform the law of those states which enact it.

(2) This chapter shall be construed to promote the general purposes stated in this section. [1979 c 98 § 1.]

26.27.020 Definitions. As used in this chapter:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights; it does not include a decision relating to child support or any other monetary obligation of any person;

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for dissolution of marriage, or legal separation, and includes child neglect and dependency proceedings;

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding, and includes an initial decree and a modification decree;

(5) "Home state" means the state in which the child immediately preceding the time involved lived with his

parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the six-month or other period;

(6) "Initial decree" means the first custody decree concerning a particular child;

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(8) "Physical custody" means actual possession and control of a child;

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by the court or claims a right to custody; and

(10) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia. [1979 c 98 § 2.]

26.27.030 Jurisdiction. (1) A court of this state which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if the conditions as set forth in any of the following paragraphs are met:

(a) This state (i) is the home state of the child at the time of commencement of the proceeding, or (ii) had been the child's home state within six months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this state; or

(b) It is in the best interest of the child that a court of this state assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and (ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) The child is physically present in this state and (i) the child has been abandoned or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or

(d) It appears that no other state would have jurisdiction under prerequisites substantially in accordance with paragraphs (a), (b), or (c) of this subsection, or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (ii) it is in the best interest of the child that this court assume jurisdiction.

(2) Except under subsection (1)(c) and (d) of this section, physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody. [1979 c 98 § 3.]

26.27.040 Notice and opportunity to be heard. Before making a decree under this chapter, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons is outside this state, notice and opportunity to be heard shall be given under RCW 26.27.050. [1979 c 98 § 4.]

26.27.050 Notice to persons outside this state—Submission to jurisdiction. (1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice, and may be made in any of the following ways:

(a) By personal delivery outside this state in the manner prescribed for service of process within this state;

(b) In the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) By any form of mail addressed to the person to be served and requesting a receipt; or

(d) As directed by the court (including publication, if other means of notification are ineffective).

(2) Notice under this section shall be served, mailed, delivered, or last published at least ten days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service, or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court. [1979 c 98 § 5.]

26.27.060 Simultaneous proceedings in other states.

(1) A court of this state shall not exercise its jurisdiction under this chapter if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this chapter, unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding the court shall examine the pleadings and other information supplied by the parties under RCW 26.27.090 and shall consult the child custody registry established under RCW 26.27.160 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with RCW 26.27.190 through 26.27.220. If a court of this

state has made a custody decree before being informed of a pending proceeding in a court of another state it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum. [1979 c 98 § 6.]

26.27.070 Inconvenient forum. (1) A court which has jurisdiction under this chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) If another state is or recently was the child's home state;

(b) If another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(c) If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) If the parties have agreed on another forum which is no less appropriate; and

(e) If the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in RCW 26.27.010.

(4) Before determining whether to decline or retain jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings, or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this chapter if a custody determination is incidental to an action for dissolution of marriage or another proceeding while retaining jurisdiction over the dissolution of marriage or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorney's fees, incurred by other parties or their

witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact, or if the court which would have jurisdiction in the other state is not certainly known, shall transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction the court of this state shall inform the original court of this fact. [1979 c 98 § 7.]

26.27.080 Jurisdiction declined by reason of conduct. (1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct the court may decline to exercise jurisdiction for purposes of adjudication of custody if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court shall not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) Where the court declines to exercise jurisdiction upon petition for an initial custody decree under subsection (1) of this section, the court shall notify the parent or other appropriate person and the prosecuting attorney of the appropriate jurisdiction in the other state. If a request to that effect is received from the other state, the court shall order the petitioner to appear with the child in a custody proceeding instituted in the other state in accordance with RCW 26.27.200. If no such request is made within a reasonable time after the notification, the court may entertain a petition to determine custody by the petitioner if it has jurisdiction under RCW 26.27.030.

(4) Where the court refuses to assume jurisdiction to modify the custody decree of another state under subsection (2) of this section or under RCW 26.27.140, the court shall notify the person who has legal custody under the decree of the other state and the prosecuting attorney of the appropriate jurisdiction in the other state and may order the petitioner to return the child to the person who has legal custody. If it appears that the order will be ineffective and the legal custodian is ready to receive the child within a period of a few days, the court may place the child in a foster care home for the period, pending return of the child to the legal custodian. At the same time, the court shall advise the petitioner that any petition for modification of custody must be directed to the appropriate court of the other state which has continuing jurisdiction, or, in the event that that court declines jurisdiction, to a court in a state which has jurisdiction under RCW 26.27.030.

(5) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorney's fees and the cost of returning the child to another state. [1979 c 98 § 8.]

26.27.090 Information under oath to be submitted to court. (1) Every party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit every party shall further declare under oath as to each of the following whether:

(a) He has participated, as a party, witness, or in any other capacity, in any other litigation concerning the custody of the same child in this or any other state;

(b) He has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) He knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding. [1979 c 98 § 9.]

26.27.100 Additional parties. If the court learns from information furnished by the parties under RCW 26.27.090 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state he shall be served with process or otherwise notified in accordance with RCW 26.27.050. [1979 c 98 § 10.]

26.27.110 Appearance of parties and child. (1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child the court may order that he appear personally with the child. If the party who is ordered to appear with the child cannot be served or fails to obey the order, or it appears the order will be ineffective, the court may issue a warrant of arrest against the party to secure his appearance with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child the court may order that the notice given under RCW 26.27.050 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) of this section or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances. [1979 c 98 § 11.]

26.27.120 Binding force and res judicata effect of custody decree. A custody decree rendered by a court of this state which had jurisdiction under RCW 26.27.030 binds all parties who have been served in this state or notified in accordance with RCW 26.27.050 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this chapter. [1979 c 98 § 12.]

26.27.130 Recognition of out-of-state custody decrees. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or which was made under factual circumstances meeting the jurisdictional standards of this chapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this chapter. [1979 c 98 § 13.]

26.27.140 Modification of custody decree of another state. (1) If a court of another state has made a custody decree, a court of this state shall not modify that decree unless (a) it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this chapter or has declined to assume jurisdiction to modify the decree and (b) the court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) of this section and RCW 26.27.080 to modify a custody decree of another state it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with RCW 26.27.220. [1979 c 98 § 14.]

26.27.150 Filing and enforcement of custody decree of another state. (1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any superior court of this state. The clerk shall treat the decree in the same manner as a custody decree of the superior court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses. [1979 c 98 § 15.]

26.27.160 Registry of out-of-state custody decrees and proceedings. (1) The clerk of each superior court shall maintain a registry in which he or she shall enter certified copies of custody decrees of other states received for filing to which the clerk shall assign an individual cause number.

(2) The clerk shall maintain the following at no charge as miscellaneous filings:

(a) Communications as to the pendency of custody proceedings in other states;

(b) Communications concerning a finding of inconvenient forum by a court of another state; and

(c) Other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding. [1984 c 128 § 7; 1979 c 98 § 16.]

26.27.170 Certified copies of custody decree. The clerk of a superior court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person. [1979 c 98 § 17.]

26.27.180 Taking testimony in another state. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken. [1979 c 98 § 18.]

26.27.190 Hearings and studies in another state—Orders to appear. (1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings, and if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid. [1979 c 98 § 19.]

26.27.200 Assistance to courts of other states. (1) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies under

RCW 26.09.220 to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies made shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that travel and other necessary expenses will be advanced or reimbursed. If the person who has physical custody of the child cannot be served or fails to obey the order, or it appears the order will be ineffective, the court may issue a warrant of arrest against such person to secure his appearance with the child in the other state. [1979 c 98 § 20.]

26.27.210 Preservation of records of custody proceedings—Forwarding to another state. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches eighteen years of age. Upon appropriate request of the court of another state the court shall forward to the other court certified copies of any or all of such documents. [1979 c 98 § 21.]

26.27.220 Request for court records of another state. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in RCW 26.27.210. [1979 c 98 § 22.]

26.27.230 International application. The general policies of this chapter extend to the international area. The provisions of this chapter relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons. [1979 c 98 § 23.]

26.27.900 Construction with chapter 26.09 RCW. This chapter is in addition to and shall be construed in conjunction with chapter 26.09 RCW. In the event of an irreconcilable conflict between this chapter and chapter 26.09 RCW, chapter 26.09 RCW shall control. [1979 c 98 § 24.]

26.27.910 Short title. This chapter may be cited as the Uniform Child Custody Jurisdiction Act. [1979 c 98 § 25.]

26.27.920 Severability—1979 c 98. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1979 c 98 § 26.]

26.27.930 Section captions. Section captions used in this act shall constitute no part of the law. [1979 c 98 § 27.]

Chapter 26.28 AGE OF MAJORITY (Formerly: Infants)

Sections

- 26.28.010 Age of majority.
- 26.28.015 Age of majority for enumerated specific purposes.
- 26.28.020 Married persons—When deemed of full age.
- 26.28.030 Contracts of minors—Disaffirmance.
- 26.28.040 Disaffirmance barred in certain cases.
- 26.28.050 Satisfaction of minor's contract for services.
- 26.28.060 Child labor—Penalty.
- 26.28.070 Certain types of employment prohibited—Penalty.
- 26.28.080 Selling or giving tobacco to minor—Belief of representative capacity, no defense—Penalty.
- 26.28.085 Applying tattoo to a minor—Penalty.
- Aid to dependent children: Chapter 74.12 RCW.*
- Alcohol and drug treatment: RCW 70.96A.095.*
- Alcoholic beverage control*
 - furnishing liquor to minors—Possession, use: RCW 66.44.270.*
 - minor applying for permit: RCW 66.44.280.*
 - minor purchasing liquor: RCW 66.44.290.*
 - minors frequenting off-limits area—Misrepresenting age: RCW 66.44.310.*
 - sales to minors a felony: RCW 66.44.320.*
 - treating minor, etc., in tavern: RCW 66.44.300.*
- Baseball—Contracts with minors: Chapter 67.04 RCW.*
- Child*
 - labor: Chapter 49.12 RCW.*
 - support enforcement: Chapter 26.18 RCW.*
 - welfare agencies: Chapter 74.15 RCW.*
- Children and youth services: RCW 43.20A.360, chapter 72.05 RCW.*
- Civil defense—Minors entitled to benefits: RCW 38.52.270.*
- Coal mining—Employment of minors: RCW 78.40.606.*
- Costs (civil) against guardian of infant plaintiff: RCW 4.84.140.*
- Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.*
- Crimes and punishment*
 - firearms, dangerous weapons*
 - delivery to ineligible persons: RCW 9.41.080.*
 - possession of pistol by person from eighteen to twenty-one: RCW 9.41.240.*
 - frauds and swindles, substitution of child: RCW 9.45.020.*
 - kidnapping: Chapter 9A.40 RCW.*
 - leaving children unattended in parked automobile: RCW 9.91.060.*
 - obscenity—Obscene literature: Chapter 9.68 RCW.*
 - sex crimes: Chapter 9A.44 RCW.*
- Department of social and health services, advisory committee on children and youth services: RCW 43.20A.360.*
- District courts (civil)*
 - action against infant—Guardian ad litem: RCW 12.04.150.*
 - commencement of actions—Action by infant: RCW 12.04.140.*
- Domestic violence prevention: Chapter 26.50 RCW.*
- Family abandonment or nonsupport: Chapter 26.20 RCW.*
- Firearm training program: RCW 77.32.155.*
- Game and game fish—Areas may be set aside for use of minors: RCW 77.12.330.*
- Green Hill School: Chapter 72.16 RCW.*

Health care records, rights: RCW 70.02.130.

Hours of labor: Chapter 49.28 RCW.

Juvenile courts and juvenile offenders: Title 13 RCW.

Limitation of actions (civil)

minors suing guardians for estates sold: RCW 4.16.070.

statutes tolled by personal disability: RCW 4.16.190.

Maple Lane School: Chapter 72.20 RCW.

Medical consent, liability of provider: RCW 26.09.310.

Mental health treatment: Chapter 71.34 RCW.

Missing children clearinghouse and hotline: Chapter 13.60 RCW.

Motor vehicle operators' licenses

application of minor—Signature of parent, etc.: RCW 46.20.100.

juvenile agricultural driving permits: RCW 46.20.070.

persons ineligible, generally: RCW 46.20.031.

Parties to actions (civil)—Guardian ad litem for infant: RCW 4.08.050.

Partition

guardian may consent to partition: RCW 7.52.470.

infant's share of proceeds to guardian: RCW 7.52.450.

Probate

descent and distribution to legitimate, illegitimate, adopted children:
Chapter 11.04 RCW.

escheats—Limitation when claimant is minor: RCW 11.08.280.

guardianship—Guardian ad litem: RCW 11.88.090.

letters testamentary and of administration—Procedure during minority or absence of executor: RCW 11.28.040.

provisions for family support

appointment of guardian ad litem for minors or incompetents: RCW 11.52.014.

support of minor children: RCW 11.52.030.

Property taxes—Certificate of delinquency—Redemption before deed—Minors and legally incompetent: RCW 84.64.070.

Recognizances for minors: RCW 10.16.150.

Savings and loan associations, minors as members: RCW 33.20.040.

Schools and colleges, generally: Titles 28A and 28B RCW.

Sexual psychopaths and psychopathic delinquents: Chapter 71.06 RCW.

Sexually transmitted diseases: RCW 70.24.110.

Shoplifting by minors, liability of parents, guardians: RCW 4.24.230.

Special education—Children with handicapping conditions: Chapter 28A.155 RCW.

Special rights of action (civil)

action by parent for sale or transfer of controlled substance to minor: RCW 69.50.414.

action by parent for seduction of child: RCW 4.24.020.

action for injury or death of child: RCW 4.24.010.

State school for blind and deaf—Who may be admitted: RCW 72.40.040.

State school for girls: Chapter 72.20 RCW.

State training school for boys: Chapter 72.16 RCW.

Survival of actions (civil)—Action for personal injury survives to spouse, child, stepchildren, or heirs: RCW 4.20.060.

Unemployment compensation, "employment"—Newsboy service exemption: RCW 50.04.240.

Uniform transfers to minors act: Chapter 11.114 RCW.

Uniform veterans' guardianship act—Guardian for minor: RCW 73.36.060.

Vital statistics, supplemental report on name of child: RCW 70.58.100.

Worker's compensation—"Child" defined: RCW 51.08.030.

26.28.010 Age of majority. Except as otherwise specifically provided by law, all persons shall be deemed and taken to be of full age for all purposes at the age of eighteen years. [1971 ex.s. c 292 § 1; 1970 ex.s. c 17 § 1; 1923 c 72 § 2; Code 1881 § 2363; 1866 p 92 § 1; 1863 p 434 § 1; 1854 p 407 § 1; RRS § 10548.]

Severability—1971 ex.s. c 292: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held

invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 292 § 77.]

Saving—1923 c 72: "This act shall not apply to females who shall have attained the age of eighteen years at the time this act shall go into effect." [1923 c 72 § 3.] 1923 c 72 was codified as RCW 11.92.010 and 26.28.010.

Age of majority for probate law and procedure purposes: RCW 11.76.080, 11.76.095, 11.88.020, and 11.92.010.

26.28.015 Age of majority for enumerated specific purposes. Notwithstanding any other provision of law, and except as provided under RCW 26.50.020, all persons shall be deemed and taken to be of full age for the specific purposes hereafter enumerated at the age of eighteen years:

(1) To enter into any marriage contract without parental consent if otherwise qualified by law;

(2) To execute a will for the disposition of both real and personal property if otherwise qualified by law;

(3) To vote in any election if authorized by the Constitution and otherwise qualified by law;

(4) To enter into any legal contractual obligation and to be legally bound thereby to the full extent as any other adult person;

(5) To make decisions in regard to their own body and the body of their lawful issue whether natural born to or adopted by such person to the full extent allowed to any other adult person including but not limited to consent to surgical operations;

(6) To sue and be sued on any action to the full extent as any other adult person in any of the courts of this state, without the necessity for a guardian ad litem. [1992 c 111 § 12; 1971 ex.s. c 292 § 2.]

Severability—1992 c 111: See RCW 26.50.903.

Findings—1992 c 111: See note following RCW 26.50.030.

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

Alcohol and drug treatment: RCW 70.96A.095.

Mental health treatment: Chapter 71.34 RCW.

Sexually transmitted diseases: RCW 70.24.110.

26.28.020 Married persons—When deemed of full age. All minor persons married to a person of full age shall be deemed and taken to be of full age. [1973 1st ex.s. c 154 § 38; Code 1881 § 2364; 1863 p 434 § 2; 1854 p 407 § 2; RRS § 10549.]

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

26.28.030 Contracts of minors—Disaffirmance. A minor is bound, not only by contracts for necessities, but also by his other contracts, unless he disaffirms them within a reasonable time after he attains his majority, and restores to the other party all money and property received by him by virtue of the contract, and remaining within his control at any time after his attaining his majority. [1866 p 92 § 2; RRS § 5829.]

26.28.040 Disaffirmance barred in certain cases. No contract can be thus disaffirmed in cases where on account of the minor's own misrepresentations as to his majority, or from his having engaged in business as an adult, the other party had good reasons to believe the minor capable of contracting. [1866 p 93 § 3; RRS § 5830.]

26.28.050 Satisfaction of minor's contract for services. When a contract for the personal services of a minor has been made with him alone, and those services are afterwards performed, payment made therefor to such minor in accordance with the terms of the contract, is a full satisfaction for those services, and the parents or guardian cannot recover therefor. [1866 p 93 § 4; RRS § 5831.]

26.28.060 Child labor—Penalty. (1) Every person who shall employ, and every parent, guardian or other person having the care, custody or control of such child, who shall permit to be employed, by another, any child under the age of fourteen years at any labor whatever, in or in connection with any store, shop, factory, mine or any inside employment not connected with farm or house work, without the written permit thereto of a judge of a superior court of the county wherein such child may live, shall be guilty of a misdemeanor.

(2) Subsection (1) of this section does not apply to children employed as actors or performers in film, video, audio, or theatrical productions. [1994 c 62 § 1; 1973 1st ex.s. c 154 § 39; 1909 c 249 § 195; RRS § 2447.]

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

Child labor: Chapter 49.12 RCW.

Employment permits: RCW 28A.225.080.

26.28.070 Certain types of employment prohibited—Penalty. Every person who shall employ, or cause to be employed, exhibit or have in his custody for exhibition or employment any minor actually or apparently under the age of eighteen years; and every parent, relative, guardian, employer or other person having the care, custody, or control of any such minor, who shall in any way procure or consent to the employment of such minor:

(1) In begging, receiving alms, or in any mendicant occupation; or,

(2) In any indecent or immoral exhibition or practice; or,

(3) In any practice or exhibition dangerous or injurious to life, limb, health or morals; or,

(4) As a messenger for delivering letters, telegrams, packages or bundles, to any known house of prostitution or assignation;

Shall be guilty of a misdemeanor. [1909 c 249 § 194; RRS § 2446.]

Juvenile courts and juvenile offenders: Title 13 RCW.

26.28.080 Selling or giving tobacco to minor—Belief of representative capacity, no defense—Penalty. Every person who sells or gives, or permits to be sold or given to any person under the age of eighteen years any cigar, cigarette, cigarette paper or wrapper, or tobacco in any form is guilty of a gross misdemeanor.

It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another. [1994 sp.s. c 7 § 437. Prior: 1987 c 250 § 2; 1987 c 204 § 1; 1971 ex.s. c 292 § 37; 1919 c 17 § 1; 1911 c 133 § 1; 1909 ex.s. c 27 § 1; 1909 c 249 § 193; 1901 c 122 § 1;

1895 c 126 §§ 1, 3 and 4; RRS § 2445. Formerly RCW 26.08.080, 26.08.090, and 26.08.100.]

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

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

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

Juvenile courts and juvenile offenders: Title 13 RCW.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

26.28.085 Applying tattoo to a minor—Penalty. Every person who applies a tattoo to any minor under the age of eighteen is guilty of a misdemeanor. It is not a defense to a violation of this section that the person applying the tattoo did not know the minor's age unless the person applying the tattoo establishes by a preponderance of the evidence that he or she made a reasonable, bona fide attempt to ascertain the true age of the minor by requiring production of a driver's license or other picture identification card or paper and did not rely solely on the oral allegations or apparent age of the minor.

For the purposes of this section, "tattoo" includes any permanent marking or coloring of the skin with any pigment, ink, or dye, or any procedure that leaves a visible scar on the skin. Medical procedures performed by a licensed physician are exempted from this section. [1995 c 373 § 1.]

Chapter 26.30

UNIFORM MINOR STUDENT CAPACITY TO BORROW ACT

Sections

26.30.010	Definitions.
26.30.020	Minors—Contracts—Educational purposes—Enforceability.
26.30.900	Uniformity of interpretation.
26.30.910	Short title.
26.30.920	Effective date—1970 ex.s. c 4.

26.30.010 Definitions. As used in this chapter:

(1) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(2) "Educational institution" means any university, college, community college, junior college, high school, technical, vocational, or professional school, or similar institution, wherever located, which has been accredited by the Northwest Association of Higher and Secondary Institutions or approved by the state agency having regulatory powers over the class of schools to which the school belongs, or accredited or approved by the appropriate official, department, or agency of the state in which the institution is located.

(3) "Educational loan" means a loan or other aid or assistance for the purpose of furthering the obligor's education at an educational institution. [1970 ex.s. c 4 § 1.]

Student financial aid program: RCW 28B.10.800 through 28B.10.824.

26.30.020 Minors—Contracts—Educational purposes—Enforceability. Any written obligation signed by a minor sixteen or more years of age in consideration of an

educational loan received by him from any person is enforceable as if he were an adult at the time of execution, but only if prior to the making of the educational loan an educational institution has certified in writing to the person making the educational loan that the minor is enrolled, or has been accepted for enrollment, in the educational institution. [1970 ex.s. c 4 § 2.]

Contracts of minors, disaffirmance: RCW 26.28.030.

26.30.900 Uniformity of interpretation. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1970 ex.s. c 4 § 3.]

26.30.910 Short title. This chapter may be cited as the "Uniform Minor Student Capacity to Borrow Act." [1970 ex.s. c 4 § 4.]

26.30.920 Effective date—1970 ex.s. c 4. This chapter shall take effect on July 1, 1970. [1970 ex.s. c 4 § 5.]

Chapter 26.33 ADOPTION

Sections

- 26.33.010 Intent.
- 26.33.020 Definitions.
- 26.33.030 Petitions—Place of filing—Consolidation of petitions and hearings.
- 26.33.040 Petitions—Statements and findings about Indian Child Welfare Act and Soldiers and Sailors Civil Relief Act required.
- 26.33.045 Delay or denial of adoption on basis of race, color, or national origin prohibited—Consideration in placement—Exception.
- 26.33.050 Validity of consents, relinquishments, or orders of termination from other jurisdictions—Burden of proof.
- 26.33.060 Hearings—Procedure—Witnesses.
- 26.33.070 Appointment of guardian ad litem—When required—Payment of fees.
- 26.33.080 Petition for relinquishment—Filing—Written consent required.
- 26.33.090 Petition for relinquishment—Hearing—Temporary custody order—Notice—Order of relinquishment.
- 26.33.100 Petition for termination—Who may file—Contents—Time.
- 26.33.110 Petition for termination—Time and place of hearing—Notice of hearing and petition—Contents.
- 26.33.120 Termination—Grounds—Failure to appear.
- 26.33.130 Termination order—Effect.
- 26.33.140 Who may adopt or be adopted.
- 26.33.150 Petition for adoption—Filing—Contents—Preplacement report required.
- 26.33.160 Consent to adoption—When revocable—Procedure.
- 26.33.170 When consent to adoption not required.
- 26.33.180 Preplacement report required before placement with adoptive parents—Exception.
- 26.33.190 Preplacement report—Requirements—Fees.
- 26.33.200 Post-placement report—Requirements—Exception—Fees.
- 26.33.210 Preplacement or post-placement report—Department or agency may make report.
- 26.33.220 Preplacement and post-placement reports—When not required.
- 26.33.230 Notice of proceedings at which preplacement reports considered—Contents—Proof of service—Appearance—Waiver.
- 26.33.240 Petition for adoption—Hearing—Notice—Disposition.

- 26.33.250 Decree of adoption—Determination of place and date of birth.
- 26.33.260 Decree of adoption—Effect—Accelerated appeal—Limited grounds to challenge—Intent.
- 26.33.270 Decree of adoption—Protection of certain rights and benefits.
- 26.33.280 Decree of adoption—Transmittal to state registrar of vital statistics.
- 26.33.290 Decree of adoption—Duties of state registrar of vital statistics.
- 26.33.295 Open adoption agreements—Agreed orders—Enforcement.
- 26.33.300 Adoption statistical data.
- 26.33.310 Notice—Requirements—Waiver.
- 26.33.320 Adoption of hard to place children—Court's consideration of state's agreement with prospective adoptive parents.
- 26.33.330 Records sealed—Inspection—Fee.
- 26.33.340 Department, agency, and court files confidential—Limited disclosure of information.
- 26.33.343 Search for birth parent or adopted child—Confidential intermediary.
- 26.33.345 Search for birth parent or adopted child—Limited release of information—Noncertified copies of original birth certificate.
- 26.33.347 Consent or refusal to release adoptee's identifying information—Desire to be contacted—Certified statement.
- 26.33.350 Medical reports—Requirements.
- 26.33.360 Petition by natural parent to set aside adoption—Costs—Time limit.
- 26.33.370 Permanent care and custody of a child—Assumption, relinquishment, or transfer except by court order or statute, when prohibited—Penalty.
- 26.33.380 Family and social history report required—Identity of birth parents confidential.
- 26.33.385 Standards for locating records and information—Rules.
- 26.33.390 Information on adoption-related services.
- 26.33.400 Advertisements—Prohibitions—Exceptions—Application of consumer protection act.
- 26.33.410 Advertisements—Exemption.
- 26.33.900 Effective date—Application—1984 c 155.
- 26.33.901 Severability—1984 c 155.

Child selling and child buying, class C felony: RCW 9A.64.030.

Dependent and delinquent children: Title 13 RCW.

Descent and distribution—Adopted children: Chapter 11.04 RCW.

Paternity, determination: Chapter 26.26 RCW.

Welfare agencies for children: Title 13 RCW.

26.33.010 Intent. The legislature finds that the purpose of adoption is to provide stable homes for children. Adoptions should be handled efficiently, but the rights of all parties must be protected. The guiding principle must be determining what is in the best interest of the child. It is the intent of the legislature that this chapter be used only as a means for placing children in adoptive homes and not as a means for parents to avoid responsibility for their children unless the department, an agency, or a prospective adoptive parent is willing to assume the responsibility for the child. [1984 c 155 § 1.]

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

(1) "Alleged father" means a person whose parent-child relationship has not been terminated, who is not a presumed father under chapter 26.26 RCW, and who alleges himself or whom a party alleges to be the father of the child. It includes a person whose marriage to the mother was terminated more than three hundred days before the birth of the

child or who was separated from the mother more than three hundred days before the birth of the child.

(2) "Child" means a person under eighteen years of age.

(3) "Adoptee" means a person who is to be adopted or who has been adopted.

(4) "Adoptive parent" means the person or persons who seek to adopt or have adopted an adoptee.

(5) "Court" means the superior court.

(6) "Department" means the department of social and health services.

(7) "Agency" means any public or private association, corporation, or individual licensed or certified by the department as a child placing agency under chapter 74.15 RCW or as an adoption agency.

(8) "Parent" means the natural or adoptive mother or father of a child, including a presumed father under chapter 26.26 RCW. It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.

(9) "Legal guardian" means the department, an agency, or a person, other than a parent or stepparent, appointed by the court to promote the child's general welfare, with the authority and duty to make decisions affecting the child's development.

(10) "Guardian ad litem" means a person, not related to a party to the action, appointed by the court to represent the best interests of a party who is under a legal disability.

(11) "Relinquish or relinquishment" means the voluntary surrender of custody of a child to the department, an agency, or prospective adoptive parents.

(12) "Individual approved by the court" or "qualified salaried court employee" means a person who has a master's degree in social work or a related field and one year of experience in social work, or a bachelor's degree and two years of experience in social work, and includes a person not having such qualifications only if the court makes specific findings of fact that are entered of record establishing that the person has reasonably equivalent experience.

(13) "Birth parent" means the biological mother or biological or alleged father of a child, including a presumed father under chapter 26.26 RCW, whether or not any such person's parent-child relationship has been terminated by a court of competent jurisdiction. "Birth parent" does not include a biological mother or biological or alleged father, including a presumed father under chapter 26.26 RCW, if the parent-child relationship was terminated because of an act for which the person was found guilty under chapter 9A.42 or 9A.44 RCW.

(14) "Nonidentifying information" includes, but is not limited to, the following information about the birth parents, adoptive parents, and adoptee:

(a) Age in years at the time of adoption;

(b) Heritage, including nationality, ethnic background, and race;

(c) Education, including number of years of school completed at the time of adoption, but not name or location of school;

(d) General physical appearance, including height, weight, color of hair, eyes, and skin, or other information of a similar nature;

(e) Religion;

(f) Occupation, but not specific titles or places of employment;

(g) Talents, hobbies, and special interests;

(h) Circumstances leading to the adoption;

(i) Medical and genetic history of birth parents;

(j) First names;

(k) Other children of birth parents by age, sex, and medical history;

(l) Extended family of birth parents by age, sex, and medical history;

(m) The fact of the death, and age and cause, if known;

(n) Photographs;

(o) Name of agency or individual that facilitated the adoption. [1993 c 81 § 1; 1990 c 146 § 1; 1984 c 155 § 2.]

26.33.030 Petitions—Place of filing—Consolidation of petitions and hearings. (1) A petition under this chapter may be filed in the superior court of the county in which the petitioner is a resident or of the county in which the adoptee is domiciled.

(2) A petition under this chapter may be consolidated with any other petition under this chapter. A hearing under this chapter may be consolidated with any other hearing under this chapter. [1984 c 155 § 3.]

26.33.040 Petitions—Statements and findings about Indian Child Welfare Act and Soldiers and Sailors Civil Relief Act required. (1) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq., applies to the proceeding. Every order or decree entered in any proceeding under this chapter shall contain a finding that the Indian Child Welfare Act does or does not apply. In proceedings under this chapter, the adoption facilitator shall file a sworn statement documenting efforts to determine whether the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq., applies.

(2) Every petition filed in proceedings under this chapter shall contain a statement alleging whether the Soldiers and Sailors Civil Relief Act of 1940, 50 U.S.C. Sec. 501 et seq., applies to the proceeding. Every order or decree entered in any proceeding under this chapter shall contain a finding that the Soldiers and Sailors Civil Relief Act of 1940 does or does not apply. [1991 c 136 § 1; 1984 c 155 § 4.]

26.33.045 Delay or denial of adoption on basis of race, color, or national origin prohibited—Consideration in placement—Exception. An adoption shall not be delayed or denied on the basis of the race, color, or national origin of the adoptive parent or the child involved. However, when the department or an agency considers whether a placement option is in a child's best interests, the department or agency may consider the cultural, ethnic, or racial background of the child and the capacity of prospective adoptive parents to meet the needs of a child of this background. This provision shall not apply to or affect the application of the Indian Child Welfare Act of 1978, 25 U.S.C. Sec. 1901 et seq. [1995 c 270 § 8.]

Finding—1995 c 270: See note following RCW 74.13.118.

26.33.050 Validity of consents, relinquishments, or orders of termination from other jurisdictions—Burden of proof. Any consent, relinquishment, or order of termination that would be valid in the jurisdiction in which it was executed or obtained, and which comports with due process of law, is valid in Washington state, but the burden of proof as to validity and compliance is on the petitioner. [1984 c 155 § 5.]

26.33.060 Hearings—Procedure—Witnesses. All hearings under this chapter shall be heard by the court without a jury. Unless the parties and the court agree otherwise, proceedings of contested hearings shall be recorded. The general public shall be excluded and only those persons shall be admitted whose presence is requested by any person entitled to notice under this chapter or whom the judge finds to have a direct interest in the case or in the work of the court. Persons so admitted shall not disclose any information obtained at the hearing which would identify the individual adoptee or parent involved. The court may require the presence of witnesses deemed necessary to the disposition of the petition, including persons making any report, study, or examination which is before the court if those persons are reasonably available. A person who has executed a valid waiver need not appear at the hearing. If the court finds that it is in the child's best interest, the child may be excluded from the hearing. [1984 c 155 § 6.]

26.33.070 Appointment of guardian ad litem—When required—Payment of fees. (1) The court shall appoint a guardian ad litem for any parent or alleged father under eighteen years of age in any proceeding under this chapter. The court may appoint a guardian ad litem for a child adoptee or any incompetent party in any proceeding under this chapter. The guardian ad litem for a parent or alleged father, in addition to determining what is in the best interest of the party, shall make an investigation and report to the court concerning whether any written consent to adoption or petition for relinquishment signed by the parent or alleged father was signed voluntarily and with an understanding of the consequences of the action.

(2) The county in which a petition is filed shall pay the fees of a guardian ad litem or attorney appointed under this chapter. [1984 c 155 § 7.]

26.33.080 Petition for relinquishment—Filing—Written consent required. (1) A parent, an alleged father, the department, or an agency may file with the court a petition to relinquish a child to the department or an agency. The parent's or alleged father's written consent to adoption shall accompany the petition. The written consent of the department or the agency to assume custody shall be filed with the petition.

(2) A parent, alleged father, or prospective adoptive parent may file with the court a petition to relinquish a child to the prospective adoptive parent. The parent's or alleged father's written consent to adoption shall accompany the petition. The written consent of the prospective adoptive parent to assume custody shall be filed with the petition. The identity of the prospective adoptive parent need not be disclosed to the petitioner.

(3) A petition for relinquishment, together with the written consent to adoption, may be filed before the child's birth. If the child is an Indian child as defined in 25 U.S.C. Sec. 1903(4), the petition and consent shall not be signed until at least ten days after the child's birth and shall be recorded before a court of competent jurisdiction pursuant to 25 U.S.C. Sec. 1913(a). [1987 c 170 § 3; 1985 c 421 § 1; 1984 c 155 § 8.]

Severability—1987 c 170: See note following RCW 13.04.030.

26.33.090 Petition for relinquishment—Hearing—Temporary custody order—Notice—Order of relinquishment. (1) The court shall set a time and place for a hearing on the petition for relinquishment. The hearing may not be held sooner than forty-eight hours after the child's birth or the signing of all necessary consents to adoption, whichever is later. However, if the child is an Indian child, the hearing shall not be held sooner than ten days after the child's birth, and no consent shall be valid unless signed at least ten days after the child's birth and recorded before a court of competent jurisdiction pursuant to 25 U.S.C. Sec. 1913(a). Except where the child is an Indian child, the court may enter a temporary order giving custody of the child to the prospective adoptive parent, if a preplacement report has been filed, or to the department or agency to whom the child will be relinquished pending the court's hearing on the petition. If the child is an Indian child, the court may enter a temporary custody order under this subsection only if the requirements of 25 U.S.C. Sec. 1913(a) regarding voluntary foster care placement have been satisfied.

(2) Notice of the hearing shall be served on any relinquishing parent or alleged father, and the department or agency in the manner prescribed by RCW 26.33.310. If the child is an Indian child, notice of the hearing shall also be served on the child's tribe in the manner prescribed by RCW 26.33.310.

(3) The court may require the parent to appear personally and enter his or her consent to adoption on the record. However, if the child is an Indian child, the court shall require the consenting parent to appear personally before a court of competent jurisdiction to enter on the record his or her consent to the relinquishment or adoption. The court shall determine that any written consent has been validly executed, and if the child is an Indian child, such court shall further certify that the requirements of 25 U.S.C. Sec. 1913(a) have been satisfied. If the court determines it is in the best interests of the child, the court shall approve the petition for relinquishment.

(4) If the court approves the petition, it shall award custody of the child to the department, agency, or prospective adoptive parent, who shall be appointed legal guardian. The legal guardian shall be financially responsible for support of the child until further order of the court. The court shall also enter an order pursuant to RCW 26.33.130 terminating the parent-child relationship of the parent and the child.

(5) An order of relinquishment to an agency or the department shall include an order authorizing the agency to place the child with a prospective adoptive parent. [1987 c 170 § 4; 1985 c 421 § 2; 1984 c 155 § 9.]

Severability—1987 c 170: See note following RCW 13.04.030.

26.33.100 Petition for termination—Who may file—Contents—Time. (1) A petition for termination of the parent-child relationship of a parent or alleged father who has not executed a written consent to adoption may be filed by:

- (a) The department or an agency;
- (b) The prospective adoptive parent to whom a child has been or may be relinquished if the prospective adoptive parent has filed or consented to a petition for relinquishment; or
- (c) The prospective adoptive parent if he or she seeks to adopt the child of his or her spouse.

(2) The petition for termination of the parent-child relationship shall contain a statement of facts identifying the petitioner, the parents, the legal guardian, a guardian ad litem for a party, any alleged father, and the child. The petition shall state the facts forming the basis for the petition and shall be signed under penalty of perjury or be verified.

(3) The petition may be filed before the child's birth. [1985 c 421 § 3; 1984 c 155 § 10.]

26.33.110 Petition for termination—Time and place of hearing—Notice of hearing and petition—Contents.

(1) The court shall set a time and place for a hearing on the petition for termination of the parent-child relationship, which shall not be held sooner than forty-eight hours after the child's birth. However, if the child is an Indian child, the hearing shall not be held sooner than ten days after the child's birth and the time of the hearing shall be extended up to twenty additional days from the date of the scheduled hearing upon the motion of the parent, Indian custodian, or the child's tribe.

(2) Notice of the hearing shall be served on the petitioner, the nonconsenting parent or alleged father, the legal guardian of a party, and the guardian ad litem of a party, in the manner prescribed by RCW 26.33.310. If the child is an Indian child, notice of the hearing shall also be served on the child's tribe in the manner prescribed by 25 U.S.C. Sec. 1912(a).

(3) Except as otherwise provided in this section, the notice of the petition shall:

(a) State the date and place of birth. If the petition is filed prior to birth, the notice shall state the approximate date and location of conception of the child and the expected date of birth, and shall identify the mother;

(b) Inform the nonconsenting parent or alleged father that: (i) He or she has a right to be represented by counsel and that counsel will be appointed for an indigent person who requests counsel; and (ii) failure to respond to the termination action within twenty days of service if served within the state or thirty days if served outside of this state, will result in the termination of his or her parent-child relationship with respect to the child;

(c) Inform an alleged father that failure to file a claim of paternity under chapter 26.26 RCW or to respond to the petition, within twenty days of the date of service of the petition is grounds to terminate his parent-child relationship with respect to the child;

(d) Inform an alleged father of an Indian child that if he acknowledges paternity of the child or if his paternity of the child is established prior to the termination of the parent-

child relationship, that his parental rights may not be terminated unless he: (i) Gives valid consent to termination, or (ii) his parent-child relationship is terminated involuntarily pursuant to chapter 26.33 or 13.34 RCW. [1995 c 270 § 5; 1987 c 170 § 5; 1985 c 421 § 4; 1984 c 155 § 11.]

Finding—1995 c 270: See note following RCW 74.13.118.

Severability—1987 c 170: See note following RCW 13.04.030.

26.33.120 Termination—Grounds—Failure to appear. (1) Except in the case of an Indian child and his or her parent, the parent-child relationship of a parent may be terminated upon a showing by clear, cogent, and convincing evidence that it is in the best interest of the child to terminate the relationship and that the parent has failed to perform parental duties under circumstances showing a substantial lack of regard for his or her parental obligations and is withholding consent to adoption contrary to the best interest of the child.

(2) Except in the case of an Indian child and his or her alleged father, the parent-child relationship of an alleged father who appears and claims paternity may be terminated upon a showing by clear, cogent, and convincing evidence that it is in the best interest of the child to terminate the relationship and that:

(a) The alleged father has failed to perform parental duties under circumstances showing a substantial lack of regard for his parental obligations and is withholding consent to adoption contrary to the best interest of the child; or

(b) He is not the father.

(3) The parent-child relationship of a parent or an alleged father may be terminated if the parent or alleged father fails to appear after being notified of the hearing in the manner prescribed by RCW 26.33.310.

(4) The parent-child relationship of an Indian child and his or her parent or alleged father where paternity has been claimed or established, may be terminated only pursuant to the standards set forth in 25 U.S.C. Sec. 1912(f). [1987 c 170 § 6; 1984 c 155 § 12.]

Severability—1987 c 170: See note following RCW 13.04.030.

26.33.130 Termination order—Effect. (1) If the court determines, after a hearing, that the parent-child relationship should be terminated pursuant to RCW 26.33.090 or 26.33.120, the court shall enter an appropriate order terminating the parent-child relationship.

(2) An order terminating the parent-child relationship divests the parent and the child of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other except past-due child support obligations owed by the parent.

(3) The parent-child relationship may be terminated with respect to one parent without affecting the parent-child relationship between the child and the other parent.

(4) The parent or alleged father whose parent-child relationship with the child has been terminated is not thereafter entitled to notice of proceedings for the adoption of the child by another, nor has the parent or alleged father any right to contest the adoption or otherwise to participate in the proceedings unless an appeal from the termination order is pending or unless otherwise ordered by the court. [1984 c 155 § 13.]

26.33.140 Who may adopt or be adopted. (1) Any person may be adopted, regardless of his or her age or residence.

(2) Any person who is legally competent and who is eighteen years of age or older may be an adoptive parent. [1984 c 155 § 14.]

26.33.150 Petition for adoption—Filing—Contents—Preplacement report required. (1) An adoption proceeding is initiated by filing with the court a petition for adoption. The petition shall be filed by the prospective adoptive parent.

(2) A petition for adoption shall contain the following information:

- (a) The name and address of the petitioner;
- (b) The name, if any, gender, and place and date of birth, if known, of the adoptee;
- (c) A statement that the child is or is not an Indian child covered by the Indian Child Welfare Act; and
- (d) The name and address of the department or any agency, legal guardian, or person having custody of the child.

(3) The written consent to adoption of any person, the department, or agency which has been executed shall be filed with the petition.

(4) The petition shall be signed under penalty of perjury by the petitioner. If the petitioner is married, the petitioner's spouse shall join in the petition.

(5) If a preplacement report prepared pursuant to RCW 26.33.190 has not been previously filed with the court, the preplacement report shall be filed with the petition for adoption. [1984 c 155 § 15.]

26.33.160 Consent to adoption—When revocable—Procedure. (1) Except as otherwise provided in RCW 26.33.170, consent to an adoption shall be required of the following if applicable:

- (a) The adoptee, if fourteen years of age or older;
- (b) The parents and any alleged father of an adoptee under eighteen years of age;
- (c) An agency or the department to whom the adoptee has been relinquished pursuant to RCW 26.33.080; and
- (d) The legal guardian of the adoptee.

(2) Except as otherwise provided in subsection (4)(h) of this section, consent to adoption is revocable by the consenting party at any time before the consent is approved by the court. The revocation may be made in either of the following ways:

- (a) Written revocation may be delivered or mailed to the clerk of the court before approval; or
- (b) Written revocation may be delivered or mailed to the clerk of the court after approval, but only if it is delivered or mailed within forty-eight hours after a prior notice of revocation that was given within forty-eight hours after the birth of the child. The prior notice of revocation shall be given to the agency or person who sought the consent and may be either oral or written.

(3) Except as provided in subsections (2)(b) and (4)(h) of this section and in this subsection, a consent to adoption may not be revoked after it has been approved by the court. Within one year after approval, a consent may be revoked for fraud or duress practiced by the person, department, or

agency requesting the consent, or for lack of mental competency on the part of the person giving the consent at the time the consent was given. A written consent to adoption may not be revoked more than one year after it is approved by the court.

(4) Except as provided in (h) of this subsection, the written consent to adoption shall be signed under penalty of perjury and shall state that:

- (a) It is given subject to approval of the court;
- (b) It has no force or effect until approved by the court;
- (c) The birth parent is or is not of Native American or Alaska native ancestry;
- (d) The consent will not be presented to the court until forty-eight hours after it is signed or forty-eight hours after the birth of the child, whichever occurs later;
- (e) It is revocable by the consenting party at any time before its approval by the court. It may be revoked in either of the following ways:

(i) Written revocation may be delivered or mailed to the clerk of the court before approval of the consent by the court; or

(ii) Written revocation may be delivered or mailed to the clerk of the court after approval, but only if it is delivered or mailed within forty-eight hours after a prior notice of revocation that was given within forty-eight hours after the birth of the child. The prior notice of revocation shall be given to the agency or person who sought the consent and may be either oral or written;

(f) The address of the clerk of court where the consent will be presented is included;

(g) Except as provided in (h) of this subsection, after it has been approved by the court, the consent is not revocable except for fraud or duress practiced by the person, department, or agency requesting the consent or for lack of mental competency on the part of the person giving the consent at the time the consent was given. A written consent to adoption may not be revoked more than one year after it is approved by the court;

(h) In the case of a consent to an adoption of an Indian child, no consent shall be valid unless the consent is executed in writing more than ten days after the birth of the child and unless the consent is recorded before a court of competent jurisdiction pursuant to 25 U.S.C. Sec. 1913(a). Consent may be withdrawn for any reason at any time prior to the entry of the final decree of adoption. Consent may be withdrawn for fraud or duress within two years of the entry of the final decree of adoption. Revocation of the consent prior to a final decree of adoption, may be delivered or mailed to the clerk of the court or made orally to the court which shall certify such revocation. Revocation of the consent is effective if received by the clerk of the court prior to the entry of the final decree of adoption or made orally to the court at any time prior to the entry of the final decree of adoption. Upon withdrawal of consent, the court shall return the child to the parent unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130; and

(i) The following statement has been read before signing the consent:

I understand that my decision to relinquish the child is an extremely important one, that the legal effect of this relinquishment will be to take from me all legal rights and obligations with respect to the child, and that an order permanently terminating all of my parental rights to the child will be entered. I also understand that there are social services and counseling services available in the community, and that there may be financial assistance available through state and local governmental agencies.

(5) A written consent to adoption which meets all the requirements of this chapter but which does not name or otherwise identify the adopting parent is valid if it contains a statement that it is voluntarily executed without disclosure of the name or other identification of the adopting parent.

(6) There must be a witness to the consent of the parent or alleged father. The witness must be at least eighteen years of age and selected by the parent or alleged father. The consent document shall contain a statement identifying by name, address, and relationship the witness selected by the parent or alleged father. [1991 c 136 § 2; 1990 c 146 § 2; 1987 c 170 § 7; 1985 c 421 § 5; 1984 c 155 § 16.]

Severability—1987 c 170: See note following RCW 13.04.030.

26.33.170 When consent to adoption not required.

An agency's, the department's, or a legal guardian's consent to adoption may be dispensed with if the court determines by clear, cogent and convincing evidence that the proposed adoption is in the best interests of the adoptee. [1988 c 203 § 1; 1984 c 155 § 17.]

26.33.180 Preplacement report required before placement with adoptive parents—Exception. Except as provided in RCW 26.33.220, a child shall not be placed with prospective adoptive parents until a preplacement report has been filed with the court. [1984 c 155 § 18.]

26.33.190 Preplacement report—Requirements—Fees. (1) Any person may at any time request an agency, the department, an individual approved by the court, or a qualified salaried court employee to prepare a preplacement report. A certificate signed under penalty of perjury by the person preparing the report specifying his or her qualifications as required in this chapter shall be attached to or filed with each preplacement report and shall include a statement of training or experience that qualifies the person preparing the report to discuss relevant adoption issues. A person may have more than one preplacement report prepared. All preplacement reports shall be filed with the court in which the petition for adoption is filed.

(2) The preplacement report shall be a written document setting forth all relevant information relating to the fitness of the person requesting the report as an adoptive parent. The report shall be based on a study which shall include an investigation of the home environment, family life, health, facilities, and resources of the person requesting the report. The report shall include a list of the sources of information on which the report is based. The report shall include a recommendation as to the fitness of the person requesting the

report to be an adoptive parent. The report shall also verify that the following issues were discussed with the prospective adoptive parents:

(a) The concept of adoption as a lifelong developmental process and commitment;

(b) The potential for the child to have feelings of identity confusion and loss regarding separation from the birth parents;

(c) Disclosure of the fact of adoption to the child;

(d) The child's possible questions about birth parents and relatives; and

(e) The relevance of the child's racial, ethnic, and cultural heritage.

(3) All preplacement reports shall include an investigation of the conviction record, pending charges, or disciplinary board final decisions of prospective adoptive parents. The investigation shall include an examination of state and national criminal identification data provided by the Washington state patrol criminal identification system as described in chapter 43.43 RCW.

(4) An agency, the department, or a court approved individual may charge a reasonable fee based on the time spent in conducting the study and preparing the preplacement report. The court may set a reasonable fee for conducting the study and preparing the report when a court employee has prepared the report. An agency, the department, a court approved individual, or the court may reduce or waive the fee if the financial condition of the person requesting the report so warrants. An agency's, the department's, or court approved individual's, fee is subject to review by the court upon request of the person requesting the report.

(5) The person requesting the report shall designate to the agency, the department, the court approved individual, or the court in writing the county in which the preplacement report is to be filed. If the person requesting the report has not filed a petition for adoption, the report shall be indexed in the name of the person requesting the report and a cause number shall be assigned. A fee shall not be charged for filing the report. The applicable filing fee may be charged at the time a petition governed by this chapter is filed. Any subsequent preplacement reports shall be filed together with the original report.

(6) A copy of the completed preplacement report shall be delivered to the person requesting the report.

(7) A person may request that a report not be completed. A reasonable fee may be charged for the value of work done. [1991 c 136 § 3; 1990 c 146 § 3; 1984 c 155 § 19.]

26.33.200 Post-placement report—Requirements—Exception—Fees. (1) Except as provided in RCW 26.33.220, at the time the petition for adoption is filed, the court shall order a post-placement report made to determine the nature and adequacy of the placement and to determine if the placement is in the best interest of the child. The report shall be prepared by an agency, the department, an individual approved by the court, or a qualified salaried court employee appointed by the court. A certificate signed under penalty of perjury by the person preparing the report specifying his or her qualifications as required in this chapter shall be attached to or filed with each post-placement report. The report shall be in writing and contain all reasonably

available information concerning the physical and mental condition of the child, home environment, family life, health, facilities and resources of the petitioners, and any other facts and circumstances relating to the propriety and advisability of the adoption. The report shall also include, if relevant, information on the child's special cultural heritage, including membership in any Indian tribe or band. The report shall be filed within sixty days of the date of appointment, unless the time is extended by the court. The preplacement report shall be made available to the person appointed to make the post-placement report.

(2) A fee may be charged for preparation of the post-placement report in the same manner as for a preplacement report under RCW 26.33.190. [1990 c 146 § 4; 1984 c 155 § 20.]

26.33.210 Preplacement or post-placement report—Department or agency may make report. The department or an agency having the custody of a child may make the preplacement or post-placement report on a petitioner for the adoption of that child. [1984 c 155 § 21.]

26.33.220 Preplacement and post-placement reports—When not required. Unless otherwise ordered by the court, the reports required by RCW 26.33.190 are not required if the petitioner seeks to adopt the child of the petitioner's spouse. The reports required by RCW 26.33.190 and 26.33.200 are not required if the adoptee is eighteen years of age or older. [1984 c 155 § 22.]

26.33.230 Notice of proceedings at which preplacement reports considered—Contents—Proof of service—Appearance—Waiver. The petitioner shall give not less than three days written notice of any proceeding at which a preplacement report will be considered to all agencies, any court approved individual, or any court employee requested by the petitioner to make a preplacement report. The notice shall state the name of the petitioner, the cause number of the proceeding, the time and place of the hearing, and the object of the hearing. Proof of service on the agency or court approved individual in form satisfactory to the court shall be furnished. The agency or court approved individual may appear at the hearing and give testimony concerning any matters relevant to the relinquishment or the adoption and its recommendation as to the fitness of petitioners as parents. The agency or court approved individual may in writing acknowledge notice and state to the court that the agency or court approved individual does not desire to participate in the hearing or the agency or court approved individual may in writing waive notice of any hearing. [1984 c 155 § 24.]

26.33.240 Petition for adoption—Hearing—Notice—Disposition. (1) After the reports required by RCW 26.33.190 and 26.33.200 have been filed, the court shall schedule a hearing on the petition for adoption upon request of the petitioner for adoption. Notice of the date, time, and place of hearing shall be given to the petitioner and any person or agency whose consent to adoption is required under RCW 26.33.160, unless the person or agency has waived in writing the right to receive notice of the hearing.

If the child is an Indian child, notice shall also be given to the child's tribe. Notice shall be given in the manner prescribed by RCW 26.33.310.

(2) Notice of the adoption hearing shall also be given to any person who or agency which has prepared a preplacement report. The notice shall be given in the manner prescribed by RCW 26.33.230.

(3) If the court determines, after review of the petition, preplacement and post-placement reports, and other evidence introduced at the hearing, that all necessary consents to adoption are valid or have been dispensed with pursuant to RCW 26.33.170 and that the adoption is in the best interest of the adoptee, and, in the case of an adoption of an Indian child, that the adoptive parents are within the placement preferences of 25 U.S.C. Sec. 1915 or good cause to the contrary has been shown on the record, the court shall enter a decree of adoption pursuant to RCW 26.33.250.

(4) If the court determines the petition should not be granted because the adoption is not in the best interest of the child, the court shall make appropriate provision for the care and custody of the child. [1987 c 170 § 8; 1984 c 155 § 23.]

Severability—1987 c 170: See note following RCW 13.04.030.

26.33.250 Decree of adoption—Determination of place and date of birth. (1) A decree of adoption shall provide, as a minimum, the following information:

- (a) The full original name of the person to be adopted;
- (b) The full name of each petitioner for adoption;
- (c) Whether the petitioner or petitioners are husband and wife, stepparent, or a single parent;
- (d) The full new name of the person adopted, unless the name of the adoptee is not to be changed;
- (e) Information to be incorporated in any new certificate of birth to be issued by the state or territorial registrar of vital records; and
- (f) The adoptee's date of birth and place of birth as determined under subsection (3) of this section.

(2) Except for the names of the person adopted and the petitioner, information set forth in the decree that differs from that shown on the original birth certificate, alternative birth record, or other information used in lieu of such a record shall be included in the decree only upon a clear showing that the information in the original record is erroneous.

(3) In determining the date and place of birth of a person born outside the United States, the court shall:

(a) If available, enter in the decree the exact date and place of birth as stated in the birth certificate from the country of origin or in the United States department of state's report of birth abroad or in the documents of the United States immigration and naturalization service;

(b) If the exact place of birth is unknown, enter in the decree such information as may be known and designate a place of birth in the country of origin;

(c) If the exact date of birth is unknown, determine a date of birth based upon medical testimony as to the probable chronological age of the adoptee and other evidence regarding the adoptee's age that the court finds appropriate to consider;

(d) In any other case where documents of the United States immigration and naturalization service are not available, the court shall determine the date and place of birth based upon such evidence as the court in its discretion determines appropriate. [1984 c 155 § 25.]

26.33.260 Decree of adoption—Effect—Accelerated appeal—Limited grounds to challenge—Intent. (1) The entry of a decree of adoption divests any parent or alleged father who is not married to the adoptive parent or who has not joined in the petition for adoption of all legal rights and obligations in respect to the adoptee, except past-due child support obligations. The adoptee shall be free from all legal obligations of obedience and maintenance in respect to the parent. The adoptee shall be, to all intents and purposes, and for all legal incidents, the child, legal heir, and lawful issue of the adoptive parent, entitled to all rights and privileges, including the right of inheritance and the right to take under testamentary disposition, and subject to all the obligations of a natural child of the adoptive parent.

(2) Any appeal of an adoption decree shall be decided on an accelerated review basis.

(3) Except as otherwise provided in RCW 26.33.160 (3) and (4)(h), no person may challenge an adoption decree on the grounds of:

(a) A person claiming or alleging paternity subsequently appears and alleges lack of prior notice of the proceeding; or

(b) The adoption proceedings were in any other manner defective.

(4) It is the intent of the legislature that this section provide finality for adoptive placements and stable homes for children. [1995 c 270 § 7; 1984 c 155 § 26.]

Finding—1995 c 270: See note following RCW 74.13.118.

Inheritance by adopted child: RCW 11.04.085.

26.33.270 Decree of adoption—Protection of certain rights and benefits. An order or decree entered under this chapter shall not disentitle a child to any benefit due the child from any third person, agency, state, or the United States. Action under this chapter shall not affect any rights and benefits that a native American child derives from the child's descent from a member of an Indian tribe or band. [1984 c 155 § 27.]

26.33.280 Decree of adoption—Transmittal to state registrar of vital statistics. After a decree of adoption is entered, as soon as the time for appeal has expired, or if an appeal is taken, and the adoption is affirmed on appeal, the clerk of the court shall transmit to the state registrar of vital statistics a certified copy of the decree, along with any additional information and fees required by the registrar. [1984 c 155 § 28.]

26.33.290 Decree of adoption—Duties of state registrar of vital statistics. Upon receipt of a decree of adoption, the state registrar of vital statistics shall:

(1) Return the decree to the court clerk if all information required by RCW 26.33.250 is not included in the decree;

(2) If the adoptee was born in a state other than Washington, or in a territory of the United States, forward the

certificate of adoption to the appropriate health record recording agency of the state or territory of the United States in which the birth occurred;

(3) If the adoptee was born outside of the United States or its territories, issue a new certificate of birth by the office of the state registrar of vital statistics which reflects the information contained in the decree. [1984 c 155 § 29.]

Vital statistics: Chapter 70.58 RCW.

26.33.295 Open adoption agreements—Agreed orders—Enforcement. (1) Nothing in this chapter shall be construed to prohibit the parties to a proceeding under this chapter from entering into agreements regarding communication with or contact between child adoptees, adoptive parents, and a birth parent or parents.

(2) Agreements regarding communication with or contact between child adoptees, adoptive parents, and a birth parent or parents shall not be legally enforceable unless the terms of the agreement are set forth in a written court order entered in accordance with the provisions of this section. The court shall not enter a proposed order unless the terms of such order have been approved in writing by the prospective adoptive parents, any birth parent whose parental rights have not previously been terminated, and, if the child is in the custody of the department or a licensed child-placing agency, a representative of the department or child-placing agency. If the child is represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child-custody proceeding, the terms of the proposed order also must be approved in writing by the child's representative. An agreement under this section need not disclose the identity of the parties to be legally enforceable. The court shall not enter a proposed order unless the court finds that the communication or contact between the child adoptee, the adoptive parents, and a birth parent or parents as agreed upon and as set forth in the proposed order, would be in the child adoptee's best interests.

(3) Failure to comply with the terms of an agreed order regarding communication or contact that has been entered by the court pursuant to this section shall not be grounds for setting aside an adoption decree or revocation of a written consent to an adoption after that consent has been approved by the court as provided in this chapter.

(4) An agreed order entered pursuant to this section may be enforced by a civil action and the prevailing party in that action may be awarded, as part of the costs of the action, a reasonable amount to be fixed by the court as attorneys' fees. The court shall not modify an agreed order under this section unless it finds that the modification is necessary to serve the best interests of the child adoptee, and that: (a) The modification is agreed to by the adoptive parent and the birth parent or parents; or (b) exceptional circumstances have arisen since the agreed order was entered that justify modification of the order. [1990 c 285 § 4.]

Findings—Purpose—Severability—1990 c 285: See notes following RCW 74.04.005.

26.33.300 Adoption statistical data. The department of health shall be a depository for statistical data concerning adoption. It shall furnish to the clerk of each county a data card which shall be completed and filed with the clerk on

behalf of each petitioner. The clerk shall forward the completed cards to the department of health which shall compile the data and publish reports summarizing the data. A birth certificate shall not be issued showing the petitioner as the parent of any child adopted in the state of Washington until a data card has been completed and filed. [1991 c 3 § 288; 1990 c 146 § 5; 1984 c 155 § 30.]

26.33.310 Notice—Requirements—Waiver. (1) Petitions governed by this chapter shall be served in the manner as set forth in the superior court civil rules. Subsequent notice, papers, and pleadings may be served in the manner provided in superior court civil rules.

(2) If personal service on any parent or alleged father who has not consented to the termination of his or her parental rights can be given, the summons and notice of hearing on the petition to terminate parental rights shall be served at least twenty days before the hearing date if served within the state or thirty days if served outside of this state.

(3) If personal service on the parent or any alleged father, either within or without this state, cannot be given, notice shall be given: (a) By first class and registered mail, mailed at least thirty days before the hearing to the person's last known address; and (b) by publication at least once a week for three consecutive weeks with the first publication date at least thirty days before the hearing. Publication shall be in a legal newspaper in the city or town of the last known address within the United States and its territories of the parent or alleged father, whether within or without this state, or, if no address is known to the petitioner, publication shall be in the city or town of the last known whereabouts within the United States and its territories; or if no address or whereabouts are known to the petitioner or the last known address is not within the United States and its territories, in the city or town where the proceeding has been commenced.

(4) Notice and appearance may be waived by the department, an agency, a parent, or an alleged father before the court or in a writing signed under penalty of perjury. The waiver shall contain the current address of the department, agency, parent, or alleged father. The face of the waiver for a hearing on termination of the parent-child relationship shall contain language explaining the meaning and consequences of the waiver and the meaning and consequences of termination of the parent-child relationship. A person or agency who has executed a waiver shall not be required to appear except in the case of an Indian child where consent to termination or adoption must be certified before a court of competent jurisdiction pursuant to 25 U.S.C. Sec. 1913(a).

(5) If a person entitled to notice is known to the petitioner to be unable to read or understand English, all notices, if practicable, shall be given in that person's native language or through an interpreter.

(6) Where notice to an Indian tribe is to be provided pursuant to this chapter and the department is not a party to the proceeding, notice shall be given to the tribe at least ten business days prior to the hearing by registered mail return receipt requested. [1995 c 270 § 6; 1987 c 170 § 9; 1985 c 421 § 6; 1984 c 155 § 31.]

Finding—1995 c 270: See note following RCW 74.13.118.

Severability—1987 c 170: See note following RCW 13.04.030.

26.33.320 Adoption of hard to place children—Court's consideration of state's agreement with prospective adoptive parents. (1) In deciding whether to grant a petition for adoption of a hard to place child and in reviewing any request for the vacation or modification of a decree of adoption, the superior court shall consider any agreement made or proposed to be made between the department and any prospective adoptive parent for any payment or payments which have been provided or which are to be provided by the department in support of the adoption of such child. Before the date of the hearing on the petition to adopt, vacate, or modify an adoption decree, the department shall file as part of the adoption file with respect to the child a copy of any initial agreement, together with any changes made in the agreement, or in the related standards.

(2) If the court, in its judgment, finds the provision made in an agreement to be inadequate, it may make any recommendation as it deems warranted with respect to the agreement to the department. The court shall not, however, solely by virtue of this section, be empowered to direct the department to make payment. This section shall not be deemed to limit any other power of the superior court with respect to the adoption and any related matter. [1984 c 155 § 32.]

26.33.330 Records sealed—Inspection—Fee. (1) All records of any proceeding under this chapter shall be sealed and shall not be thereafter open to inspection by any person except upon order of the court for good cause shown, or except by using the procedure described in RCW 26.33.343. In determining whether good cause exists, the court shall consider any certified statement on file with the department of health as provided in RCW 26.33.347.

(2) The state registrar of vital statistics may charge a reasonable fee for the review of any of its sealed records. [1996 c 243 § 3; 1990 c 145 § 3; 1984 c 155 § 33.]

Finding—1996 c 243: See note following RCW 26.33.347.

26.33.340 Department, agency, and court files confidential—Limited disclosure of information. Department, agency, and court files regarding an adoption shall be confidential except that reasonably available nonidentifying information may be disclosed upon the written request for the information from the adoptive parent, the adoptee, or the birth parent. If the adoption facilitator refuses to disclose nonidentifying information, the individual may petition the superior court. Identifying information may also be disclosed through the procedure described in RCW 26.33.343. [1993 c 81 § 2; 1990 c 145 § 4; 1984 c 155 § 34.]

26.33.343 Search for birth parent or adopted child—Confidential intermediary. (1) An adopted person over the age of twenty-one years, or under twenty-one with the permission of the adoptive parent, or a birth parent or member of the birth parent's family after the adoptee has reached the age of twenty-one may petition the court to appoint a confidential intermediary. A petition under this section shall state whether a certified statement is on file with the department of health as provided for in RCW 26.33.347 and shall also state the intent of the adoptee as set forth in any such statement. The intermediary shall search

for and discreetly contact the birth parent or adopted person, or if they are not alive or cannot be located within one year, the intermediary may attempt to locate members of the birth parent or adopted person's family. These family members shall be limited to the natural grandparents of the adult adoptee, a brother or sister of a natural parent, or the child of a natural parent. The court, for good cause shown, may allow a relative more distant in degree to petition for disclosure.

(2)(a) Confidential intermediaries appointed under this section shall complete training provided by a licensed adoption service or another court-approved entity and file an oath of confidentiality and a certificate of completion of training with the superior court of every county in which they serve as intermediaries. The court may dismiss an intermediary if the intermediary engages in conduct which violates professional or ethical standards.

(b) The confidential intermediary shall sign a statement of confidentiality substantially as follows:

I,, signing under penalty of contempt of court, state: "As a condition of appointment as a confidential intermediary, I affirm that, when adoption records are opened to me:

I will not disclose to the petitioner, directly or indirectly, any identifying information in the records without further order from the court.

I will conduct a diligent search for the person being sought and make a discreet and confidential inquiry as to whether that person will consent to being put in contact with the petitioner, and I will report back to the court the results of my search and inquiry.

If the person sought consents to be put in contact with the petitioner, I will attempt to obtain a dated, written consent from the person, and attach the original of the consent to my report to the court. If the person sought does not consent to the disclosure of his or her identity, I shall report the refusal of consent to the court.

I will not make any charge or accept any compensation for my services except as approved by the court, or as reimbursement from the petitioner for actual expenses incurred in conducting the search. These expenses will be listed in my report to the court.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law, and subjects me to being found in contempt of court."

/s/ date

(c) The confidential intermediary shall be entitled to reimbursement from the petitioner for actual expenses in conducting the search. The court may authorize a reasonable fee in addition to these expenses.

(3) If the confidential intermediary is unable to locate the person being sought within one year, the confidential intermediary shall make a recommendation to the court as to whether or not a further search is warranted, and the reasons for this recommendation.

(4) In the case of a petition filed on behalf of a natural parent or other blood relative of the adoptee, written consent of any living adoptive parent shall be obtained prior to contact with the adoptee if the adoptee:

(a) Is less than twenty-five years of age and is residing with the adoptive parent; or

(b) Is less than twenty-five years of age and is a dependent of the adoptive parent.

(5) If the confidential intermediary locates the person being sought, a discreet and confidential inquiry shall be made as to whether or not that person will consent to having his or her present identity disclosed to the petitioner. The identity of the petitioner shall not be disclosed to the party being sought. If the party being sought consents to the disclosure of his or her identity, the confidential intermediary shall obtain the consent in writing and shall include the original of the consent in the report filed with the court. If the party being sought refuses disclosure of his or her identity, the confidential intermediary shall report the refusal to the court and shall refrain from further and subsequent inquiry without judicial approval.

(6)(a) If the confidential intermediary obtains from the person being sought written consent for disclosure of his or her identity to the petitioner, the court may then order that the name and other identifying information of that person be released to the petitioner.

(b) If the person being sought is deceased, the court may order disclosure of the identity of the deceased to the petitioner.

(c) If the confidential intermediary is unable to contact the person being sought within one year, the court may order that the search be continued for a specified time or be terminated. [1996 c 243 § 4; 1990 c 145 § 1.]

Finding—1996 c 243: See note following RCW 26.33.347.

26.33.345 Search for birth parent or adopted child—Limited release of information—Noncertified copies of original birth certificate. (1) The department of social and health services, adoption agencies, and independent adoption facilitators shall release the name and location of the court where a relinquishment of parental rights or finalization of an adoption took place to an adult adoptee, a birth parent of an adult adoptee, an adoptive parent, a birth or adoptive grandparent of an adult adoptee, or an adult sibling of an adult adoptee, or the legal guardian of any of these.

(2) The department of health shall make available a noncertified copy of the original birth certificate of a child to the child's birth parents upon request.

(3) For adoptions finalized after October 1, 1993, the department of health shall make available a noncertified copy of the original birth certificate to the adoptee after the adoptee's eighteenth birthday unless the birth parent has filed an affidavit of nondisclosure. [1993 c 81 § 3; 1990 c 145 § 2.]

26.33.347 Consent or refusal to release adoptee's identifying information—Desire to be contacted—Certified statement. (1) An adopted person over the age of eighteen may file with the department of health a certified statement declaring any one or more of the following:

(a) The adoptee refuses to consent to the release of any identifying information to a biological parent, biological sibling, or other biological relative and does not wish to be contacted by a confidential intermediary except in the case of a medical emergency as determined by a court of competent jurisdiction;

(b) The adoptee consents to the release of any identifying information to a confidential intermediary appointed under RCW 26.33.343, a biological parent, biological sibling, or other biological relative;

(c) The adoptee desires to be contacted by his or her biological parents, biological siblings, other biological relatives, or a confidential intermediary appointed under RCW 26.33.343;

(d) The current name, address, and telephone number of the adoptee who desires to be contacted.

(2) The certified statement shall be filed with the department of health and placed with the adoptee's original birth certificate if the adoptee was born in this state, or in a separate registry file for reference purposes if the adoptee was born in another state or outside of the United States. When the statement includes a request for confidentiality or a refusal to consent to the disclosure of identifying information, a prominent notice stating substantially the following shall also be placed at the front of the file: "AT THE REQUEST OF THE ADOPTEE, ALL RECORDS AND IDENTIFYING INFORMATION RELATING TO THIS ADOPTION SHALL REMAIN CONFIDENTIAL AND SHALL NOT BE DISCLOSED OR RELEASED WITHOUT A COURT ORDER SO DIRECTING."

(3) An adopted person who files a certified statement under subsection (1) of this section may subsequently file another certified statement requesting to rescind or amend the prior certified statement. [1996 c 243 § 2.]

Finding—1996 c 243: "The legislature finds that it is in the best interest of the people of the state of Washington to support the adoption process in a variety of ways, including protecting the privacy interests of adult adoptees when the confidential intermediary process is used." [1996 c 243 § 1.]

26.33.350 Medical reports—Requirements. (1) Every person, firm, society, association, corporation, or state agency receiving, securing a home for, or otherwise caring for a minor child shall transmit to the prospective adopting parent prior to placement and shall make available to all persons with whom a child has been placed by adoption a complete medical report containing all known and available information concerning the mental, physical, and sensory handicaps of the child.

(2) The report shall not reveal the identity of the birth parent of the child except as authorized under this chapter but shall include any known or available mental or physical health history of the birth parent that needs to be known by the adoptive parent to facilitate proper health care for the child or that will assist the adoptive parent in maximizing the developmental potential of the child.

(3) Where known or available, the information provided shall include:

(a) A review of the birth family's and the child's previous medical history, including the child's x-rays, examinations, hospitalizations, and immunizations. After July 1, 1992, medical histories shall be given on a standardized reporting form developed by the department;

(b) A physical exam of the child by a licensed physician with appropriate laboratory tests and x-rays;

(c) A referral to a specialist if indicated; and

(d) A written copy of the evaluation with recommendations to the adoptive family receiving the report.

(4) Entities and persons obligated to provide information under this section shall make reasonable efforts to locate records and information concerning the child's mental, physical, and sensory handicaps. The entities or persons providing the information have no duty, beyond providing the information, to explain or interpret the records or information regarding the child's present or future health. [1994 c 170 § 1; 1991 c 136 § 4; 1990 c 146 § 6; 1989 c 281 § 1; 1984 c 155 § 37.]

26.33.360 Petition by natural parent to set aside adoption—Costs—Time limit. (1) If a natural parent unsuccessfully petitions to have an adoption set aside, the court shall award costs, including reasonable attorneys' fees, to the adoptive parent.

(2) If a natural parent successfully petitions to have an adoption set aside, the natural parent shall be liable to the adoptive parent for both the actual expenditures and the value of services rendered by the adoptive parents in caring for the child.

(3) A natural parent who has executed a written consent to adoption shall not bring an action to set aside an adoption more than one year after the date the court approved the written consent. [1984 c 155 § 35.]

26.33.370 Permanent care and custody of a child—Assumption, relinquishment, or transfer except by court order or statute, when prohibited—Penalty. (1) Unless otherwise permitted by court order or statute, it is unlawful for any person, partnership, society, association, or corporation, except the parents, to assume the permanent care and custody of a child. Unless otherwise permitted by court order or statute, it is unlawful for any parent to relinquish or transfer to another person, partnership, society, association, or corporation the permanent care and custody of any child for adoption or any other purpose.

(2) Any relinquishment or transfer in violation of this section shall be void.

(3) Violation of this section is a gross misdemeanor. [1984 c 155 § 36.]

26.33.380 Family and social history report required—Identity of birth parents confidential. (1) Every person, firm, society, association, corporation, or state agency receiving, securing a home for, or otherwise caring for a minor child shall transmit to the prospective adopting parent prior to placement and shall make available to all persons with whom a child has been placed by adoption, a family background and child and family social history report, which includes a chronological history of the circumstances surrounding the adoptive placement and any available psychiatric reports, psychological reports, court reports pertaining to dependency or custody, or school reports. Such reports or information shall not reveal the identity of the birth parents of the child but shall contain reasonably available nonidentifying information.

(2) Entities and persons obligated to provide information under this section shall make reasonable efforts to locate records and information concerning the child's family background and social history. The entities or persons providing the information have no duty, beyond providing the

information, to explain or interpret the records or information regarding the child's mental or physical health. [1994 c 170 § 2; 1993 c 81 § 4; 1989 c 281 § 2.]

26.33.385 Standards for locating records and information—Rules. The department shall adopt rules, in consultation with affected parties, establishing minimum standards for making reasonable efforts to locate records and information relating to adoptions as required under RCW 26.33.350 and 26.33.380. [1994 c 170 § 3.]

26.33.390 Information on adoption-related services.

(1) All persons adopting a child through the department shall receive written information on the department's adoption-related services including, but not limited to, adoption support, family reconciliation services, archived records, mental health, and developmental disabilities.

(2) Any person adopting a child shall receive from the adoption facilitator written information on adoption-related services. This information may be that published by the department or any other social service provider and shall include information about how to find and evaluate appropriate adoption therapists, and may include other resources for adoption-related issues.

(3) Any person involved in providing adoption-related services shall respond to requests for written information by providing materials explaining adoption procedures, practices, policies, fees, and services. [1991 c 136 § 5; 1990 c 146 § 7; 1989 c 281 § 3.]

26.33.400 Advertisements—Prohibitions—Exceptions—Application of consumer protection act. (1) Unless the context clearly requires otherwise, "advertisement" means communication by newspaper, radio, television, handbills, placards or other print, broadcast, or the electronic medium. This definition applies throughout this section.

(2) No person or entity shall cause to be published for circulation, or broadcast on a radio or television station, within the geographic borders of this state, an advertisement of a child or children offered or wanted for adoption, or shall hold himself or herself out through such advertisement as having the ability to place, locate, dispose, or receive a child or children for adoption unless such person or entity is:

(a) A duly authorized agent, contractee, or employee of the department or a children's agency or institution licensed by the department to care for and place children;

(b) A person who has a completed preplacement report as set forth in RCW 26.33.190 (1) and (2) or chapter 26.34 RCW with a favorable recommendation as to the fitness of the person to be an adoptive parent, or such person's duly authorized uncompensated agent, or such person's attorney who is licensed to practice in the state. Verification of compliance with the requirements of this section shall consist of a written declaration by the person or entity who prepared the preplacement report.

Nothing in this section prohibits an attorney licensed to practice in Washington state from advertising his or her availability to practice or provide services related to the adoption of children.

(3) A violation of subsection (2) of this section is a matter affecting the public interest for the purpose of

applying chapter 19.86 RCW. A violation of subsection (2) of this section is not reasonable in relation to the development and preservation of business. A violation of subsection (2) of this section constitutes an unfair or deceptive act or practice in trade or commerce for the purpose of applying chapter 19.86 RCW. [1991 c 136 § 6; 1989 c 255 § 1.]

26.33.410 Advertisements—Exemption. Nothing in RCW 26.33.400 applies to any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of RCW 26.33.400. [1989 c 255 § 2.]

26.33.900 Effective date—Application—1984 c 155. This act shall take effect January 1, 1985. Any proceeding initiated before January 1, 1985, shall be governed by the law in effect on the date the proceeding was initiated. [1984 c 155 § 41.]

26.33.901 Severability—1984 c 155. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 155 § 42.]

Chapter 26.34

INTERSTATE COMPACT ON PLACEMENT OF CHILDREN

Sections

26.34.010	Compact enacted—Provisions.
26.34.020	Financial responsibility.
26.34.030	"Appropriate public authorities" defined.
26.34.040	"Appropriate authority of the receiving state" defined.
26.34.050	Authority of state officers and agencies to enter into agreements—Approval.
26.34.060	Jurisdiction of courts.
26.34.070	"Executive head" defined—Compact administrator.
26.34.080	Violations—Penalty.

26.34.010 Compact enacted—Provisions. The interstate compact on the placement of children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in form substantially as follows:

ARTICLE I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(a) Each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care.

(b) The appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child.

(c) The proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made.

(d) Appropriate jurisdictional arrangements for the care of children will be promoted.

ARTICLE II. *Definitions*

As used in this compact:

(a) "Child" means a person who, by reason of minority, is legally subject to parental, guardianship or similar control.

(b) "Sending agency" means a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.

(c) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.

(d) "Placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective or epileptic or any institution primarily educational in character, and any hospital or other medical facility.

ARTICLE III. *Conditions for Placement*

(a) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(b) Prior to sending, bringing or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(1) The name, date and place of birth of the child.

(2) The identity and address or addresses of the parents or legal guardian.

(3) The name and address of the person, agency or institution to or with which the sending agency proposes to send, bring, or place the child.

(4) A full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(c) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to paragraph (b) of this article may request of the sending agency, or any other appropriate officer or agency of or in the sending agency's state, and shall be entitled to receive therefrom, such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(d) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

ARTICLE IV. *Penalty for Illegal Placement*

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place, or care for children.

ARTICLE V. *Retention of Jurisdiction*

(a) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by a receiving state sufficient to deal with an act of delinquency or crime committed therein.

(b) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(c) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state; nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in paragraph (a) hereof.

ARTICLE VI. *Institutional Care of Delinquent Children*

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard, prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) Equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) Institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

ARTICLE VII. *Compact Administrator*

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE VIII. *Limitations*

This compact shall not apply to:

(a) The sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state.

(b) Any placement, sending or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party, or to any other agreement between said states which has the force of law.

ARTICLE IX. *Enactment and Withdrawal*

This compact shall be open to joinder by any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and, with the consent of Congress, the Government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until two years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

ARTICLE X. *Construction and Severability*

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1971 ex.s. c 168 § 1.]

26.34.020 Financial responsibility. Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of RCW 26.16.205 and 26.20.030 shall apply. [1971 ex.s. c 168 § 2.]

26.34.030 "Appropriate public authorities" defined. The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the department of social and health services, and said agency shall receive and act with reference to notices required by said Article III. [1971 ex.s. c 168 § 3.]

26.34.040 "Appropriate authority of the receiving state" defined. As used in paragraph (a) of Article V of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the department of social and health services. [1971 ex.s. c 168 § 4.]

26.34.050 Authority of state officers and agencies to enter into agreements—Approval. The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to paragraph (b) of Article V of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the director of financial management in the case of the state and of the treasurer in the case of a subdivision of the state. [1979 c 151 § 10; 1971 ex.s. c 168 § 5.]

26.34.060 Jurisdiction of courts. Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof. [1971 ex.s. c 168 § 6.]

26.34.070 "Executive head" defined—Compact administrator. As used in Article VII of the Interstate Compact on the Placement of Children, the term "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII. [1971 ex.s. c 168 § 7.]

26.34.080 Violations—Penalty. Any person, firm, corporation, association or agency which places a child in the state of Washington without meeting the requirements set forth herein, or any person, firm, corporation, association or agency which receives a child in the state of Washington, where there has been no compliance with the requirements set forth herein, shall be guilty of a misdemeanor. Each day

of violation shall constitute a separate offense. [1971 ex.s. c 168 § 8.]

Chapter 26.40

HANDICAPPED CHILDREN

Sections

- 26.40.010 Declaration of purpose.
- 26.40.020 Removal, denial of parental responsibility—Commitment not an admission requirement to any school.
- 26.40.030 Petition by parent for order of commitment—Grounds.
- 26.40.040 Petition by parent for order of commitment—Contents—Who may be co-custodians—Effective date.
- 26.40.050 Petition by parent for order of commitment—Hearing—Written consent of co-custodians required.
- 26.40.060 Notice, copies, filing of order of commitment.
- 26.40.070 Petition by parent for rescission, change in co-custodians, determination of parental responsibility.
- 26.40.080 Health and welfare of committed child—State and co-custodian responsibilities.
- 26.40.090 Petition by co-custodians for rescission of commitment—Hearing.
- 26.40.100 Chapter does not affect commitments under other laws.
- 26.40.110 Lease of buses to transport children with disabilities.

Aid to dependent children—Child welfare services—Services to crippled children: Chapter 74.12 RCW.

Child welfare agencies: Chapter 74.15 RCW.

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

Juvenile courts and offenders: Title 13 RCW.

Mental illness: Chapter 71.05 RCW.

Special education: Chapter 28A.155 RCW.

State institutions: Title 72 RCW.

26.40.010 Declaration of purpose. The purpose of this chapter is to assure the right of every physically, mentally or sensory handicapped child to parental love and care as long as possible, to provide for adequate custody of a handicapped child who has lost parental care, and to make available to the handicapped child the services of the state through its various departments and agencies. [1977 ex.s. c 80 § 22; 1955 c 272 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

26.40.020 Removal, denial of parental responsibility—Commitment not an admission requirement to any school. So long as the parents of a handicapped child are able to assume parental responsibility for such child, their parental responsibility may not be removed or denied, and commitment by the state or any officer or official thereof shall never be a requirement for the admission of such child to any state school, or institution, or to the common schools. [1955 c 272 § 2.]

26.40.030 Petition by parent for order of commitment—Grounds. The parents or parent of any child who is temporarily or permanently delayed in normal educational processes and/or normal social adjustment by reason of physical, sensory or mental handicap, or by reason of social or emotional maladjustment, or by reason of other handicap, may petition the superior court for the county in which such child resides for an order for the commitment of such child

to custody as provided in RCW 26.40.040, as now or hereafter amended. [1977 ex.s. c 80 § 23; 1955 c 272 § 3.]

Purpose—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

26.40.040 Petition by parent for order of commitment—Contents—Who may be co-custodians—Effective date. The petition for an order for the commitment of a child to custody shall request the court to issue an order for the commitment of such child to the co-custody of the state and a relative or relatives, a friend or friends, an attorney or attorneys, a church through its chief officers, a fraternal organization through its chief officers, or a service organization through its chief officers, who shall be named in the petition. The petition shall also request the court to issue such order making the commitment of such child to custody effective as of the date that both parents of such child are deceased or are determined by the court to be unable to continue parental responsibilities for such child as provided in RCW 26.40.070. [1955 c 272 § 4.]

26.40.050 Petition by parent for order of commitment—Hearing—Written consent of co-custodians required. Upon the filing of a petition for an order for the commitment of a child to custody, a hearing upon such petition shall be held in open court, and, if the court finds that the petition should be granted, the court shall issue an order for the commitment of the child to custody as petitioned and not otherwise. Written consent of the co-custodians other than the state must be filed with the court before such order for commitment may be issued. [1955 c 272 § 5.]

26.40.060 Notice, copies, filing of order of commitment. Upon the issuance of an order for the commitment of a child to custody, the court shall transmit copies thereof to the co-custodians named therein. For the state as co-custodian the copy of such order shall be filed with the department of social and health services whose duty it shall be to notify the state superintendent of public instruction, the state department of social and health services, and such other state departments or agencies as may have services for the child, of the filing of such order, which notice shall be given by the department of social and health services at the time commitment to custody becomes effective under the order. [1982 c 35 § 195; 1979 c 141 § 35; 1955 c 272 § 6.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

26.40.070 Petition by parent for rescission, change in co-custodians, determination of parental responsibility. The parents or parent upon whose petition an order for the commitment of a child to custody has been issued may, before such commitment becomes effective, petition the court for a rescission of the order or for a change in the co-custodians other than the state, or to determine that they are unable to continue parental responsibilities for the child, and the court shall proceed on such petition as on the original petition. [1955 c 272 § 7.]

26.40.080 Health and welfare of committed child—State and co-custodian responsibilities. It shall be the responsibility of the state and the appropriate departments and agencies thereof to discover methods and procedures by which the mental and/or physical health of the child in custody may be improved and, with the consent of the co-custodians, to apply those methods and procedures. The co-custodians other than the state shall have no financial responsibility for the child committed to their co-custody except as they may in written agreement with the state accept such responsibility. At any time after the commitment of such child they may inquire into his well-being, and the state and any of its agencies may do nothing with respect to the child that would in any way affect his mental or physical health without the consent of the co-custodians. The legal status of the child may not be changed without the consent of the co-custodians. If it appears to the state as co-custodian of a child that the health and/or welfare of such child is impaired or jeopardized by the failure of the co-custodians other than the state to consent to the application of certain methods and procedures with respect to such child, the state through its proper department or agency may petition the court for an order to proceed with such methods and procedures. Upon the filing of such petition a hearing shall be held in open court, and if the court finds that such petition should be granted it shall issue the order. [1955 c 272 § 8.]

26.40.090 Petition by co-custodians for rescission of commitment—Hearing. When the co-custodians of any child committed to custody under provisions of this chapter agree that such child is no longer in need of custody they may petition the court for a rescission of the commitment to custody. Upon the filing of such petition a hearing shall be held in open court and if the court finds that such petition should be granted it shall rescind the order of commitment to custody. [1955 c 272 § 9.]

26.40.100 Chapter does not affect commitments under other laws. Nothing in this chapter shall be construed as affecting the authority of the courts to make commitments as otherwise provided by law. [1955 c 272 § 10.]

26.40.110 Lease of buses to transport children with disabilities. See RCW 28A.160.040 through 28A.160.060.

Chapter 26.44

ABUSE OF CHILDREN AND ADULT DEPENDENT PERSONS

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26.44.010 Declaration of purpose. The Washington state legislature finds and declares: The bond between a child and his or her parent, custodian, or guardian is of paramount importance, and any intervention into the life of a child is also an intervention into the life of the parent, custodian, or guardian; however, instances of nonaccidental injury, neglect, death, sexual abuse and cruelty to children by their parents, custodians or guardians have occurred, and in the instance where a child is deprived of his or her right to conditions of minimal nurture, health, and safety, the state is justified in emergency intervention based upon verified information; and therefore the Washington state legislature

hereby provides for the reporting of such cases to the appropriate public authorities. It is the intent of the legislature that, as a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of such children: PROVIDED, That such reports shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious or erroneous information or actions: PROVIDED FURTHER, That this chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not proved to be injurious to the child's health, welfare and safety.

Adult dependent or developmentally disabled persons not able to provide for their own protection through the criminal justice system shall also be afforded the protection offered children through the reporting and investigation requirements mandated in this chapter. [1987 c 206 § 1; 1984 c 97 § 1; 1977 ex.s. c 80 § 24; 1975 1st ex.s. c 217 § 1; 1969 ex.s. c 35 § 1; 1965 c 13 § 1.]

Severability—1984 c 97: See RCW 74.34.900.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

26.44.015 Limitations of chapter—Application to children and adult dependent persons. (1) This chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not injurious to the child's health, welfare, and safety.

(2) Nothing in this chapter may be used to prohibit the reasonable use of corporal punishment as a means of discipline.

(3) No parent or guardian may be deemed abusive or neglectful solely by reason of the parent's or child's blindness, deafness, developmental disability, or other handicap.

(4) A person reporting injury, abuse, or neglect to an adult dependent person shall not suffer negative consequences if the person reporting believes in good faith that the adult dependent person has been found legally incompetent or disabled. [1993 c 412 § 11.]

26.44.020 Definitions. For the purpose of and as used in this chapter:

(1) "Court" means the superior court of the state of Washington, juvenile department.

(2) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term "practitioner" shall include a duly accredited Christian Science practitioner: PROVIDED, HOWEVER, That a person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(4) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment or care.

(5) "Department" means the state department of social and health services.

(6) "Child" or "children" means any person under the age of eighteen years of age.

(7) "Professional school personnel" shall include, but not be limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social service counselor" shall mean anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" shall mean any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(10) "Pharmacist" shall mean any registered pharmacist under the provisions of chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(11) "Clergy" shall mean any regularly licensed or ordained minister, priest or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(12) "Abuse or neglect" shall mean the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child, adult dependent, or developmentally disabled person by any person under circumstances which indicate that the child's or adult's health, welfare, and safety is harmed. An abused child is a child who has been subjected to child abuse or neglect as defined herein.

(13) "Child protective services section" shall mean the child protective services section of the department.

(14) "Adult dependent persons" shall be defined as those persons over the age of eighteen years who have been found to be legally incompetent or disabled pursuant to chapter 11.88 RCW.

(15) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

(16) "Negligent treatment or maltreatment" means an act or omission which evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare, and safety.

(17) "Developmentally disabled person" means a person who has a disability defined in RCW 71A.10.020.

(18) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard the general welfare of such children and shall include investigations of child abuse and neglect reports, including reports regarding child care centers and family child care homes, and the development, management, and provision of or referral to services to

ameliorate conditions which endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(19) "Malice" or "maliciously" means an evil intent, wish, or design to vex, annoy, or injure another person. Such malice may be inferred from an act done in wilful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a wilful disregard of social duty.

(20) "Sexually aggressive youth" means a child who is defined in RCW 74.13.075(1)(b) as being a "sexually aggressive youth." [1996 c 178 § 10. Prior: 1993 c 412 § 12; 1993 c 402 § 1; 1988 c 142 § 1; prior: 1987 c 524 § 9; 1987 c 206 § 2; 1984 c 97 § 2; 1982 c 129 § 6; 1981 c 164 § 1; 1977 ex.s. c 80 § 25; 1975 1st ex.s. c 217 § 2; 1969 ex.s. c 35 § 2; 1965 c 13 § 2.]

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—1984 c 97: See RCW 74.34.900.

Severability—1982 c 129: See note following RCW 9A.04.080.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Interviews of children—Records—Risk assessment process—Reports to legislature. (1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, licensed or certified child care providers or their employees, employee of the department, or juvenile probation officer has reasonable cause to believe that a child or adult dependent or developmentally disabled person, has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) The reporting requirement shall also apply to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child or adult dependent or developmentally disabled person has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(c) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child or adult dependent or developmentally disabled person, who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this

subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(d) The report shall be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child or adult has suffered abuse or neglect. The report shall include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children, dependent adults, or developmentally disabled persons are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section shall apply.

(3) Any other person who has reasonable cause to believe that a child or adult dependent or developmentally disabled person has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child, adult dependent, or developmentally disabled person's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report shall also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child, adult dependent, or developmentally disabled person's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services or department case services for the developmentally disabled. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child or developmentally disabled person. Information considered privileged by statute and not directly related to reports required by this section shall not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving reports of abuse or neglect, the department or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview shall occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

(11) Upon receiving a report of child abuse and neglect, the department or investigating law enforcement agency shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(12) The department shall maintain investigation records and conduct timely and periodic reviews of all cases consti-

tuting abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(13) The department shall use a risk assessment process when investigating child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

The department shall provide annual reports to the legislature on the effectiveness of the risk assessment process.

(14) Upon receipt of a report of abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting. [1996 c 278 § 2; 1995 c 311 § 17. Prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

Finding—Intent—1996 c 278: "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

Severability—1987 c 512: See RCW 18.19.901.

Legislative findings—1985 c 259: "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

Severability—1984 c 97: See RCW 74.34.900.

Severability—1982 c 129: See note following RCW 9A.04.080.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

26.44.032 Legal defense of public employee. In cases in which a public employee subject to RCW 26.44.030 acts in good faith and without gross negligence in his or her reporting duty, and if the employee's judgment as to what constitutes reasonable cause to believe that a child or adult dependent or developmentally disabled person has suffered abuse or neglect is being challenged, the public employer

shall provide for the legal defense of the employee. [1988 c 87 § 1.]

26.44.035 Response to complaint by more than one agency—Procedure—Written records. If the department or a law enforcement agency responds to a complaint of child abuse or neglect and discovers that another agency has also responded to the complaint, the agency shall notify the other agency of their presence, and the agencies shall coordinate the investigation and keep each other apprised of progress.

The department, each law enforcement agency, each county prosecuting attorney, each city attorney, and each court shall make as soon as practicable a written record and shall maintain records of all incidents of suspected child abuse reported to that person or agency. Records kept under this section shall be identifiable by means of an agency code for child abuse. [1985 c 259 § 3.]

Legislative findings—1985 c 259: See note following RCW 26.44.030.

26.44.040 Reports—Oral, written—Contents. An immediate oral report shall be made by telephone or otherwise to the proper law enforcement agency or the department of social and health services and, upon request, shall be followed by a report in writing. Such reports shall contain the following information, if known:

- (1) The name, address, and age of the child or adult dependent or developmentally disabled person;
- (2) The name and address of the child's parents, stepparents, guardians, or other persons having custody of the child or the residence of the adult dependent or developmentally disabled person;
- (3) The nature and extent of the injury or injuries;
- (4) The nature and extent of the neglect;
- (5) The nature and extent of the sexual abuse;
- (6) Any evidence of previous injuries, including their nature and extent; and
- (7) Any other information which may be helpful in establishing the cause of the child's or adult dependent or developmentally disabled person's death, injury, or injuries and the identity of the alleged perpetrator or perpetrators. [1993 c 412 § 14; 1987 c 206 § 4; 1984 c 97 § 4; 1977 ex.s. c 80 § 27; 1975 1st ex.s. c 217 § 4; 1971 ex.s. c 167 § 2; 1969 ex.s. c 35 § 4; 1965 c 13 § 4.]

Severability—1984 c 97: See RCW 74.34.900.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

26.44.050 Abuse or neglect of child or adult dependent or developmentally disabled person—Duty of law enforcement agency or department of social and health services—Taking child into custody without court order, when. Upon the receipt of a report concerning the possible occurrence of abuse or neglect, it shall be the duty of the law enforcement agency or the department of social and health services to investigate and provide the protective services section with a report in accordance with the provision of chapter 74.13 RCW, and where necessary to refer such report to the court.

A law enforcement officer may take, or cause to be taken, a child into custody without a court order if there is probable cause to believe that the child is abused or neglected and that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050. The law enforcement agency or the department of social and health services investigating such a report is hereby authorized to photograph such a child or adult dependent or developmentally disabled person for the purpose of providing documentary evidence of the physical condition of the child, adult dependent or developmentally disabled person. [1987 c 450 § 7; 1987 c 206 § 5; 1984 c 97 § 5; 1981 c 164 § 3; 1977 ex.s. c 291 § 51; 1977 ex.s. c 80 § 28; 1975 1st ex.s. c 217 § 5; 1971 ex.s. c 302 § 15; 1969 ex.s. c 35 § 5; 1965 c 13 § 5.]

Reviser's note: This section was amended by 1987 c 206 § 5 and by 1987 c 450 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1984 c 97: See RCW 74.34.900.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

26.44.053 Guardian ad litem, appointment—Examination of person having legal custody—Hearing—Procedure. (1) In any judicial proceeding under this chapter or chapter 13.34 RCW in which it is alleged that a child has been subjected to child abuse or neglect, the court shall appoint a guardian ad litem for the child as provided in chapter 13.34 RCW. The requirement of a guardian ad litem may be deemed satisfied if the child is represented by counsel in the proceedings.

(2) At any time prior to or during a hearing in such a case, the court may, on its own motion, or the motion of the guardian ad litem, or other parties, order the examination by a physician, psychologist, or psychiatrist, of any parent or child or other person having custody of the child at the time of the alleged child abuse or neglect, if the court finds such an examination is necessary to the proper determination of the case. The hearing may be continued pending the completion of such examination. The physician, psychologist, or psychiatrist conducting such an examination may be required to testify concerning the results of such examination and may be asked to give his or her opinion as to whether the protection of the child requires that he or she not be returned to the custody of his or her parents or other persons having custody of him or her at the time of the alleged child abuse or neglect. Persons so testifying shall be subject to cross-examination as are other witnesses. No information given at any such examination of the parent or any other person having custody of the child may be used against such person in any subsequent criminal proceedings against such person or custodian concerning the abuse or neglect of the child.

(3) A parent or other person having legal custody of a child alleged to be abused or neglected shall be a party to any proceeding that may impair or impede such person's interest in and custody or control of the child. [1996 c 249

§ 16; 1994 c 110 § 1; 1993 c 241 § 4. Prior: 1987 c 524 § 11; 1987 c 206 § 7; 1975 1st ex.s. c 217 § 8.]

Intent—1996 c 249: See note following RCW 2.56.030.

Conflict with federal requirements—1993 c 241: See note following RCW 13.34.030.

26.44.056 Protective detention or custody of abused child—Reasonable cause—Notice—Time limits—Monitoring plan—Liability. (1) An administrator of a hospital or similar institution or any physician, licensed pursuant to chapters 18.71 or 18.57 RCW, may detain a child without consent of a person legally responsible for the child whether or not medical treatment is required, if the circumstances or conditions of the child are such that the detaining individual has reasonable cause to believe that permitting the child to continue in his or her place of residence or in the care and custody of the parent, guardian, custodian or other person legally responsible for the child's care would present an imminent danger to that child's safety: PROVIDED, That such administrator or physician shall notify or cause to be notified the appropriate law enforcement agency or child protective services pursuant to RCW 26.44.040. Such notification shall be made as soon as possible and in no case longer than seventy-two hours. Such temporary protective custody by an administrator or doctor shall not be deemed an arrest. Child protective services may detain the child until the court assumes custody, but in no case longer than seventy-two hours, excluding Saturdays, Sundays, and holidays.

(2) Whenever an administrator or physician has reasonable cause to believe that a child would be in imminent danger if released to a parent, guardian, custodian, or other person or is in imminent danger if left in the custody of a parent, guardian, custodian, or other person, the administrator or physician may notify a law enforcement agency and the law enforcement agency shall take the child into custody or cause the child to be taken into custody. The law enforcement agency shall release the child to the custody of child protective services. Child protective services shall detain the child until the court assumes custody or upon a documented and substantiated record that in the professional judgment of the child protective services the child's safety will not be endangered if the child is returned. If the child is returned, the department shall establish a six-month plan to monitor and assure the continued safety of the child's life or health. The monitoring period may be extended for good cause.

(3) A child protective services employee, an administrator, doctor, or law enforcement officer shall not be held liable in any civil action for the decision for taking the child into custody, if done in good faith under this section. [1983 c 246 § 3; 1982 c 129 § 8; 1975 1st ex.s. c 217 § 9.]

Severability—1982 c 129: See note following RCW 9A.04.080.

26.44.060 Immunity from civil or criminal liability—Confidential communications not violated—Actions against state not affected—False report, penalty. (1)(a) Except as provided in (b) of this subsection, any person participating in good faith in the making of a report pursuant to this chapter or testifying as to alleged child abuse or neglect in a judicial proceeding shall in so doing be immune

from any liability arising out of such reporting or testifying under any law of this state or its political subdivisions.

(b) A person convicted of a violation of subsection (4) of this section shall not be immune from liability under (a) of this subsection.

(2) An administrator of a hospital or similar institution or any physician licensed pursuant to chapters 18.71 or 18.57 RCW taking a child into custody pursuant to RCW 26.44.056 shall not be subject to criminal or civil liability for such taking into custody.

(3) Conduct conforming with the reporting requirements of this chapter shall not be deemed a violation of the confidential communication privilege of RCW 5.60.060 (3) and (4), 18.53.200 and 18.83.110. Nothing in this chapter shall be construed as to supersede or abridge remedies provided in chapter 4.92 RCW.

(4) A person who, intentionally and in bad faith or maliciously, knowingly makes a false report of abuse or neglect shall be guilty of a misdemeanor punishable in accordance with RCW 9A.20.021. [1988 c 142 § 3; 1982 c 129 § 9; 1975 1st ex.s. c 217 § 6; 1965 c 13 § 6.]

Severability—1982 c 129: See note following RCW 9A.04.080.

Nurse-patient privilege subject to RCW 26.44.060(3); RCW 5.62.030.

26.44.063 Temporary restraining order or preliminary injunction—Enforcement. (1) It is the intent of the legislature to minimize trauma to a child involved in an allegation of sexual or physical abuse. The legislature declares that removing the child from the home often has the effect of further traumatizing the child. It is, therefore, the legislature's intent that the alleged offender, rather than the child, shall be removed from the home and that this should be done at the earliest possible point of intervention in accordance with RCW 10.31.100, 13.34.130, this section, and RCW 26.44.130.

(2) In any judicial proceeding in which it is alleged that a child has been subjected to sexual or physical abuse, if the court finds reasonable grounds to believe that an incident of sexual or physical abuse has occurred, the court may, on its own motion, or the motion of the guardian ad litem or other parties, issue a temporary restraining order or preliminary injunction restraining or enjoining the person accused of committing the abuse from:

(a) Molesting or disturbing the peace of the alleged victim;

(b) Entering the family home of the alleged victim except as specifically authorized by the court; or

(c) Having any contact with the alleged victim, except as specifically authorized by the court.

(3) In issuing a temporary restraining order or preliminary injunction, the court may impose any additional restrictions that the court in its discretion determines are necessary to protect the child from further abuse or emotional trauma pending final resolution of the abuse allegations.

(4) The court shall issue a temporary restraining order prohibiting a person from entering the family home if the court finds that the order would eliminate the need for an out-of-home placement to protect the child's right to nurturance, health, and safety and is sufficient to protect the child from further sexual or physical abuse or coercion.

(5) The court may issue a temporary restraining order without requiring notice to the party to be restrained or other parties only if it finds on the basis of the moving affidavit or other evidence that irreparable injury could result if an order is not issued until the time for responding has elapsed.

(6) A temporary restraining order or preliminary injunction:

(a) Does not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding; and

(b) May be revoked or modified.

(7) The person having physical custody of the child shall have an affirmative duty to assist in the enforcement of the restraining order including but not limited to a duty to notify the court as soon as practicable of any violation of the order, a duty to request the assistance of law enforcement officers to enforce the order, and a duty to notify the department of social and health services of any violation of the order as soon as practicable if the department is a party to the action. Failure by the custodial party to discharge these affirmative duties shall be subject to contempt proceedings.

(8) Willful violation of a court order entered under this section is a misdemeanor. A written order shall contain the court's directive and shall bear the legend: "Violation of this order with actual notice of its terms is a criminal offense under chapter 26.44 RCW, is also subject to contempt proceedings, and will subject a violator to arrest." [1993 c 412 § 15; 1988 c 190 § 3; 1985 c 35 § 1.]

Ex parte temporary order for protection: RCW 26.50.070.

Orders for protection in cases of domestic violence: RCW 26.50.030.

Orders prohibiting contact: RCW 10.99.040.

Temporary restraining order: RCW 26.09.060.

26.44.067 Temporary restraining order or preliminary injunction—Contents—Notice—Noncompliance—Defense—Penalty. (1) Any person having had actual notice of the existence of a restraining order issued by a court of competent jurisdiction pursuant to RCW 26.44.063 who refuses to comply with the provisions of such order shall be guilty of a misdemeanor.

(2) The notice requirements of subsection (1) of this section may be satisfied by the peace officer giving oral or written evidence to the person subject to the order by reading from or handing to that person a copy certified by a notary public or the clerk of the court to be an accurate copy of the original court order which is on file. The copy may be supplied by the court or any party.

(3) The remedies provided in this section shall not apply unless restraining orders subject to this section shall bear this legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.44 RCW AND IS ALSO SUBJECT TO CONTEMPT PROCEEDINGS.

(4) It is a defense to prosecution under subsection (1) of this section that the court order was issued contrary to law or court rule. No right of action shall accrue against any peace officer acting upon a properly certified copy of a court order lawful on its face if such officer employs otherwise lawful means to effect the arrest. [1993 c 412 § 16; 1989 c 373 § 23; 1985 c 35 § 2.]

Severability—1989 c 373: See RCW 7.21.900.

26.44.075 Inclusion of number of child abuse reports and cases in prosecuting attorney's annual report. Commencing in 1986, the prosecuting attorney shall include in the annual report a section stating the number of child abuse reports received by the office under this chapter and the number of cases where charges were filed. [1985 c 259 § 4.]

Legislative findings—1985 c 259: See note following RCW 26.44.030.

26.44.080 Violation—Penalty. Every person who is required to make, or to cause to be made, a report pursuant to RCW 26.44.030 and 26.44.040, and who knowingly fails to make, or fails to cause to be made, such report, shall be guilty of a gross misdemeanor. [1982 c 129 § 10; 1971 ex.s. c 167 § 3.]

Severability—1982 c 129: See note following RCW 9A.04.080.

26.44.100 Information about rights—Legislative purpose. The legislature finds parents and children often are not aware of their due process rights when agencies are investigating allegations of child abuse and neglect. The legislature reaffirms that all citizens, including parents, shall be afforded due process, that protection of children remains the priority of the legislature, and that this protection includes protecting the family unit from unnecessary disruption. To facilitate this goal, the legislature wishes to ensure that parents and children be advised in writing and orally, if feasible, of their basic rights and other specific information as set forth in this chapter, provided that nothing contained in this chapter shall cause any delay in protective custody action. [1993 c 412 § 17; 1985 c 183 § 1.]

26.44.105 Information about rights—Oral and written information—Copies of dependency petition and any court order. Whenever a dependency petition is filed by the department of social and health services, it shall advise the parents, and any child over the age of twelve who is subject to the dependency action, of their respective rights under RCW 13.34.090. The parents and the child shall be provided a copy of the dependency petition and a copy of any court orders which have been issued. This advice of rights under RCW 13.34.090 shall be in writing. The department caseworker shall also make reasonable efforts to advise the parent and child of these same rights orally. [1985 c 183 § 2.]

26.44.110 Information about rights—Custody without court order—Written statement required—Contents. If a child has been taken into custody by law enforcement pursuant to RCW 26.44.050, the law enforcement agency shall leave a written statement with a parent or in the residence of the parent if no parent is present. The statement shall give the reasons for the removal of the child from the home and the telephone number of the child protective services office in the parent's jurisdiction. [1985 c 183 § 3.]

26.44.115 Child taken into custody under court order—Information to parents. If a child is taken into custody by child protective services pursuant to a court order issued under RCW 13.34.050, the child protective services worker shall take reasonable steps to advise the parents immediately, regardless of the time of day, that the child has been taken into custody, the reasons why the child was taken into custody, and general information about the child's placement. The department shall comply with RCW 13.34.060 when providing notice under this section. [1990 c 246 § 10; 1985 c 183 § 4.]

Severability—1990 c 246: See note following RCW 13.34.060.

26.44.120 Information about rights—Notice to noncustodial parent. Whenever the child protective services worker is required to notify parents and children of their basic rights and other specific information as set forth in RCW 26.44.105 through 26.44.115, the child protective services worker shall also make a reasonable effort to notify the noncustodial parent of the same information in a timely manner. [1985 c 183 § 5.]

26.44.130 Arrest without warrant. When a peace officer responds to a call alleging that a child has been subjected to sexual or physical abuse and has probable cause to believe that a crime has been committed or responds to a call alleging that a temporary restraining order or preliminary injunction has been violated, the peace officer has the authority to arrest the person without a warrant pursuant to RCW 10.31.100. [1988 c 190 § 4.]

26.44.140 Treatment for abusive person removed from home. The court shall require that an individual who, while acting in a parental role, has physically or sexually abused a child and has been removed from the home pursuant to a court order issued in a proceeding under chapter 13.34 RCW, prior to being permitted to reside in the home where the child resides, complete the treatment and education requirements necessary to protect the child from future abuse. The court may require the individual to continue treatment as a condition for remaining in the home where the child resides.

The department of social and health services or supervising agency shall be responsible for advising the court as to appropriate treatment and education requirements, providing referrals to the individual, monitoring and assessing the individual's progress, informing the court of such progress, and providing recommendations to the court.

The person removed from the home shall pay for these services unless the person is otherwise eligible to receive financial assistance in paying for such services. Nothing in this section shall be construed to create in any person an entitlement to services or financial assistance in paying for services. [1991 c 301 § 15; 1990 c 3 § 1301.]

Finding—1991 c 301: See note following RCW 10.99.020.

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.

26.44.150 Temporary restraining order restricting visitation for persons accused of sexually or physically abusing a child—Penalty for violating court order. (1) If

a person who has unsupervised visitation rights with a minor child pursuant to a court order is accused of sexually or physically abusing a child and the alleged abuse has been reported to the proper authorities for investigation, the law enforcement officer conducting the investigation may file an affidavit with the prosecuting attorney stating that the person is currently under investigation for sexual or physical abuse of a child and that there is a risk of harm to the child if a temporary restraining order is not entered. Upon receipt of the affidavit, the prosecuting attorney shall determine whether there is a risk of harm to the child if a temporary restraining order is not entered. If the prosecutor determines there is a risk of harm, the prosecutor shall immediately file a motion for an order to show cause seeking to restrict visitation with the child, and seek a temporary restraining order. The restraining order shall be issued for up to ninety days or until the investigation has been concluded in favor of the alleged abuser, whichever is shorter.

(2) Willful violation of a court order entered under this section is a misdemeanor. The court order shall state: "Violation of this order is a criminal offense under chapter 26.44 RCW and will subject the violator to arrest." [1993 c 412 § 18.]

26.44.160 Allegations that child under twelve committed sex offense—Investigation—Referral to prosecuting attorney—Referral to department—Referral for treatment. (1) If a law enforcement agency receives a complaint that alleges that a child under age twelve has committed a sex offense as defined in RCW 9.94A.030, the agency shall investigate the complaint. If the investigation reveals that probable cause exists to believe that the youth may have committed a sex offense and the child is at least eight years of age, the agency shall refer the case to the proper county prosecuting attorney for appropriate action to determine whether the child may be prosecuted or is a sexually aggressive youth. If the child is less than eight years old, the law enforcement agency shall refer the case to the department.

(2) If the prosecutor or a judge determines the child cannot be prosecuted for the alleged sex offense because the child is incapable of committing a crime as provided in RCW 9A.04.050 and the prosecutor believes that probable cause exists to believe that the child engaged in acts that would constitute a sex offense, the prosecutor shall refer the child as a sexually aggressive youth to the department. The prosecutor shall provide the department with an affidavit stating that the prosecutor has determined that probable cause exists to believe that the juvenile has committed acts that could be prosecuted as a sex offense but the case is not being prosecuted because the juvenile is incapable of committing a crime as provided in RCW 9A.04.050.

(3) The department shall investigate any referrals that allege that a child is a sexually aggressive youth. The purpose of the investigation shall be to determine whether the child is abused or neglected, as defined in this chapter, and whether the child or the child's parents are in need of services or treatment. The department may offer appropriate available services and treatment to a sexually aggressive youth and his or her parents or legal guardians as provided in RCW 74.13.075 and may refer the child and his or her

parents to appropriate treatment and services available within the community. If the parents refuse to accept or fail to obtain appropriate treatment or services under circumstances that indicate that the refusal or failure is child abuse or neglect, as defined in this chapter, the department may pursue a dependency action as provided in chapter 13.34 RCW.

(4) Nothing in this section shall affect the responsibility of a law enforcement agency to report incidents of abuse or neglect as required in RCW 26.44.030(5). [1993 c 402 § 2.]

26.44.900 Severability—1975 1st ex.s. c 217. If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 217 § 10.]

Chapter 26.50

DOMESTIC VIOLENCE PREVENTION

Sections

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Abuse of children and adult dependent or developmentally disabled persons: Chapter 26.44 RCW.

Arrest without warrant: RCW 10.31.100(2).

Dissolution of marriage: Chapter 26.09 RCW.

Domestic violence, official response: Chapter 10.99 RCW.

Nonparental actions for child custody: Chapter 26.10 RCW.

Shelters for victims of domestic violence: Chapter 70.123 RCW.

26.50.010 Definitions. As used in this chapter, the following terms shall have the meanings given them:

(1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

(2) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a respondent sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

(3) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(4) "Court" includes the superior, district, and municipal courts of the state of Washington.

(5) "Judicial day" does not include Saturdays, Sundays, or legal holidays.

(6) "Electronic monitoring" means a program in which a person's presence at a particular location is monitored from a remote location by use of electronic equipment.

(7) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes but is not limited to clothing, cribs, bedding, documents, medications, and personal hygiene items. [1995 c 246 § 1. Prior: 1992 c 111 § 7; 1992 c 86 § 3; 1991 c 301 § 8; 1984 c 263 § 2.]

Severability—1995 c 246: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 246 § 40.]

Findings—1992 c 111: See note following RCW 26.50.030.

Finding—1991 c 301: See note following RCW 10.99.020.

Domestic violence offenses defined: RCW 10.99.020.

26.50.020 Commencement of action—Jurisdiction—Venue. (1) Any person may seek relief under this chapter by filing a petition with a court alleging that the person has been the victim of domestic violence committed by the

respondent. The person may petition for relief on behalf of himself or herself and on behalf of minor family or household members.

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

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

(4) The court may, if it deems necessary, appoint a guardian ad litem for a petitioner or respondent who is a party to an action under this chapter.

(5) The courts defined in *RCW 26.50.010(3) have jurisdiction over proceedings under this chapter. The jurisdiction of district and municipal courts under this chapter shall be limited to enforcement of RCW 26.50.110(1), or the equivalent municipal ordinance, and the issuance and enforcement of temporary orders for protection provided for in RCW 26.50.070 if: (a) A superior court has exercised or is exercising jurisdiction over a proceeding under this title or chapter 13.34 RCW involving the parties; (b) the petition for relief under this chapter presents issues of residential schedule of and contact with children of the parties; or (c) the petition for relief under this chapter requests the court to exclude a party from the dwelling which the parties share. When the jurisdiction of a district or municipal court is limited to the issuance and enforcement of a temporary order, the district or municipal court shall set the full hearing provided for in RCW 26.50.050 in superior court and transfer the case. If the notice and order are not served on the respondent in time for the full hearing, the issuing court shall have concurrent jurisdiction with the superior court to extend the order for protection.

(6) An action under this chapter shall be filed in the county or the municipality where the petitioner resides, unless the petitioner has left the residence or household to avoid abuse. In that case, the petitioner may bring an action in the county or municipality of the previous or the new household or residence.

(7) A person's right to petition for relief under this chapter is not affected by the person leaving the residence or household to avoid abuse. [1992 c 111 § 8; 1989 c 375 § 28; 1987 c 71 § 1; 1985 c 303 § 1; 1984 c 263 § 3.]

*Reviser's note: RCW 26.50.010(3) was renumbered as RCW 26.50.010(4) by 1992 c 111 § 7.

Findings—1992 c 111: See note following RCW 26.50.030.

Severability—1989 c 375: See RCW 26.09.914.

Effective date—1985 c 303 §§ 1, 2: "Sections 1 and 2 of this act shall take effect September 1, 1985." [1985 c 303 § 15.]

26.50.025 Orders under this chapter and chapter 26.09, 26.10, or 26.26 RCW—Enforcement—Consolidation. (1) Any order available under this chapter may be issued in actions under chapter 26.09, 26.10, or 26.26 RCW. If an order for protection is issued in an action under chapter 26.09, 26.10, or 26.26 RCW, the order shall be issued on the forms mandated by RCW 26.50.035(1). An order issued in accordance with this subsection is fully enforceable and shall be enforced under the provisions of this chapter.

(2) If a party files an action under chapter 26.09, 26.10, or 26.26 RCW, an order issued previously under this chapter between the same parties may be consolidated by the court under that action and cause number. Any order issued under this chapter after consolidation shall contain the original cause number and the cause number of the action under chapter 26.09, 26.10, or 26.26 RCW. Relief under this chapter shall not be denied or delayed on the grounds that the relief is available in another action. [1995 c 246 § 2.]

Severability—1995 c 246: See note following RCW 26.50.010.

26.50.030 Petition for an order for protection—Availability of forms and informational brochures—Bond not required. There shall exist an action known as a petition for an order for protection in cases of domestic violence.

(1) A petition for relief shall allege the existence of domestic violence, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. Petitioner and respondent shall disclose the existence of any other litigation concerning the custody or residential placement of a child of the parties as set forth in RCW 26.27.090 and the existence of any other restraining, protection, or no-contact orders between the parties.

(2) A petition for relief may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties except in cases where the court realigns petitioner and respondent in accordance with RCW 26.50.060(4).

(3) Within ninety days of receipt of the master copy from the administrator for the courts, all court clerk's offices shall make available the standardized forms, instructions, and informational brochures required by RCW 26.50.035 and shall fill in and keep current specific program names and telephone numbers for community resources. Any assistance or information provided by clerks under this section does not constitute the practice of law and clerks are not responsible for incorrect information contained in a petition.

(4) No filing fee may be charged for proceedings under this section. Forms and instructional brochures shall be provided free of charge.

(5) A person is not required to post a bond to obtain relief in any proceeding under this section. [1996 c 248 § 12; 1995 c 246 § 3; 1992 c 111 § 2; 1985 c 303 § 2; 1984 c 263 § 4.]

Severability—1995 c 246: See note following RCW 26.50.010.

Findings—1992 c 111: "The legislature finds that:

Domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems: Child abuse, other crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse. Domestic violence costs millions of dollars each year in the state of Washington for health care, absence from work, services to children, and more. The crisis is growing.

While the existing protection order process can be a valuable tool to increase safety for victims and to hold batterers accountable, specific problems in its use have become evident. Victims have difficulty completing the paperwork required particularly if they have limited English proficiency; model forms have been modified to be inconsistent with statutory language; different forms create confusion for law enforcement agencies about the contents and enforceability of orders. Refinements are needed so that victims have the easy, quick, and effective access to the

court system envisioned at the time the protection order process was first created.

When courts issue mutual protection orders without the filing of separate written petitions, notice to each respondent, and hearing on each petition, the original petitioner is deprived of due process. Mutual protection orders label both parties as violent and treat both as being equally at fault. Batterers conclude that the violence is excusable or provoked and victims who are not violent are confused and stigmatized. Enforcement may be ineffective and mutual orders may be used in other proceedings as evidence that the victim is equally at fault.

Valuable information about the reported incidents of domestic violence in the state of Washington is unobtainable without gathering data from all law enforcement agencies; without this information, it is difficult for policymakers, funders, and service providers to plan for the resources and services needed to address the issue.

Domestic violence must be addressed more widely and more effectively in our state: Greater knowledge by professionals who deal frequently with domestic violence is essential to enforce existing laws, to intervene in domestic violence situations that do not come to the attention of the law enforcement or judicial systems, and to reduce and prevent domestic violence by intervening before the violence becomes severe.

Adolescent dating violence is occurring at increasingly high rates: Preventing and confronting adolescent violence is important in preventing potential violence in future adult relationships." [1992 c 111 § 1.]

Effective date—1985 c 303 §§ 1, 2: See note following RCW 26.50.020.

Child abuse, temporary restraining order: RCW 26.44.063.

Orders prohibiting contact: RCW 10.99.040.

Temporary restraining order: RCW 26.09.060.

26.50.035 Development of instructions, informational brochures, forms, and handbook by the administrator for the courts—Community resource list—Distribution of master copy. (1) By July 1, 1994, the administrator for the courts shall develop and prepare instructions and informational brochures required under RCW 26.50.030(4), standard petition and order for protection forms, and a court staff handbook on domestic violence and the protection order process. The standard petition and order for protection forms must be used after September 1, 1994, for all petitions filed and orders issued under this chapter. The instructions, brochures, forms, and handbook shall be prepared in consultation with interested persons, including a representative of the state domestic violence coalition, judges, and law enforcement personnel.

(a) The instructions shall be designed to assist petitioners in completing the petition, and shall include a sample of standard petition and order for protection forms.

(b) The informational brochure shall describe the use of and the process for obtaining a protection order, a no-contact order as provided by RCW 10.99.040, a restraining order as provided by RCW 26.09.060, and an antiharassment protection order as provided by chapter 10.14 RCW.

(c) The order for protection form shall include, in a conspicuous location, notice of criminal penalties resulting from violation of the order, and the following statement: "You can be arrested even if the person or persons who obtained the order invite or allow you to violate the order's prohibitions. The respondent has the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application."

(d) The court staff handbook shall allow for the addition of a community resource list by the court clerk.

(2) All court clerks shall obtain a community resource list from a domestic violence program, defined in RCW 70.123.020, serving the county in which the court is located.

The community resource list shall include the names and telephone numbers of domestic violence programs serving the community in which the court is located, including law enforcement agencies, domestic violence agencies, sexual assault agencies, legal assistance programs, interpreters, multicultural programs, and batterers' treatment programs. The court shall make the community resource list available as part of or in addition to the informational brochures described in subsection (1) of this section.

(3) The administrator for the courts shall distribute a master copy of the petition and order forms, instructions, and informational brochures to all court clerks and shall distribute a master copy of the petition and order forms to all superior, district, and municipal courts.

(4) For purposes of this section, "court clerks" means court administrators in courts of limited jurisdiction and elected court clerks.

(5) The administrator for the courts shall determine the significant non-English-speaking or limited English-speaking populations in the state. The administrator shall then arrange for translation of the instructions and informational brochures required by this section, which shall contain a sample of the standard petition and order for protection forms, into the languages spoken by those significant non-English-speaking populations and shall distribute a master copy of the translated instructions and informational brochures to all court clerks by January 1, 1997.

(6) The administrator for the courts shall update the instructions, brochures, standard petition and order for protection forms, and court staff handbook when changes in the law make an update necessary. [1995 c 246 § 4; 1993 c 350 § 2; 1985 c 303 § 3; 1984 c 263 § 31.]

Severability—1995 c 246: See note following RCW 26.50.010.

Findings—1993 c 350: "The legislature finds that domestic violence is a problem of immense proportions affecting individuals as well as communities. Domestic violence has long been recognized as being at the core of other major social problems including child abuse, crimes of violence against person or property, juvenile delinquency, and alcohol and drug abuse. Domestic violence costs include the loss of lives as well as millions of dollars each year in the state of Washington for health care, absence from work, and services to children. The crisis is growing.

While the existing protection order process can be a valuable tool to increase safety for victims and to hold batterers accountable, specific problems in its use have become evident. Victims have difficulty completing the paperwork required; model forms have been modified to be inconsistent with statutory language; different forms create confusion for law enforcement agencies about the contents and enforceability of orders. Refinements are needed so that victims have the easy, quick, and effective access to the court system envisioned at the time the protection order process was first created.

Valuable information about the reported incidents of domestic violence in the state of Washington is unobtainable without gathering data from all law enforcement agencies. Without this information, it is difficult for policymakers, funders, and service providers to plan for the resources and services needed to address the issue." [1993 c 350 § 1.]

Severability—1993 c 350: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 350 § 9.]

26.50.040 Fees not permitted—Filing, service of process, certified copies. No fees for filing or service of process may be charged by a public agency to petitioners seeking relief under this chapter. Petitioners shall be provided the necessary number of certified copies at no cost. [1995 c 246 § 5; 1985 c 303 § 4; 1984 c 263 § 5.]

Severability—1995 c 246: See note following RCW 26.50.010.

26.50.050 Hearing—Service—Time. Upon receipt of the petition, the court shall order a hearing which shall be held not later than fourteen days from the date of the order. The court may schedule a hearing by telephone pursuant to local court rule, to reasonably accommodate a disability, or in exceptional circumstances to protect a petitioner from further acts of domestic violence. The court shall require assurances of the petitioner's identity before conducting a telephonic hearing. Except as provided in RCW 26.50.085 and 26.50.123, personal service shall be made upon the respondent not less than five court days prior to the hearing. If timely personal service cannot be made, the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or service by mail as provided in RCW 26.50.123. If the court permits service by publication or by mail, the court shall set the hearing date not later than twenty-four days from the date of the order. The court may issue an ex parte order for protection pending the hearing as provided in RCW 26.50.070, 26.50.085, and 26.50.123. [1995 c 246 § 6; 1992 c 143 § 1; 1984 c 263 § 6.]

Severability—1995 c 246: See note following RCW 26.50.010.

26.50.055 Appointment of interpreter. (1) Pursuant to chapter 2.42 RCW, an interpreter shall be appointed for any party who, because of a hearing or speech impairment, cannot readily understand or communicate in spoken language.

(2) Pursuant to chapter 2.43 RCW, an interpreter shall be appointed for any party who cannot readily speak or understand the English language.

(3) The interpreter shall translate or interpret for the party in preparing forms, participating in the hearing and court-ordered assessments, and translating any orders. [1995 c 246 § 11.]

Severability—1995 c 246: See note following RCW 26.50.010.

26.50.060 Relief—Duration—Realignment of designation of parties—Award of costs, service fees, and attorneys' fees. (1) Upon notice and after hearing, the court may provide relief as follows:

(a) Restrain the respondent from committing acts of domestic violence;

(b) Exclude the respondent from the dwelling which the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child;

(c) On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter;

(d) Order the respondent to participate in batterers' treatment;

(e) Order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this chapter;

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

(g) Restrain the respondent from having any contact with the victim of domestic violence or the victim's children or members of the victim's household;

(h) Require the respondent to submit to electronic monitoring. The order shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring;

(i) Consider the provisions of RCW 9.41.800;

(j) Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make it clear which property is included; and

(k) Order use of a vehicle.

(2) If a restraining order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year. This limitation is not applicable to orders for protection issued under chapter 26.09, 26.10, or 26.26 RCW. With regard to other relief, if the petitioner has petitioned for relief on his or her own behalf or on behalf of the petitioner's family or household members or minor children, and the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires, the court may either grant relief for a fixed period or enter a permanent order of protection.

If the petitioner has petitioned for relief on behalf of the respondent's minor children, the court shall advise the petitioner that if the petitioner wants to continue protection for a period beyond one year the petitioner may either petition for renewal pursuant to the provisions of this chapter or may seek relief pursuant to the provisions of chapter 26.09 or 26.26 RCW.

(3) If the court grants an order for a fixed time period, the petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 26.50.085, personal service shall be made on the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or by mail as provided in RCW 26.50.123. If the court permits service by publication or mail, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in RCW 26.50.070. The court shall grant the petition for renewal unless the respondent proves by a preponderance of

the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in this section. The court may award court costs, service fees, and reasonable attorneys' fees as provided in subsection (1)(f) of this section.

(4) In providing relief under this chapter, the court may realign the designation of the parties as "petitioner" and "respondent" where the court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence and may issue an ex parte temporary order for protection in accordance with RCW 26.50.070 on behalf of the victim until the victim is able to prepare a petition for an order for protection in accordance with RCW 26.50.030.

(5) Except as provided in subsection (4) of this section, no order for protection shall grant relief to any party except upon notice to the respondent and hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with RCW 26.50.050.

(6) The court order shall specify the date the order expires if any. The court order shall also state whether the court issued the protection order following personal service, service by publication, or service by mail and whether the court has approved service by publication or mail of an order issued under this section.

(7) If the court declines to issue an order for protection or declines to renew an order for protection, the court shall state in writing on the order the particular reasons for the court's denial. [1996 c 248 § 13; 1995 c 246 § 7; 1994 sp.s. c 7 § 457. Prior: 1992 c 143 § 2; 1992 c 111 § 4; 1992 c 86 § 4; 1989 c 411 § 1; 1987 c 460 § 55; 1985 c 303 § 5; 1984 c 263 § 7.]

Severability—1995 c 246: See note following RCW 26.50.010.

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

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Findings—1992 c 111: See note following RCW 26.50.030.

Short title—Section captions—Effective date—Severability—1987 c 460: See RCW 26.09.910 through 26.09.913.

26.50.070 Ex parte temporary order for protection.

(1) Where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary order for protection, pending a full hearing, and grant relief as the court deems proper, including an order:

(a) Restraining any party from committing acts of domestic violence;

(b) Restraining any party from going onto the grounds of or entering the dwelling that the parties share, from the residence, workplace, or school of the other, or from the day care or school of a child until further order of the court;

(c) Restraining any party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the court;

(d) Restraining any party from having any contact with the victim of domestic violence or the victim's children or members of the victim's household; and

(e) Considering the provisions of RCW 9.41.800.

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

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

(4) An ex parte temporary order for protection shall be effective for a fixed period not to exceed fourteen days or twenty-four days if the court has permitted service by publication under RCW 26.50.085 or by mail under RCW 26.50.123. The ex parte order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than fourteen days from the issuance of the temporary order or not later than twenty-four days if service by publication or by mail is permitted. Except as provided in RCW 26.50.050, 26.50.085, and 26.50.123, the respondent shall be personally served with a copy of the ex parte order along with a copy of the petition and notice of the date set for the hearing.

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

(6) If the court declines to issue an ex parte temporary order for protection the court shall state the particular reasons for the court's denial. The court's denial of a motion for an ex parte order of protection shall be filed with the court. [1996 c 248 § 14; 1995 c 246 § 8; 1994 sp.s. c 7 § 458; 1992 c 143 § 3; 1989 c 411 § 2; 1984 c 263 § 8.]

Severability—1995 c 246: See note following RCW 26.50.010.

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

Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460: See note following RCW 9.41.010.

Child abuse, temporary restraining order: RCW 26.44.063.

Orders prohibiting contact: RCW 10.99.040.

Temporary restraining order: RCW 26.09.060.

26.50.080 Issuance of order—Assistance of peace officer—Designation of appropriate law enforcement agency.

(1) When an order is issued under this chapter upon request of the petitioner, the court may order a peace officer to accompany the petitioner and assist in placing the petitioner in possession of those items indicated in the order or to otherwise assist in the execution of the order of protection. The order shall list all items that are to be included with sufficient specificity to make it clear which property is included. Orders issued under this chapter shall include a designation of the appropriate law enforcement agency to execute, serve, or enforce the order.

(2) Upon order of a court, a peace officer shall accompany the petitioner in an order of protection and assist in placing the petitioner in possession of all items listed in the order and to otherwise assist in the execution of the order. [1995 c 246 § 9; 1984 c 263 § 9.]

Severability—1995 c 246: See note following RCW 26.50.010.

26.50.085 Hearing reset after ex parte order—Service by publication—Circumstances.

(1) If the

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

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

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

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

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

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

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

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

., Petitioner
vs. No.
., Respondent

The state of Washington to (respondent):

You are hereby summoned to appear on the day of, 19. . ., at a.m./p.m., and respond to the petition. If you fail to respond, an order of protection will be issued against you pursuant to the provisions of the domestic violence protection act, chapter 26.50 RCW, for a minimum of one year from the date you are required to appear. A temporary order of protection has been issued

against you, restraining you from the following: (Insert a brief statement of the provisions of the ex parte order). A copy of the petition, notice of hearing, and ex parte order has been filed with the clerk of this court.

.....
Petitioner

[1992 c 143 § 4.]

26.50.090 Order—Service—Fees. (1) An order issued under this chapter shall be personally served upon the respondent, except as provided in subsections (6) and (8) of this section.

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

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

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

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

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

(7) Municipal police departments serving documents as required under this chapter may collect from respondents ordered to pay fees under RCW 26.50.060 the same fees for service and mileage authorized by RCW 36.18.040 to be collected by sheriffs.

(8) If the court previously entered an order allowing service of the notice of hearing and temporary order of protection by publication pursuant to RCW 26.50.085 or by mail pursuant to RCW 26.50.123, the court may permit service by publication or by mail of the order of protection issued under RCW 26.50.060. Service by publication must comply with the requirements of RCW 26.50.085 and service by mail must comply with the requirements of RCW 26.50.123. The court order must state whether the court permitted service by publication or by mail. [1995 c 246 § 10; 1992 c 143 § 6; 1985 c 303 § 6; 1984 c 263 § 10.]

Severability—1995 c 246: See note following RCW 26.50.010.

26.50.095 Order following service by publication. Following completion of service by publication as provided in RCW 26.50.085 or by mail as provided in RCW 26.50.123, if the respondent fails to appear at the hearing, the court may issue an order of protection as provided in RCW 26.50.060. That order must be served pursuant to RCW 26.50.090, and forwarded to the appropriate law

enforcement agency pursuant to RCW 26.50.100. [1995 c 246 § 12; 1992 c 143 § 5.]

Severability—1995 c 246: See note following RCW 26.50.010.

26.50.100 Order—Transmittal to law enforcement agency—Record in law enforcement information system—Enforceability. (1) A copy of an order for protection granted under this chapter shall be forwarded by the clerk of the court on or before the next judicial day to the appropriate law enforcement agency specified in the order.

Upon receipt of the order, the law enforcement agency shall forthwith enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order shall remain in the computer for the period stated in the order. The law enforcement agency shall only expunge from the computer-based criminal intelligence information system orders that are expired, vacated, or superseded. Entry into the law enforcement information system constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county in the state.

(2) The information entered into the computer-based criminal intelligence information system shall include notice to law enforcement whether the order was personally served, served by publication, or served by mail. [1996 c 248 § 15; 1995 c 246 § 13; 1992 c 143 § 7; 1984 c 263 § 11.]

Severability—1995 c 246: See note following RCW 26.50.010.

26.50.110 Violation of order—Penalties. (1) Whenever an order for protection is granted under this chapter and the respondent or person to be restrained knows of the order, a violation of the restraint provisions or of a provision excluding the person from a residence, workplace, school, or day care is a gross misdemeanor except as provided in subsections (4) and (5) of this section. Upon conviction, and in addition to any other penalties provided by law, the court may require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter that restrains the person or excludes the person from a residence, workplace, school, or day care, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order for protection shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of an order issued under this chapter and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of a protective order issued under this chapter that is reckless and

creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a court order issued under this chapter is a class C felony if the offender has at least two previous convictions for violating the provisions of a no-contact order issued under chapter 10.99 RCW, a domestic violence protection order issued under chapter 26.09, 26.10, or 26.26 RCW or this chapter, or any federal or out-of-state order that is comparable to a no-contact or protection order issued under Washington law. The previous convictions may involve the same victim or other victims specifically protected by the no-contact orders or protection orders the offender violated.

(6) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order for protection granted under this chapter, the court may issue an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation. [1996 c 248 § 16; 1995 c 246 § 14; 1992 c 86 § 5; 1991 c 301 § 6; 1984 c 263 § 12.]

Severability—1995 c 246: See note following RCW 26.50.010.

Finding—1991 c 301: See note following RCW 10.99.020.

26.50.115 Enforcement of ex parte order—Knowledge of order prerequisite to penalties—Reasonable efforts to serve copy of order. (1) When the court issues an ex parte order pursuant to RCW 26.50.070 or an order of protection pursuant to RCW 26.50.060, the court shall advise the petitioner that the respondent may not be subjected to the penalties set forth in RCW 26.50.110 for a violation of the order unless the respondent knows of the order.

(2) When a peace officer investigates a report of an alleged violation of an order for protection issued under this chapter the officer shall attempt to determine whether the respondent knew of the existence of the protection order. If the law enforcement officer determines that the respondent did not or probably did not know about the protection order and the officer is provided a current copy of the order, the officer shall serve the order on the respondent if the respondent is present. If the respondent is not present, the officer shall make reasonable efforts to serve a copy of the order on the respondent. If the officer serves the respondent with the petitioner's copy of the order, the officer shall give petitioner a receipt indicating that petitioner's copy has been served on the respondent. After the officer has served the order on the respondent, the officer shall enforce prospective compliance with the order.

(3) Presentation of an unexpired, certified copy of a protection order with proof of service is sufficient for a law enforcement officer to enforce the order regardless of the presence of the order in the law enforcement computer-based criminal intelligence information system. [1996 c 248 § 17; 1995 c 246 § 15; 1992 c 143 § 8.]

Severability—1995 c 246: See note following RCW 26.50.010.

26.50.120 Violation of order—Prosecuting attorney or attorney for municipality may be requested to assist—Costs and attorney's fee. When a party alleging a violation of an order for protection issued under this chapter states that the party is unable to afford private counsel and asks the prosecuting attorney for the county or the attorney for the municipality in which the order was issued for assistance, the attorney shall initiate and prosecute a contempt proceeding if there is probable cause to believe that the violation occurred. In this action, the court may require the violator of the order to pay the costs incurred in bringing the action, including a reasonable attorney's fee. [1984 c 263 § 13.]

26.50.123 Service by mail. (1) In circumstances justifying service by publication under RCW 26.50.085(1), if the serving party files an affidavit stating facts from which the court determines that service by mail is just as likely to give actual notice as service by publication and that the serving party is unable to afford the cost of service by publication, the court may order that service be made by mail. Such service shall be made by any person over eighteen years of age, who is competent to be a witness, other than a party, by mailing copies of the order and other process to the party to be served at his or her last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender.

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

(3) Service under this section may be used in the same manner and shall have the same jurisdictional effect as service by publication for purposes of this chapter. Service shall be deemed complete upon the mailing of two copies as prescribed in this section. [1995 c 246 § 16.]

Severability—1995 c 246: See note following RCW 26.50.010.

26.50.125 Service by publication or mailing—Costs. The court may permit service by publication or by mail under this chapter only if the petitioner pays the cost of publication or mailing unless the county legislative authority allocates funds for service of process by publication or by mail for indigent petitioners. [1995 c 246 § 17; 1992 c 143 § 9.]

Severability—1995 c 246: See note following RCW 26.50.010.

26.50.130 Order—Modification—Transmittal. Upon application with notice to all parties and after a hearing, the court may modify the terms of an existing order for protection. In any situation where an order is terminated or modified before its expiration date, the clerk of the court shall forward on or before the next judicial day a true copy of the modified order or the termination order to the appropriate law enforcement agency specified in the modified or termination order. Upon receipt of the order, the law enforcement agency shall promptly enter it in the law enforcement information system. [1984 c 263 § 14.]

26.50.135 Residential placement or custody of a child—Prerequisite. (1) Before granting an order under this chapter directing residential placement of a child or restraining or limiting a party's contact with a child, the court shall consult the judicial information system, if available, to determine the pendency of other proceedings involving the residential placement of any child of the parties for whom residential placement has been requested.

(2) Jurisdictional issues regarding out-of-state proceedings involving the custody or residential placement of any child of the parties shall be governed by the uniform child custody jurisdiction act, chapter 26.27 RCW. [1995 c 246 § 19.]

Severability—1995 c 246: See note following RCW 26.50.010.

26.50.140 Peace officers—Immunity. No peace officer may be held criminally or civilly liable for making an arrest under RCW 26.50.110 if the police officer acts in good faith and without malice. [1984 c 263 § 17.]

26.50.150 Domestic violence perpetrator programs. The department of social and health services shall adopt rules for standards of approval of domestic violence perpetrator programs that accept perpetrators of domestic violence into treatment to satisfy court orders or that represent the programs as ones that treat domestic violence perpetrators. The treatment must meet the following minimum qualifications:

(1) All treatment must be based upon a full, complete clinical intake including: Current and past violence history; a lethality risk assessment; a complete diagnostic evaluation; a substance abuse assessment; criminal history; assessment of cultural issues, learning disabilities, literacy, and special language needs; and a treatment plan that adequately and appropriately addresses the treatment needs of the individual.

(2) To facilitate communication necessary for periodic safety checks and case monitoring, the program must require the perpetrator to sign the following releases:

(a) A release for the program to inform the victim and victim's community and legal advocates that the perpetrator is in treatment with the program, and to provide information, for safety purposes, to the victim and victim's community and legal advocates;

(b) A release to prior and current treatment agencies to provide information on the perpetrator to the program; and

(c) A release for the program to provide information on the perpetrator to relevant legal entities including: Lawyers, courts, parole, probation, child protective services, and child welfare services.

(3) Treatment must be for a minimum treatment period defined by the secretary of the department by rule. The weekly treatment sessions must be in a group unless there is a documented, clinical reason for another modality. Any other therapies, such as individual, marital, or family therapy, substance abuse evaluations or therapy, medication reviews, or psychiatric interviews, may be concomitant with the weekly group treatment sessions described in this section but not a substitute for it.

(4) The treatment must focus primarily on ending the violence, holding the perpetrator accountable for his or her violence, and changing his or her behavior. The treatment

must be based on nonvictim-blaming strategies and philosophies and shall include education about the individual, family, and cultural dynamics of domestic violence.

(5) Satisfactory completion of treatment must be contingent upon the perpetrator meeting specific criteria, defined by rule by the secretary of the department, and not just upon the end of a certain period of time or a certain number of sessions.

(6) The program must have policies and procedures for dealing with reoffenses and noncompliance.

(7) All evaluation and treatment services must be provided by, or under the supervision of, qualified personnel.

(8) The secretary of the department may adopt rules and establish fees as necessary to implement this section. [1991 c 301 § 7.]

Finding—1991 c 301: See note following RCW 10.99.020.

26.50.160 Judicial information system—Data base.

To prevent the issuance of competing protection orders in different courts and to give courts needed information for issuance of orders, the judicial information system shall be available in each district, municipal, and superior court by July 1, 1997, and shall include a data base containing the following information:

(1) The names of the parties and the cause number for every order of protection issued under this title, every criminal no-contact order issued under chapter 10.99 RCW, every antiharassment order issued under chapter 10.14 RCW, every dissolution action under chapter 26.09 RCW, every third-party custody action under chapter 26.10 RCW, and every parentage action under chapter 26.10 RCW;

(2) A criminal history of the parties; and

(3) Other relevant information necessary to assist courts in issuing orders under this chapter as determined by the judicial information system committee. [1995 c 246 § 18.]

Severability—1995 c 246: See note following RCW 26.50.010.

26.50.200 Title to real estate—Effect. Nothing in this chapter may affect the title to real estate: PROVIDED, That a judgment for costs or fees awarded under this chapter shall constitute a lien on real estate to the extent provided in chapter 4.56 RCW. [1985 c 303 § 7; 1984 c 263 § 15.]

26.50.210 Proceedings additional. Any proceeding under *this act is in addition to other civil or criminal remedies. [1984 c 263 § 16.]

***Reviser's note:** For translation of "this act" [1984 c 263] see Codification Tables, Volume 0.

26.50.220 Parenting plan—Designation of parent for other state and federal purposes. Solely for the purposes of all other state and federal statutes which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside a majority of the time as the custodian of the child. However, this designation shall not affect either parent's rights and responsibilities under the parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside the majority of the time shall be deemed to be the custodian of the child for the purposes of such federal and state statutes. [1989 c 375 § 26.]

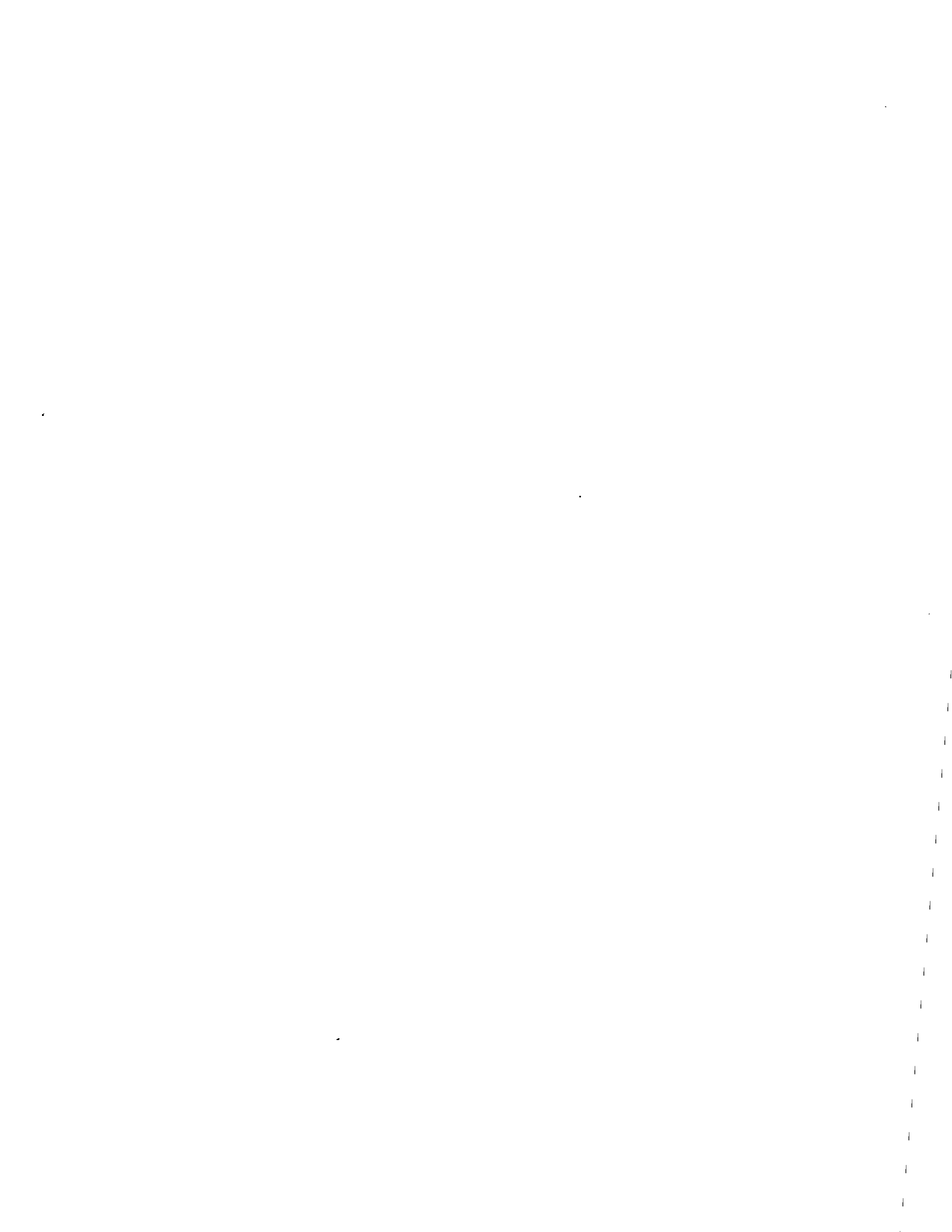
Severability—1989 c 375: See RCW 26.09.914.

26.50.900 Short title. This chapter may be cited as the "Domestic Violence Prevention Act". [1984 c 263 § 1.]

26.50.901 Effective date—1984 c 263. Sections 1 through 29 of this act shall take effect on September 1, 1984. [1984 c 263 § 32.]

26.50.902 Severability—1984 c 263. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 263 § 33.]

26.50.903 Severability—1992 c 111. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 111 § 14.]



Title 27

LIBRARIES, MUSEUMS, AND HISTORICAL ACTIVITIES

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- 27.12 Public libraries.
- 27.15 Library capital facility areas.
- 27.18 Interstate library compact.
- 27.20 State law library.
- 27.24 County law libraries.
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- 27.44 Indian graves and records.
- 27.48 Preservation of historical materials.
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Chapter not to apply to certain materials printed in library or library district: RCW 82.04.600.

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Highway advertising control act of 1961: Chapter 47.42 RCW.

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Power of cities and towns to acquire art museums, auditoriums, etc.: RCW 35.21.020.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

State publications distribution center: Chapter 40.06 RCW.

Chapter 27.04 STATE LIBRARY

Sections

- 27.04.010 Library created.
- 27.04.020 Library commission created—Terms, vacancies—Compensation and travel expenses.
- 27.04.030 Duties of commission—Qualifications of librarians.
- 27.04.045 Duties of commission—Responsibility for certain functions—Expiration of subsection.
- 27.04.050 Duties of librarian.
- 27.04.080 Sale of library materials authorized—Disposition of proceeds.
- 27.04.100 Reimbursement of employees for offender or resident assaults.
- 27.04.110 Learn-in-libraries program.

Certain library records exempt from public inspection: RCW 42.17.310.

27.04.010 Library created. There shall be a state library, and a state librarian as the chief executive officer in charge thereof. [1943 c 207 § 1; Rem. Supp. 1943 § 8225-1. Prior: See Reviser's note below.]

Reviser's note: For prior laws on this subject, see Laws 1929 c 159; 1921 c 7 § 13; 1913 c 72; 1903 c 171; 1901 c 43 and 46; 1893 c 63; 1891 c 37; Code 1881 §§.2588-2613.

27.04.020 Library commission created—Terms, vacancies—Compensation and travel expenses. A state library commission is hereby created which shall consist of the superintendent of public instruction, who shall be ex officio chairman of the commission, and four commissioners appointed by the governor, one of whom shall be a library trustee at the time of appointment and one a certified librarian actually engaged in library work at the time of appointment. The first appointments shall be for terms of one, two, three, and four years respectively, and thereafter one commissioner shall be appointed each year to serve for a four year term. Vacancies shall be filled by appointments for the unexpired terms. Each commissioner shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses incurred in the actual performance of their duties in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 58; 1975-'76 2nd ex.s. c 34 § 66; 1967 c 198 § 1; 1963 c 202 § 1; 1961 c 45 § 1; 1941 c 5 § 1; Rem. Supp. 1941 § 10771-2. Prior: See Reviser's note following RCW 27.04.010.]

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

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

27.04.030 Duties of commission—Qualifications of librarians. The state library commission:

(1) May make such rules under chapter 34.05 RCW as may be deemed necessary and proper to carry out the purposes of this chapter;

(2) Shall set general policy direction pursuant to the provisions of this chapter;

(3) Shall appoint a state librarian who shall serve at the pleasure of the commission;

(4) Shall adopt a recommended budget and submit it to the governor;

(5) Shall have authority to contract with any agency of the state of Washington for the purpose of providing library materials, supplies, and equipment and employing assistants as needed for the development, growth, and operation of any library facilities or services of such agency;

(6) Shall have authority to contract with any public library in the state for that library to render library service to the blind and/or physically handicapped throughout the state. The state library commission shall have authority to compensate such public library for the cost of the service it renders under such contract;

(7) May adopt rules under chapter 34.05 RCW for the allocation of any grants of state, federal, or private funds for library purposes;

(8) Shall have authority to accept and to expend in accordance with the terms thereof any grant of federal or private funds which may become available to the state for library purposes. For the purpose of qualifying to receive

such grants, the state library commission is authorized to make such applications and reports as may be required by the federal government or appropriate private entity as a condition thereto;

(9) Shall have the authority to provide for the sale of library material in accordance with RCW 27.12.305; and

(10) Shall have authority to establish rules and regulations for, and prescribe and hold examinations to test, the qualifications of those seeking certificates as librarians.

(a) The commission shall grant librarians' certificates without examination to applicants who are graduates of library schools accredited by the American library association for general library training, and shall grant certificates to other applicants when it has satisfied itself by examination that the applicant has attainments and abilities equivalent to those of a library school graduate and is qualified to carry on library work ably and efficiently.

(b) The commission shall require a fee of not less than one dollar nor greater than that required to recover the costs associated with the application to be paid by each applicant for a librarian's certificate. Money paid as fees shall be deposited with the state treasurer.

(c) A library serving a community having over four thousand population shall not have in its employ, in the position of librarian or in any other full-time professional library position, a person who does not hold a librarian's certificate issued by the commission or its predecessor.

(d) A full-time professional library position, as intended by this subsection, is one that requires, in the opinion of the commission, a knowledge of books and of library technique equivalent to that required for graduation from an accredited library school.

(e) The provisions of this subsection apply to every library serving a community having over four thousand population and to every library operated by the state or under its authority, including libraries of institutions of higher learning: PROVIDED, That nothing in this subsection applies to the state law library or to county law libraries. [1987 c 330 § 401; 1986 c 79 § 1; 1984 c 152 § 1; 1943 c 207 § 2; 1941 c 5 § 2; Rem. Supp. 1943 § 10771-3. Prior: See Reviser's note following RCW 27.04.010.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

27.04.045 Duties of commission—Responsibility for certain functions—Expiration of subsection. The state library commission shall be responsible for the following functions:

(1) Maintaining a library at the state capitol grounds to effectively provide library and information services to members of the legislature, state officials, and state employees in connection with their official duties;

(2) Acquiring and making available information, publications, and source materials that pertain to the history of the state;

(3) Serving as the depository for newspapers published in the state of Washington thus providing a central location for a valuable historical record for scholarly, personal, and commercial reference and circulation;

(4) Promoting and facilitating electronic access to public information and services;

(5) Establishing content-related standards for common formats and agency indexes for state agency produced information. In developing these standards, the commission is encouraged to include the state archives, the department of information services, and public and academic libraries;

(6) Collecting and distributing copies of state publications by ensuring that:

(a) The state library collects and makes available as part of its collection copies of any state publication, as defined in RCW 40.06.010, prepared by any state agency whenever fifteen or more copies are prepared for distribution. The state library commission, on recommendation of the state librarian, may provide by rule for deposit with the state library of up to three copies of such publication; and

(b) The state library maintains a division to serve as state publications distribution center, as provided in chapter 40.06 RCW;

(7) Providing advisory services to state agencies regarding their information needs;

(8) Providing for library and information service to residents and staff of state-supported residential institutions;

(9) Providing for library and information services to persons throughout the state who are blind and/or physically handicapped;

(10) Assisting individuals and groups such as libraries, library boards, governing bodies, and citizens throughout the state toward the establishment and development of library services;

(11) Making studies and surveys of library needs in order to provide, expand, enlarge, and otherwise improve access to library facilities and services throughout the state;

(12) Serving as a primary interlibrary loan, information, reference, and referral center for all libraries in the state;

(13) Assisting in the provision of direct library and information services to individuals;

(14) Overseeing of the Washington library network in accordance with chapters 27.26 and 43.105 RCW. This subsection shall expire on June 30, 1997. [1996 c 171 § 6; 1989 c 96 § 7; 1984 c 152 § 2.]

Captions not law—Effective dates—1996 c 171: See notes following RCW 43.105.250.

Findings—1989 c 96: See note following RCW 27.26.010.

Severability—1989 c 96: See RCW 27.26.900.

27.04.050 Duties of librarian. The state librarian shall advise the commission and shall be responsible for implementing policy set by the commission; shall be responsible for the general management and administration of the state library; shall have the authority to acquire library materials, equipment, and supplies by purchase, exchange, gift, or otherwise; and shall have the authority to employ and terminate personnel in accordance with chapter 41.06 RCW as may be necessary to implement the purposes of this chapter and the directions of the state library commission. [1984 c 152 § 3; 1943 c 207 § 3; Rem. Supp. 1943 § 8225-2. Prior: See Reviser's note following RCW 27.04.010.]

State reports to be filed with state library: RCW 40.07.030.

27.04.080 Sale of library materials authorized—Disposition of proceeds. See RCW 27.12.305.

27.04.100 Reimbursement of employees for offender or resident assaults. (1) In recognition of prison overcrowding and the hazardous nature of employment in state institutions and offices, the legislature hereby provides a supplementary program to reimburse employees of the state library for some of their costs attributable to their being the victims of offender or resident assaults. This program shall be limited to the reimbursement provided in this section.

(2) An employee is only entitled to receive the reimbursement provided in this section if the state librarian, or the state librarian's designee, finds that each of the following has occurred:

(a) An offender or resident has assaulted the employee while the employee is performing the employee's official duties and as a result thereof the employee has sustained injuries which have required the employee to miss days of work; and

(b) The assault cannot be attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment.

(3) The reimbursement authorized under this section shall be as follows:

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) With respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(4) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(5) The employee shall not be entitled to the reimbursement provided in subsection (3) of this section for any workday for which the state librarian, or the state librarian's designee, finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(6) The reimbursement shall only be made for absences which the state librarian, or the state librarian's designee, believes are justified.

(7) While the employee is receiving reimbursement under this section, he or she shall continue to be classified as a state employee and the reimbursement amount shall be considered as salary or wages.

(8) All reimbursement payments required to be made to employees under this section shall be made by the state library. The payments shall be considered as a salary or wage expense and shall be paid by the state library in the same manner and from the same appropriations as other salary and wage expenses of the state library.

(9) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right.

(10) For the purposes of this section, "offender or resident" means: (a) Inmate as defined in *RCW 72.09.020, (b) offender as defined in RCW 9.94A.030, (c) any other person in the custody of or subject to the jurisdiction of the

department of corrections, or (d) a resident of a state institution. [1990 c 68 § 1.]

*Reviser's note: RCW 72.09.020 was repealed by 1995 1st sp.s. c 19 § 36.

27.04.110 Learn-in-libraries program. (1) The learn-in-libraries program is hereby created. The state library commission shall administer the program.

(2) The state library commission may provide grants, with funds appropriated for that purpose, to local libraries to develop and implement learn-in-library programs that provide after school and vacation programs for children. Grant applicants shall be encouraged to develop programs that use older adult volunteers and other community volunteer resources. The programs shall be designed to increase literacy, improve reading skills, encourage reading, and provide homework assistance for school-age children who would otherwise be unsupervised. Applicants shall be encouraged to develop innovative models to provide services.

(3) In addition to grants provided under subsection (2) of this section, the state library commission may provide grants, with funds appropriated for that purpose, to local libraries to develop and implement other innovative programs for children throughout the year. Programs may be developed in cooperation with a school district and occur during the school day. Programs shall be designed to provide services to children or to help provide training to parents or other persons working with children in order to increase literacy, encourage reading, promote reading readiness, and improve reading and other learning skills. The commission shall encourage grant applicants to develop programs that use older adult volunteers and other community volunteer resources and to develop innovative models to provide services.

(4) The state library commission shall report to the legislature on the results of the program by December 1, 1991. [1991 c 91 § 1; 1990 c 290 § 2.]

Chapter 27.12

PUBLIC LIBRARIES

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Certain library records exempt from public inspection: RCW 42.17.310.

Librarians—Qualifications and certification: RCW 27.04.030(10).

Rural library district regular property tax levy: RCW 84.52.063.

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

27.12.010 Definitions. As used in this chapter, unless the context requires a different meaning:

(1) "Governmental unit" means any county, city, town, rural county library district, intercounty rural library district, rural partial-county library district, or island library district;

(2) "Legislative body" means the body authorized to determine the amount of taxes to be levied in a governmental unit; in rural county library districts, in intercounty rural library districts, and in island library districts, the legislative body shall be the board of library trustees of the district;

(3) "Library" means a free public library supported in whole or in part with money derived from taxation;

(4) "Regional library" means a free public library maintained by two or more counties or other governmental units as provided in RCW 27.12.080;

(5) "Rural county library district" means a library serving all the area of a county not included within the area of incorporated cities and towns: PROVIDED, That any city or town with a population of one hundred thousand or less at the time of annexation may be included therein as provided in RCW 27.12.360 through 27.12.390;

(6) "Intercounty rural library district" means a municipal corporation organized to provide library service for all areas outside of incorporated cities and towns within two or more counties: PROVIDED, That any city or town with a population of one hundred thousand or less at the time of annexation may be included therein as provided in RCW 27.12.360 through 27.12.390;

(7) "Island library district" means a municipal corporation organized to provide library service for all areas outside of incorporated cities and towns on a single island only, and not all of the area of the county, in counties composed entirely of islands and having a population of less than twenty-five thousand at the time the island library district was created: PROVIDED, That any city or town with a population of one hundred thousand or less at the time of annexation may be included therein as provided in RCW 27.12.360 through 27.12.390; and

(8) "Rural partial-county library district" means a municipal corporation organized to provide library service for a portion of the unincorporated area of a county. Any city or town located in the same county as a rural partial-county library district may annex to the district if the city or town has a population of one hundred thousand or less at the time of annexation. [1994 c 198 § 1; 1993 c 284 § 2; 1982 c 123 § 1; 1981 c 26 § 1; 1977 ex.s. c 353 § 5; 1965 c 122 § 1; 1947 c 75 § 10; 1941 c 65 § 1; 1935 c 119 § 2; Rem. Supp. 1947 § 8226-2.]

27.12.020 Policy of state. It is hereby declared to be the policy of the state, as a part of its provision for public education, to promote the establishment and development of public library service throughout its various subdivisions. [1935 c 119 § 1; RRS § 8226-1. FORMER PART OF SECTION: 1941 c 65 § 2; 1935 c 119 § 3; Rem. Supp. 1941 § 8226-3 now codified as RCW 27.12.025.]

27.12.025 Authorization. Any governmental unit has power to establish and maintain a library, either by itself or in cooperation with one or more other governmental units. [1941 c 65 § 2; 1935 c 119 § 3; Rem. Supp. 1941 § 8226-3. Formerly RCW 27.12.020, part.]

27.12.030 Libraries, how established. A library may be established in any county, city, or town either (1) by its legislative body of its own initiative; or (2) upon the petition of one hundred taxpayers of such a governmental unit, the legislative body shall submit to a vote of the qualified electors thereof, at the next municipal or special election held therein (in the case of a city or town) or the next general election or special election held therein (in the case

of a county), the question whether a library shall be established; and if a majority of the electors voting on the question vote in favor of the establishment of a library, the legislative body shall forthwith establish one. [1965 c 122 § 2; 1941 c 65 § 3; 1935 c 119 § 4; Rem. Supp. 1941 § 8226-4. Prior: 1915 c 12 § 1; 1913 c 123 § 1; 1909 c 116 § 1; 1901 c 166 § 1.]

27.12.040 Rural library districts—Establishment.

The procedure for the establishment of a rural county library district shall be as follows:

(1) Petitions signed by at least ten percent of the registered voters of the county who voted in the last general election, outside of the area of incorporated cities and towns, asking that the question, "Shall a rural county library district be established?" be submitted to a vote of the people, shall be filed with the county legislative authority.

(2) The county legislative authority, after having determined that the petitions were signed by the requisite number of registered voters, shall place the proposition for the establishment of a rural county library district on the ballot for the vote of the people of the county, outside incorporated cities and towns, at the next succeeding general or special election.

(3) If a majority of those voting on the proposition vote in favor of the establishment of the rural county library district, the county legislative authority shall forthwith declare it established. [1990 c 259 § 1; 1955 c 59 § 4. Prior: 1947 c 75 § 11, part; 1943 c 251 § 1, part; 1941 c 65 § 4, part; Rem. Supp. 1947 § 8226-4a, part.]

Dissolution—Disposition of property: RCW 27.12.320.

Dissolution of island library district: RCW 27.12.450.

27.12.050 Rural library districts—Board of library trustees—Tax levies. After the board of county commissioners has declared a rural county library district established, it shall appoint a board of library trustees and provide funds for the establishment and maintenance of library service for the district by making a tax levy on the property in the district of not more than fifty cents per thousand dollars of assessed value per year sufficient for the library service as shown to be required by the budget submitted to the board of county commissioners by the board of library trustees, and by making a tax levy in such further amount as shall be authorized pursuant to RCW 27.12.222 or RCW 84.52.052 or 84.52.056. Such levies shall be a part of the general tax roll and shall be collected as a part of the general taxes against the property in the district. [1973 1st ex.s. c 195 § 5; 1955 c 59 § 5. Prior: 1947 c 75 § 11, part; 1943 c 251 § 1, part; 1941 c 65 § 4, part; Rem. Supp. 1947 § 8226-4a, part.]

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

Budget for capital outlays—Accumulation of funds: RCW 27.12.220.

Capital outlays—Bonds—Excess levies: RCW 27.12.222.

27.12.060 Rural library districts—General powers.

A rural county library district shall be a public corporation with such powers as are necessary to carry out its functions and for taxation purposes shall have the power vested in municipal corporations for such purposes. [1984 c 186 § 6;

1983 c 167 § 19; 1980 c 100 § 1; 1955 c 59 § 6. Prior: 1947 c 75 § 11, part; 1943 c 251 § 1, part; 1941 c 65 § 4, part; Rem. Supp. 1947 § 8226-4a, part.]

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

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

27.12.070 Rural county library districts or rural partial-county library districts—Disbursement of revenues and collection of taxes. The county treasurer of the county in which any rural county library district or rural partial-county library district is created shall receive and disburse all district revenues and collect all taxes levied under this chapter. [1993 c 284 § 3; 1984 c 186 § 7; 1973 1st ex.s. c 195 § 6; 1970 ex.s. c 42 § 2; 1955 c 59 § 7. Prior: 1947 c 75 § 11, part; 1943 c 251 § 1, part; 1941 c 65 § 4, part; Rem. Supp. 1947 § 8226-4a, part.]

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

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

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

Annual appropriations—Control of expenditures: RCW 27.12.240.

Capital outlays—General obligation bonds—Excess levies: RCW 27.12.222.

27.12.079 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW.

27.12.080 Regional libraries. Two or more counties, or other governmental units, by action of their legislative bodies, may join in establishing and maintaining a regional library under the terms of a contract to which all will agree. The expenses of the regional library shall be apportioned between or among the contracting parties concerned on such basis as shall be agreed upon in the contract. The treasurer of one of the governmental units, as shall be provided in the contract, shall have the custody of the funds of the regional library; and the treasurers of the other governmental units concerned shall transfer quarterly to him all moneys collected for free public library purposes in their respective governmental units. If the legislative body of any governmental unit decides to withdraw from a regional library contract, the governmental unit withdrawing shall be entitled to a division of the property on the basis of its contributions. [1941 c 65 § 5; 1935 c 119 § 5; Rem. Supp. 1941 § 8226-5.]

27.12.090 Intercounty rural library districts—Establishment. Intercounty rural library districts may be established to provide throughout several counties free public library service similar to that provided within a single county by a rural county library district. [1947 c 75 § 1; Rem. Supp. 1947 § 8246-1.]

Dissolution—Disposition of property: RCW 27.12.320.

27.12.100 Intercounty rural library districts—Establishment—Procedure. An intercounty rural library district shall be established by joint action of two or more counties proceeding by either of the following alternative methods:

(1) The boards of county commissioners of any two or more counties shall adopt identical resolutions proposing the formation of such a district to include all of the areas outside of incorporated cities or towns in such counties as may be designated in such resolutions. In lieu of such resolutions a petition of like purport signed by ten percent of the registered voters residing outside of incorporated cities or towns of a county, may be filed with the county auditor thereof, and shall have the same effect as a resolution. The proposition for the formation of the district as stated on the petition shall be prepared by the attorney general upon request of the state library commission. Action to initiate the formation of such a district shall become ineffective in any county if corresponding action is not completed within one year thereafter by each other county included in such proposal. The county auditor in each county shall check the validity of the signatures on the petition and shall certify to the board of county commissioners the sufficiency of the signatures. If each petition contains the signatures of ten percent of the registered voters residing outside the incorporated cities and towns of the county, each board of county commissioners shall pass a resolution calling an election for the purpose of submitting the question to the voters and setting the date of said election. When such action has been taken in each of the counties involved, notification shall be made by each board of county commissioners to the board of county commissioners of the county having the largest population according to the last federal census, who shall give proper notification to each county auditor. At the next general or special election held in the respective counties there shall be submitted to the voters in the areas outside of incorporated cities and towns a question as to whether an intercounty rural library district shall be established as outlined in the resolutions or petitions. Notice of said election shall be given the county auditor pursuant to RCW 29.27.080. The county auditor shall provide for the printing of a separate ballot and shall provide for the distribution of ballots to the polling places pursuant to RCW 29.04.020. The county auditor shall instruct the election boards in split precincts. The respective county canvassing boards in each county to be included within the intercounty rural library district shall canvass the votes and certify the results to the county auditor pursuant to chapter 29.62 RCW; the result shall then be certified by each county auditor to the county auditor of the county having the largest population according to the last federal census. If a majority of the electors voting on the proposition in each of the counties affected shall vote in favor of such district it shall thereby become established, and the board of county commissioners of the county having the largest population according to the last federal census shall declare the intercounty rural library district established. If two or more of the counties affected are in an existing intercounty rural library district, then the electors in areas outside incorporated cities and towns in those counties shall vote as a unit and the electors in areas outside incorporated cities and towns in each of the other affected counties shall vote as separate units. If a majority of the electors voting on the proposition in the existing district and a majority of the voters in any of the other affected counties shall vote in favor of an expanded intercounty rural library district it shall thereby become established.

(2) The county commissioners of two or more counties meeting in joint session attended by a majority of the county commissioners of each county may, by majority vote of those present, order the establishment of an intercounty rural library district to include all of the area outside of incorporated cities and towns in as many of the counties represented at such joint meeting as shall be determined by resolution of such joint meeting. If two or more counties are in an existing intercounty rural library district, then a majority vote of all of the commissioners present from those counties voting as a unit, and a majority vote of the commissioners present from any other county shall cause the joint session to order the establishment of an expanded intercounty rural library district. No county, however, shall be included in such district if a majority of its county commissioners vote against its inclusion in such district. [1965 c 63 § 1; 1961 c 82 § 1; 1947 c 75 § 2; Rem. Supp. 1947 § 8246-2.]

27.12.110 Intercounty rural library districts—Expansion of existing districts. An existing rural county library district may be expanded into an intercounty rural library district or an established intercounty rural library district may be expanded to include additional counties by joint action of all counties included in the proposed expanded district taken in the same manner as prescribed for the initiation of an intercounty rural library district. [1947 c 75 § 3; Rem. Supp. 1947 § 8246-3.]

27.12.120 Intercounty rural library districts—Assumption of property, assets, liabilities. All property, assets and liabilities of preexisting library districts within the area included in an intercounty rural library district shall pass to and be assumed by an intercounty rural library district: PROVIDED, That where within any intercounty rural library district heretofore or hereafter organized under the provisions of this chapter a preexisting library district had incurred a bonded indebtedness which was outstanding at the time of the formation of the intercounty rural library district, such preexisting library district shall retain its corporate existence insofar as is necessary for the purpose until the bonded indebtedness outstanding against it on and after the effective date of said formation has been paid in full: PROVIDED FURTHER, That a special election may be called by the board of trustees of the intercounty rural library district, to be held at the next general or special election held in the respective counties for the purpose of affording the voters residing within the area outside of the preexisting library district an opportunity to assume the obligation of the bonded indebtedness of the preexisting library district or the question may be submitted to the voters as a separate proposition at the election on the proposal for the formation of the intercounty rural library district. [1961 c 82 § 2; 1947 c 75 § 4; Rem. Supp. 1947 § 8246-4.]

27.12.130 Intercounty rural library districts—Board of trustees. Immediately following the establishment of an intercounty rural library district the boards of county commissioners of the counties affected shall jointly appoint a board of five or seven trustees for the district in accordance with RCW 27.12.190. The board of trustees shall

appoint a librarian for the district. [1959 c 133 § 1; 1947 c 75 § 5; Rem. Supp. 1947 § 8246-5.]

27.12.140 Intercounty rural library districts—Name may be adopted. The board of trustees of an intercounty rural library district may adopt a name by which the district shall be known and under which it shall transact all of its business. [1947 c 75 § 6; Rem. Supp. 1947 § 8246-6.]

27.12.150 Intercounty rural library districts—Tax levies. Funds for the establishment and maintenance of the library service of the district shall be provided by the boards of county commissioners of the respective counties by means of an annual tax levy on the property in the district of not more than fifty cents per thousand dollars of assessed value per year. The tax levy in the several counties shall be at a uniform rate and shall be based on a budget to be compiled by the board of trustees of the intercounty rural library district who shall determine the uniform tax rate necessary and certify their determination to the respective boards of county commissioners.

Excess levies authorized pursuant to RCW 27.12.222 and RCW 84.52.052 or 84.52.056 shall be at a uniform rate which uniform rate shall be determined by the board of trustees of the intercounty rural library district and certified to the respective boards of county commissioners. [1973 1st ex.s. c 195 § 7; 1955 c 59 § 8; 1947 c 75 § 7; Rem. Supp. 1947 § 8246-7.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.
Budget for capital outlays—Accumulation of funds: RCW 27.12.220.
Capital outlays—Bonds—Excess levies: RCW 27.12.222.

27.12.160 Intercounty rural library districts—District treasurer. The board of trustees of an intercounty rural library district shall designate the county treasurer of one of the counties included in the district to act as treasurer for the district. All moneys raised for the district by taxation within the participating counties or received by the district from any other sources shall be paid over to him, and he shall disburse the funds of the district upon warrants drawn thereon by the auditor of the county to which he belongs pursuant to vouchers approved by the trustees of the district. [1947 c 75 § 8; Rem. Supp. 1947 § 8246-8.]

Annual expenditures—Control of appropriations: RCW 27.12.240.

27.12.170 Intercounty rural library districts—Powers of board—Procedures. Except as otherwise specifically provided intercounty rural library districts and the trustees thereof shall have the same powers as are prescribed by RCW 27.12.040 through 27.12.070, for rural county library districts and shall follow the same procedures and be subject to the same limitations as are provided therein with respect to the contracting of indebtedness. [1947 c 75 § 9; Rem. Supp. 1947 § 8246-9.]

27.12.180 Contracts for library service. Instead of establishing or maintaining an independent library, the legislative body of any governmental unit authorized to maintain a library shall have power to contract to receive library service from an existing library, the board of trustees

of which shall have reciprocal power to contract to render the service with the consent of the legislative body of its governmental unit. Such a contract shall require that the existing library perform all the functions of a library within the governmental unit wanting service. In like manner a legislative body may contract for library service from a library not owned by a public corporation but maintained for free public use: PROVIDED, That such a library be subject to inspection by the state librarian and be certified by him as maintaining a proper standard. Any school district may contract for school library service from any existing library, such service to be paid for from funds available to the school district for library purposes. [1941 c 65 § 6; 1935 c 119 § 7; Rem. Supp. 1941 § 8226-7.]

27.12.190 Library trustees—Appointment, election, removal, compensation. The management and control of a library shall be vested in a board of either five or seven trustees as hereinafter in this section provided. In cities and towns five trustees shall be appointed by the mayor with the consent of the legislative body. In counties, rural county library districts, and island library districts, five trustees shall be appointed by the board of county commissioners. In a regional library district a board of either five or seven trustees shall be appointed by the joint action of the legislative bodies concerned. In intercounty rural library districts a board of either five or seven trustees shall be appointed by the joint action of the boards of county commissioners of each of the counties included in a district. The first appointments for boards comprised of but five trustees shall be for terms of one, two, three, four, and five years respectively, and thereafter a trustee shall be appointed annually to serve for five years. The first appointments for boards comprised of seven trustees shall be for terms of one, two, three, four, five, six, and seven years respectively, and thereafter a trustee shall be appointed annually to serve for seven years. No person shall be appointed to any board of trustees for more than two consecutive terms. Vacancies shall be filled for unexpired terms as soon as possible in the manner in which members of the board are regularly chosen.

A library trustee shall not receive a salary or other compensation for services as trustee, but necessary expenses actually incurred shall be paid from the library funds.

A library trustee in the case of a city or town may be removed only by vote of the legislative body. A trustee of a county library, a rural county library district library, or an island library district library may be removed for just cause by the county commissioners after a public hearing upon a written complaint stating the ground for removal, which complaint, with a notice of the time and place of hearing, shall have been served upon the trustee at least fifteen days before the hearing. A trustee of an intercounty rural library district may be removed by the joint action of the board of county commissioners of the counties involved in the same manner as provided herein for the removal of a trustee of a county library. [1982 c 123 § 8; 1981 c 26 § 2; 1965 c 122 § 3; 1959 c 133 § 2; 1947 c 75 § 12; 1941 c 65 § 7; 1939 c 108 § 1; 1935 c 119 § 8; Rem. Supp. 1947 § 8226-8. Prior: 1915 c 12 § 2; 1909 c 116 § 4; 1901 c 166 § 4. Formerly RCW 27.12.190 and 27.12.200.]

27.12.210 Library trustees—Organization—Bylaws—Powers and duties. The trustees, immediately after their appointment or election, shall meet and organize by the election of such officers as they deem necessary. They shall:

(1) Adopt such bylaws, rules, and regulations for their own guidance and for the government of the library as they deem expedient;

(2) Have the supervision, care, and custody of all property of the library, including the rooms or buildings constructed, leased, or set apart therefor;

(3) Employ a librarian, and upon his recommendation employ such other assistants as may be necessary, all in accordance with the provisions of *RCW 27.08.010, prescribe their duties, fix their compensation, and remove them for cause;

(4) Submit annually to the legislative body a budget containing estimates in detail of the amount of money necessary for the library for the ensuing year; except that in a library district the board of library trustees shall prepare its budget, certify the same and deliver it to the board of county commissioners in ample time for it to make the tax levies for the purpose of the district;

(5) Have exclusive control of the finances of the library;

(6) Accept such gifts of money or property for library purposes as they deem expedient;

(7) Lease or purchase land for library buildings;

(8) Lease, purchase, or erect an appropriate building or buildings for library purposes, and acquire such other property as may be needed therefor;

(9) Purchase books, periodicals, maps, and supplies for the library; and

(10) Do all other acts necessary for the orderly and efficient management and control of the library. [1982 c 123 § 9; 1941 c 65 § 8; 1935 c 119 § 9; Rem. Supp. 1941 § 8226-9. Prior: 1909 c 116 § 5; 1901 c 166 § 5.]

*Reviser's note: RCW 27.08.010 was repealed by 1987 c 330 § 402. See RCW 27.04.030(10) for qualifications of librarians.

27.12.215 Job recruitment expenditures authorized. The trustees of a library or a library district have the authority to spend funds to recruit job candidates. The trustees have the authority to reimburse job candidates for reasonable and necessary travel expenses including transportation, subsistence, and lodging. [1979 ex.s. c 40 § 1.]

27.12.220 Rural, island, and intercounty rural districts—Budget for capital outlays—Accumulation of funds. The trustees of any rural county library district, any island library district, or any intercounty rural library district may include in the annual budget of such district an item for the accumulation during such year of a specified sum of money to be expended in a future year for the acquisition, enlargement or improvement of real or personal property for library purposes. [1982 c 123 § 10; 1947 c 22 § 1; Rem. Supp. 1947 § 8246a.]

27.12.222 Rural, island, and intercounty rural districts—General obligation bonds—Excess levies. A rural county library district, intercounty rural library district, or island library district may contract indebtedness and issue

general obligation bonds not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness, equal to one-tenth of one percent of the value of the taxable property within the district, as the term "value of the taxable property" is defined in RCW 39.36.015. The maximum term of nonvoter approved general obligation bonds shall not exceed six years. A rural county library district, island library district, or intercounty rural library district may additionally contract indebtedness and issue general obligation bonds for capital purposes only, together with any outstanding general indebtedness, not to exceed an amount equal to one-half of one percent of the value of the taxable property within the district, as the term "value of the taxable property" is defined in RCW 39.36.015 whenever a proposition authorizing the issuance of such bonds has been approved by the voters of the district pursuant to RCW 39.36.050, by three-fifths of the persons voting on the proposition at which election the number of persons voting on the proposition shall constitute not less than forty percent of the total number of votes cast in such taxing district at the last preceding general election. If the voters shall so authorize at an election held pursuant to RCW 39.36.050, the district may levy annual taxes in excess of normal legal limitations to pay the principal and interest upon such bonds as they shall become due. The excess levies mentioned in this section or in RCW 84.52.052 or 84.52.056 may be made notwithstanding anything contained in RCW 27.12.050 or 27.12.150 or any other statute pertaining to such library districts. [1984 c 186 § 8; 1982 c 123 § 11; 1970 ex.s. c 42 § 3; 1955 c 59 § 1.]

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

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

Island library districts—Tax levies: RCW 27.12.420.

27.12.223 Bonds—Sale—Security for deposit. Bonds authorized by RCW 27.12.222 shall be issued and sold in accordance with chapter 39.46 RCW. All such bonds shall be legal securities for any bank or trust company for deposit with the state treasurer or any county or city treasurer as security for deposits in lieu of a surety bond under any law relating to deposits of public moneys. [1984 c 186 § 9; 1983 c 167 § 20; 1970 ex.s. c 56 § 6; 1969 ex.s. c 232 § 4; 1955 c 59 § 2.]

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

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

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

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

27.12.240 Annual appropriations—Control of expenditures. After a library shall have been established or library service contracted for, the legislative body of the governmental unit for which the library was established or the service engaged, shall appropriate money annually for the support of the library. All funds for the library, whether derived from taxation or otherwise, shall be in the custody of the treasurer of the governmental unit, and shall be designated by him in some manner for identification, and shall not be used for any but library purposes. The board of

trustees shall have the exclusive control of expenditures for library purposes subject to any examination of accounts required by the state and money shall be paid for library purposes only upon vouchers of the board of trustees, without further audit. The board shall not make expenditures or incur indebtedness in any year in excess of the amount of money appropriated and/or available for library purposes. [1965 c 122 § 4; 1941 c 65 § 9; 1939 c 108 § 3; 1935 c 119 § 10; Rem. Supp. 1941 § 8226-10. Prior: 1909 c 116 § 3; 1901 c 166 § 3. Formerly RCW 27.12.240 and 27.12.250.]

27.12.260 Annual report of trustees. At the close of each year the board of trustees of every library shall make a report to the legislative body of the governmental unit wherein the board serves, showing the condition of their trust during the year, the sums of money received for the library fund from taxes and other sources, the sums of money expended and the purposes of the expenditures, the number of books and periodicals on hand, the number added during the year, the number retired, the number loaned out, and such other statistics and information and such suggestions as they deem of public interest. A copy of this report shall be filed with the state librarian. [1935 c 119 § 12; RRS § 8226-12. Prior: 1909 c 116 § 8; 1901 c 166 § 8.]

27.12.270 Rules and regulations—Free use of libraries. Every library established or maintained under *this act shall be free for the use of the inhabitants of the governmental unit in which it is located, subject to such reasonable rules and regulations as the trustees find necessary to assure the greatest benefit to the greatest number, except that the trustees may charge a reasonable fee for the use of certain duplicate copies of popular books. [1935 c 119 § 13; RRS § 8226-13. Prior: 1909 c 116 § 9, part; 1901 c 166 § 9, part.]

***Reviser's note:** Term "this act" was first used in basic act, 1935 c 119 and appeared in subsequent amendments. Chapter 119, Laws of 1935 was codified in RCW 27.08.010, 27.12.010 through 27.12.080, 27.12.180 through 27.12.210, 27.12.230 through 27.12.280, 27.12.290 through 27.12.320, 27.12.330, and 27.12.340.

27.12.280 Use by nonresidents—Exchange of books. The board of trustees of a library, under such rules and regulations as it may deem necessary and upon such terms and conditions as may be agreed upon, may allow nonresidents of the governmental unit in which the library is situated to use the books thereof, and may make exchanges of books with any other library, either permanently or temporarily. [1935 c 119 § 14; RRS § 8226-14. Prior: 1909 c 116 § 10; 1901 c 166 § 10.]

27.12.285 Library services for Indian tribes. The legislature finds that it is necessary to give the several boards of library trustees in this state additional powers in order to effectuate the state's policy with regard to libraries as set forth in RCW 27.12.020. On and after March 27, 1975 the board of library trustees in any county of this state, in addition to any other powers and duties, is hereby authorized to provide library services to Indian tribes recognized as such by the federal government or to supplement any existing library services of such an Indian tribe.

The power granted by this section shall extend beyond the geographic limits of the library district and the county or counties in which the district is located. [1975 c 50 § 1.]

27.12.290 Violators may be excluded. A board of library trustees may exclude from the use of the library under its charge any person who wilfully and persistently violates any rule or regulation prescribed for the use of the library or its facilities or any person whose physical condition is deemed dangerous or offensive to other library users. [1935 c 119 § 15; RRS § 8226-15. Prior: 1909 c 116 § 9, part; 1901 c 166 § 9, part.]

27.12.300 Gifts—Title to property. The title to money or property given to or for the use or benefit of a library shall vest in the board of trustees, to be held and used according to the terms of the gift. [1935 c 119 § 18; RRS § 8226-18. Prior: 1909 c 116 § 20; 1901 c 166 § 20.]

27.12.305 Sale of library materials authorized—Disposition of proceeds. Any public library, including the state library created pursuant to chapter 27.04 RCW, shall have the authority to provide for the sale of library materials developed by the library staff for its use but which are of value to others such as book catalogs, books published by the library, indexes, films, slides, book lists, and similar materials.

The library commission, board of library trustees, or other governing authority charged with the direct control of a public library shall determine the prices and quantities of materials to be prepared and offered for sale. Prices shall be limited to the publishing and preparation costs, exclusive of staff salaries and overhead. Any moneys received from the sales of such materials shall be placed in the appropriate library fund.

Nothing in this section shall be construed to authorize any library to charge any resident for a library service nor to authorize any library to sell materials to a branch library or library which is part of a depository library system when such materials may be distributed free of cost to such library nor shall this section be construed to prevent, curtail, or inhibit any free distribution programs or exchange programs between libraries or between libraries and other agencies. [1972 ex.s. c 90 § 1.]

27.12.310 Charter provisions superseded. Every existing free public library shall be considered as if established under *this act, and the board of trustees and the legislative body of the governmental unit in which the library is located shall proceed forthwith to make such changes as may be necessary to effect compliance with the terms hereof; and every existing contract for library service shall continue in force and be subject to *this act until the contract be terminated or a library be established by the governmental unit for which the service was engaged. The provisions of *this act shall be construed as superseding the provisions of any municipal charter in conflict herewith. [1935 c 119 § 19; RRS § 8226-19.]

***Reviser's note:** "This act," see note following RCW 27.12.270.

27.12.320 Dissolution—Disposition of property. A library established or maintained under this chapter (except a regional or a rural county library district library, an intercounty rural library district library, or an island library district library) may be abolished only in pursuance of a vote of the electors of the governmental unit in which the library is located, taken in the manner prescribed in RCW 27.12.030 for a vote upon the establishment of a library. If a library of a city or town be abolished, the books and other printed or written matter belonging to it shall go to the library of the county whereof the municipality is a part, if there be a county library, but if not, then to the state library. If a library of a county or region be abolished, the books and other printed matter belonging to it shall go to the state library. All other library property shall be disposed of as the legislative body of the governmental unit shall direct.

After a rural county library district, an island library district, or an intercounty rural library district has been in operation for three or more years, it may be dissolved pursuant to a majority vote of all of the qualified electors residing outside of incorporated cities and towns voting upon a proposition for its dissolution, at a general election, which proposition may be placed upon the ballot at any such election whenever a petition by ten percent or more qualified voters residing outside of incorporated cities or towns within a rural county library district, an island library district, or an intercounty rural library district requesting such dissolution shall be filed with the board of trustees of such district not less than ninety days prior to the holding of any such election. An island library district may also be dissolved pursuant to RCW 27.12.450.

If a rural county library district is dissolved, the books and other printed matter belonging to it shall go to the state library. All other library property shall be disposed of as the legislative body of the governmental unit shall direct. When an intercounty rural library district is dissolved, the books, funds and other property thereof shall be divided among the participating counties in the most equitable manner possible as determined by the state librarian, who shall give consideration to such items as the original source of property, the amount of funds raised from each county by the district, and the ability of the counties to make further use of such property or equipment for library purposes. Printed material which the state librarian finds will not be used by any of the participating counties for further library purposes shall be turned over to the state library.

When an island library district is dissolved pursuant to this section, the books and other printed matter belonging to it shall go to the state library. All other library property shall be disposed of as the legislative body of the governmental unit shall direct. When an island library district is dissolved due to the establishment of a county library district, pursuant to RCW 27.12.450, all property, assets, and liabilities of the preexisting island library district within the area included in the county rural library district shall pass to and be assumed by the county rural library district: **PROVIDED**, That where within any county rural library district heretofore or hereafter organized under the provisions of this chapter a preexisting island library district has incurred a bonded indebtedness which was outstanding at the time of the formation of the county rural library district, the preexisting island library district shall retain its corporate exist-

tence insofar as is necessary for the purpose until the bonded indebtedness outstanding against it on and after the effective date of the formation has been paid in full: **PROVIDED FURTHER**, That a special election may be called by the board of trustees of the county rural library district, to be held at the next general or special election held in the respective counties, for the purpose of affording the voters residing within the area outside of the preexisting island library district an opportunity to assume the obligation of the bonded indebtedness of the preexisting island library district or the question may be submitted to the voters as a separate proposition at the election on the proposal for the formation of the county rural library district. [1982 c 123 § 12; 1965 c 122 § 5; 1947 c 75 § 13; 1935 c 119 § 20; Rem. Supp. 1947 § 8226-20. Prior: 1909 c 116 § 19; 1901 c 166 § 19.]

27.12.321 School district public libraries abolished—Disposition of assets. School district public libraries organized under chapter 119, Laws of 1935, as amended prior to *this 1965 amendatory act, are hereby abolished as of January 1, 1966.

All assets belonging to any school district public library abolished by this section shall go to the rural county library district of the county in which the school district public library is located. [1965 c 122 § 6.]

***Reviser's note:** "This 1965 amendatory act" [1965 ex.s. c 122] consists of the enactment of RCW 27.12.321, amendments to RCW 27.12.010, 27.12.030, 27.12.190, 27.12.240, and 27.12.320, and the repeal of RCW 27.12.230.

27.12.330 Penalty for injury to property. Whoever intentionally injures, defaces, or destroys any property belonging to or deposited in any public library, reading room, or other educational institution, shall be guilty of a misdemeanor. [1935 c 119 § 16; RRS § 8226-16. Prior: 1909 c 116 § 11; 1901 c 166 § 11.]

27.12.340 Wilfully retaining books—Infraction. It is a class 4 civil infraction for any person to wilfully retain any book, newspaper, magazine, pamphlet, manuscript, or other property belonging in or to any public library, reading room, or other educational institution, for thirty days after notice in writing to return the same, given after the expiration of the time that by the rules of such institution such article or other property may be kept. [1987 c 456 § 29; 1935 c 119 § 17; RRS § 8226-17. Prior: 1909 c 116 § 12; 1901 c 166 § 12.]

Legislative finding—1987 c 456: See RCW 7.80.005.

Effective date—1987 c 456 §§ 9-31: See RCW 7.80.901.

27.12.350 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when. See RCW 39.30.010.

27.12.355 Rural county library district, island library district, or intercounty rural library district—Withdrawal or reannexation of areas. (1) As provided in this section, a rural county library district, island library district, or intercounty rural library district may withdraw areas from its boundaries, or reannex areas into the library

district that previously had been withdrawn from the library district under this section.

(2) The withdrawal of an area shall be authorized upon: (a) Adoption of a resolution by the board of trustees requesting the withdrawal and finding that, in the opinion of the board, inclusion of this area within the library district will result in a reduction of the district's tax levy rate under the provisions of RCW 84.52.010; and (b) adoption of a resolution by the city or town council approving the withdrawal, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county within which the area is located approving the withdrawal, if the area is located outside of a city or town. A withdrawal shall be effective at the end of the day on the thirty-first day of December in the year in which the resolutions are adopted, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution.

The authority of an area to be withdrawn from a library district as provided under this section is in addition, and not subject, to the provisions of RCW 27.12.380.

The withdrawal of an area from the boundaries of a library district shall not exempt any property therein from taxation for the purpose of paying the costs of redeeming any indebtedness of the library district existing at the time of the withdrawal.

(3) An area that has been withdrawn from the boundaries of a library district under this section may be reannexed into the library district upon: (a) Adoption of a resolution by the board of trustees proposing the reannexation; and (b) adoption of a resolution by the city or town council approving the reannexation, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county within which the area is located approving the reannexation, if the area is located outside of a city or town. The reannexation shall be effective at the end of the day on the thirty-first day of December in the year in which the adoption of the second resolution occurs, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution. Referendum action on the proposed reannexation may be taken by the voters of the area proposed to be reannexed if a petition calling for a referendum is filed with the city or town council, or county legislative authority, within a thirty-day period after the adoption of the second resolution, which petition has been signed by registered voters of the area proposed to be reannexed equal in number to ten percent of the total number of the registered voters residing in that area.

If a valid petition signed by the requisite number of registered voters has been so filed, the effect of the resolutions shall be held in abeyance and a ballot proposition to authorize the reannexation shall be submitted to the voters of the area at the next special election date specified in *RCW 29.13.020 that occurs forty-five or more days after the petitions have been validated. Approval of the ballot proposition authorizing the reannexation by a simple majority vote shall authorize the reannexation. [1987 c 138 § 1.]

*Reviser's note: As enacted by 1987 c 138 § 1, this section contained an apparently erroneous reference to RCW 29.13.030, a section repealed in 1965. Pursuant to RCW 1.08.015, this reference has been changed to RCW 29.13.020, a later enactment of the section repealed.

27.12.360 Annexation of city or town into rural county library district, island library district, or inter-county rural library district—Initiation procedure. Any city or town with a population of one hundred thousand or less at the time of annexation may become a part of any rural county library district, island library district, or inter-county rural library district lying contiguous thereto by annexation in the following manner: The inclusion of such a city or town may be initiated by the adoption of an ordinance by the legislative authority thereof stating its intent to join the library district and finding that the public interest will be served thereby. Before adoption, the ordinance shall be submitted to the library board of the city or town for its review and recommendations. If no library board exists in the city or town, the state librarian shall be notified of the proposed ordinance. If the board of trustees of the library district concurs in the annexation, notification thereof shall be transmitted to the legislative authority or authorities of the counties in which the city or town is situated. [1982 c 123 § 13; 1981 c 26 § 3; 1977 ex.s. c 353 § 1.]

27.12.370 Annexation of city or town into library district—Special election procedure. The county legislative authority or authorities shall by resolution call a special election to be held in such city or town at the next date provided in RCW 29.13.010 but not less than forty-five days from the date of the declaration of such finding, and shall cause notice of such election to be given as provided for in RCW 29.27.080.

The election on the annexation of the city or town into the library district shall be conducted by the auditor of the county or counties in which the city or town is located in accordance with the general election laws of the state and the results thereof shall be canvassed by the canvassing board of the county or counties. No person shall be entitled to vote at such election unless he or she is registered to vote in said city or town for at least thirty days preceding the date of the election. The ballot proposition shall be in substantially the following form:

"Shall the city or town of be annexed to and be a part of library district?"

YES
NO

If a majority of the persons voting on the proposition shall vote in favor thereof, the city or town shall thereupon be annexed and shall be a part of such library district. [1982 c 123 § 14; 1977 ex.s. c 353 § 2.]

27.12.380 Annexation of city or town into library district—Withdrawal of annexed city or town. The legislative body of such a city or town which has annexed to such a library district, may, by resolution, present to the voters of such city or town a proposition to withdraw from said library district at any general election held at least three years following the annexation to the library district. [1982 c 123 § 15; 1977 ex.s. c 353 § 3.]

27.12.390 Annexation of city or town into library district—Tax levies. The annual tax levy authorized by RCW 27.12.050, 27.12.150, and 27.12.420 shall be imposed

throughout the library district, including any city or town annexed thereto. Any city or town annexed to a rural library district, island library district, or intercounty rural library district shall be entitled to levy up to three dollars and sixty cents per thousand dollars of assessed valuation less any regular levy made by such library district in the incorporated area, notwithstanding any other provision of law: PROVIDED, That the limitations upon regular property taxes imposed by chapter 84.55 RCW shall apply. [1982 c 123 § 16; 1977 ex.s. c 353 § 4.]

27.12.395 Annexation of city or town into library district—Assumption of liabilities. (1) All liabilities of a city or town that is annexed to a rural county library district or intercounty rural library district, which liabilities were incurred for the purpose of or in the course of acquiring, operating, or maintaining a library or libraries, may, if provided for in the ordinance providing for annexation and in the resolution of the district consenting to annexation, pass to and be assumed by the rural county library district or intercounty rural library district. Notwithstanding the foregoing, if the city or town has incurred any voted bonded indebtedness for the purpose of acquiring, operating, or maintaining a library or libraries, and if the indebtedness is outstanding at the time of the annexation, the voted bonded indebtedness shall not be assumed by the annexing district.

(2) Notwithstanding subsection (1) of this section, if the annexed city or town has outstanding at the time of the annexation any voted bonded indebtedness incurred for the purpose of acquiring, operating, or maintaining a library or libraries, a special election may be called by the board of trustees of the rural county library district or intercounty rural library district, to be held at the next general or special election held in the applicable county or counties, for the purpose of affording the voters residing within the area of the district outside the annexed city or town an opportunity to assume the voted bonded indebtedness of the annexed city or town upon the assent of three-fifths of the voters. [1985 c 392 § 1.]

27.12.400 Island library districts—Establishment—Procedure. The procedure for the establishment of an island library district shall be as follows:

(1) Petitions signed by at least ten percent of the registered voters of the island, outside of the area of incorporated cities and towns, asking that the question, "Shall an island library district be established?" be submitted to a vote of the people of the island, shall be filed with the board of county commissioners.

(2) The board of county commissioners, after having determined that the petitions were signed by the requisite number of qualified petitioners, shall place the proposition for the establishment of an island library district on the ballot for the vote of the people of the island, outside incorporated cities and towns, at the next succeeding general or special election.

(3) If a majority of those voting on the proposition vote in favor of the establishment of the island library district, the board of county commissioners shall forthwith declare it established. [1982 c 123 § 2.]

27.12.410 Island library districts—Restrictions on establishment. An island library district may not be established if there is in existence a library district serving all of the area of the county not included within the area of incorporated cities and towns. [1982 c 123 § 3.]

27.12.420 Island library districts—Board of trustees—Tax levies. Immediately following the establishment of an island library district, the board of county commissioners shall appoint a board of library trustees for the district in accordance with RCW 27.12.190. The board of trustees shall appoint a librarian for the district.

Funds for the establishment and maintenance of the library service of the district shall be provided by the board of county commissioners by means of an annual tax levy on the property in the district of not more than fifty cents per thousand dollars of assessed value per year. The tax levy shall be based on a budget to be compiled by the board of trustees of the island library district who shall determine the tax rate necessary and certify their determination to the board of county commissioners.

Excess levies authorized pursuant to RCW 27.12.222, 84.52.052, or 84.52.056 shall be at a rate determined by the board of trustees of the island library district and certified to the board of county commissioners. [1982 c 123 § 4.]

27.12.430 Island library districts—Name may be adopted. The board of trustees of an island library district may adopt a name by which the district shall be known and under which it shall transact all of its business. [1982 c 123 § 6.]

27.12.440 Island library districts—Powers and limitations for indebtedness. Except as otherwise specifically provided, island library districts and the trustees thereof shall have the same powers and limitations as are prescribed by RCW 27.12.060 through 27.12.070 for rural county library districts and shall follow the same procedures and be subject to the same limitations as are provided therein with respect to the contracting of indebtedness. [1982 c 123 § 5.]

27.12.450 Island library districts—Dissolution, when. If after an island library district serving a single island has been established, a rural county library district serving all of the area of the county not included within the area of incorporated cities and towns is established as provided in RCW 27.12.040, the district serving the single island in the county shall be dissolved. [1982 c 123 § 7.]

Dissolution of library districts: RCW 27.12.320.

27.12.470 Rural partial-county library districts. A rural partial-county library district may be created in a portion of the unincorporated area of a county as provided in this section if a rural county library district, intercounty rural library district, or island library district has not been created in the county.

The procedure to create a rural partial-county library district is initiated by the filing of petitions with the county auditor proposing the creation of the district that have been signed by at least ten percent of the registered voters

residing in the area proposed to be included in the rural partial-county library district. The county auditor shall review the petitions and certify the sufficiency or insufficiency of the signatures to the county legislative authority.

If the petitions are certified as having sufficient valid signatures, the county legislative authority shall hold a public hearing on the proposed rural partial-county library district, may adjust the boundaries of the proposed district, and may cause a ballot proposition to be submitted to the voters of the proposed rural partial-county library district authorizing its creation if the county legislative authority finds that the creation of the rural partial-county library district is in the public interest. A subsequent public hearing shall be held if additional territory is added to the proposed rural partial-county library district by action of the county legislative authority.

The rural partial-county library district shall be created if the ballot proposition authorizing the creation of the district is approved by a simple majority vote of the voters voting on the proposition. Immediately after creation of the rural partial-county library district the county legislative authority shall appoint a board of library trustees for the district as provided under RCW 27.12.190.

Except as provided in this section, a rural partial-county library district is subject to all the provisions of law applicable to a rural county library district and shall have all the powers, duties, and authorities of a rural county library district, including, but not limited to, the authority to impose property taxes, incur debt, and annex a city or town with a population of less than one hundred thousand at the time of the annexation that is located in the same county as the rural partial-county library district.

Adjacent unincorporated territory in the county may be annexed to a rural partial-county library district in the same manner as territory is annexed to a sewer district, except that an annexation is not subject to potential review by a boundary review board.

If, at the time of creation, a rural partial-county library district has an assessed valuation of less than fifty million dollars, it may provide library services only by contracting for the services through an interlocal agreement with an adjacent library district, or an adjacent city or town that maintains its own library. If the assessed valuation of the rural partial-county library district subsequently reaches fifty million dollars as a result of annexation or appreciation, the fifty million dollar limitation shall not apply.

If a ballot proposition is approved creating a rural county library district in the county, every rural partial-county library district in that county shall be dissolved and its assets and liabilities transferred to the rural county library district. Where a rural partial-county library district has annexed a city or town, the voters of the city or town shall be allowed to vote on the proposed creation of a rural county library district and, if created, the rural county library district shall include each city and town that was annexed to the rural partial-county library district.

Nothing in this section authorizes the consolidation of a rural partial-county library district with any rural county library district; island library district; city, county, or regional library; intercounty library district; or other rural partial-county library district, unless, in addition to any other requirements imposed by statute, the boards of all library

districts involved approve the consolidation. [1994 c 198 § 2; 1993 c 284 § 1.]

Chapter 27.15

LIBRARY CAPITAL FACILITY AREAS

Sections

27.15.005	Findings.
27.15.010	Definitions.
27.15.020	Request to establish library capital facility area—Ballot propositions.
27.15.030	Governing body.
27.15.040	Authority to construct, acquire, maintain, and remodel facilities—Interlocal agreements—Legal title.
27.15.050	Financing—Bonds authorized.
27.15.060	Dissolution of library capital facility area.

27.15.005 Findings. The legislature finds that it is in the interests of the people of the state of Washington to be able to establish library capital facility areas as quasi-municipal corporations and independent taxing units existing within the boundaries of existing rural county library districts, rural intercounty library districts, rural partial-county library districts, or island library districts, for the purpose of financing the construction of capital library facilities. [1995 c 368 § 1.]

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

(1) "Library district" means rural county library district, rural intercounty library district, rural partial-county library district, or island library district.

(2) "Library capital facility area" means a quasi-municipal corporation and independent taxing authority within the meaning of Article VII, section 1 of the state Constitution, and a taxing district within the meaning of Article VII, section 2 of the state Constitution, created by a county legislative authority of one or several counties. A library capital facility area may include all or a portion of a city or town.

(3) "Library capital facilities" includes both real and personal property including, but not limited to, land, buildings, site improvements, equipment, furnishings, collections, and all necessary costs related to acquisition, financing, design, construction, equipping, and remodeling. [1995 c 368 § 2.]

27.15.020 Request to establish library capital facility area—Ballot propositions. Upon receipt of a completed written request to both establish a library capital facility area and submit a ballot proposition under RCW 27.15.050 to finance library capital facilities, that is signed by a majority of the members of the board of trustees of a library district or board of trustees of a city or town library, the county legislative authority or county legislative authorities for the county or counties in which a proposed library capital facility area is to be established shall submit separate ballot propositions to voters to authorize establishing the proposed library capital facility area and authorizing the library capital facility area, if established, to finance library capital facilities by issuing general indebtedness and impos-

ing excess levies to retire the indebtedness. The ballot propositions shall be submitted to voters at a general or special election. If the proposed election date is not a general election, the county legislative authority is encouraged to request an election when another unit of local government with territory located in the proposed library capital facility area is already holding a special election under RCW 29.13.020. Approval of the ballot proposition to create a library capital facility area shall be by a simple majority vote.

A completed request submitted under this section shall include: (1) A description of the boundaries of the library capital facility area; and (2) a copy of the resolution of the legislative authority of each city or town, and board of trustees of each library district, with territory included within the proposed library capital facility area indicating both: (a) Its approval of the creation of the proposed library capital facility area; and (b) agreement on how election costs will be paid for submitting ballot propositions to voters that authorize the library capital facility area to incur general indebtedness and impose excess levies to retire the general indebtedness. [1996 c 258 § 1; 1995 c 368 § 3.]

27.15.030 Governing body. The governing body of the library capital facility area shall be three members of the county legislative authority from each county in which the library capital facility area is located. In counties that have more than three members of their legislative body, the three members who shall serve on the governing body of the library capital facility area shall be chosen by the full membership of the county legislative authority. Where the library capital facility area is located in more than one county, a county may be represented by less than three members by mutual agreement of the legislative authorities of the participating counties. [1995 c 368 § 4.]

27.15.040 Authority to construct, acquire, maintain, and remodel facilities—Interlocal agreements—Legal title. A library capital facilities [facility] area may construct, acquire, maintain, and remodel library capital facilities and the governing body of the library capital facility area may, by interlocal agreement or otherwise, contract with a county, city, town, or library district to design, administer the construction of, operate, or maintain a library capital facility financed pursuant to this chapter. Legal title to library capital facilities acquired or constructed pursuant to this chapter may be transferred, acquired, or held by the library capital facility area or by a county, city, town, or library district in which the facility is located. [1995 c 368 § 5.]

27.15.050 Financing—Bonds authorized. (1) A library capital facility area may contract indebtedness or borrow money to finance library capital facilities and may issue general obligation bonds for such purpose not exceeding an amount, together with any existing indebtedness of the library capital facility area, equal to one and one-quarter percent of the value of the taxable property in the district and impose excess property tax levies to retire the general indebtedness as provided in RCW 39.36.050 if a ballot proposition authorizing both the indebtedness and excess levies is approved by at least three-fifths of the voters of the

library capital facility area voting on the proposition, and the total number of voters voting on the proposition constitutes not less than forty percent of the total number of voters in the library capital facility area voting at the last preceding general election. The term "value of the taxable property" has the meaning set forth in RCW 39.36.015. Such a proposition shall be submitted to voters at a general or special election and may be submitted to voters at the same election as the election when the ballot proposition authorizing the establishing of the library capital facility area is submitted. If the proposed election date is not a general election, the county legislative authority is encouraged to request an election when another unit of local government with territory located in the proposed library capital facility area is already holding a special election under RCW 29.13.020.

(2) A library capital facility area may accept gifts or grants of money or property of any kind for the same purposes for which it is authorized to borrow money in subsection (1) of this section. [1996 c 258 § 2; 1995 c 368 § 6.]

27.15.060 Dissolution of library capital facility area.

(1) A library capital facility area may be dissolved by a majority vote of the governing body when all obligations under any general obligation bonds issued by the library capital facility area have been discharged and any other contractual obligations of the library capital facility area have either been discharged or assumed by another governmental entity.

(2) A library capital facility area shall be dissolved by the governing body if the first two ballot propositions under RCW 27.15.050 that are submitted to voters are not approved. [1995 c 368 § 7.]

Chapter 27.18

INTERSTATE LIBRARY COMPACT

Sections

27.18.010	Definitions.
27.18.020	Compact enacted—Provisions.
27.18.030	Compact administrator—Deputies—Library agreements, submittal.
27.18.040	Compliance with tax and bonding laws enjoined.
27.18.050	Withdrawal—Compact administrator to send and receive notices.

27.18.010 Definitions. As used in this chapter, except where the context otherwise requires:

(1) "Compact" means the interstate library compact.

(2) "Public library agency", with reference to this state, means the state library and any county or city library or any regional library, rural county library district library, island library district library, or intercounty rural library district library.

(3) "State library agency", with reference to this state, means the commissioners of the state library. [1982 c 123 § 17; 1965 ex.s. c 93 § 1.]

27.18.020 Compact enacted—Provisions. The interstate library compact hereby is enacted into law and

entered into by this state with all states legally joining therein in the form substantially as follows:

INTERSTATE LIBRARY COMPACT

ARTICLE I. POLICY AND PURPOSE

Because the desire for the services provided by libraries transcends governmental boundaries and can most effectively be satisfied by giving such services to communities and people regardless of jurisdictional lines, it is the policy of the states party to this compact to cooperate and share their responsibilities; to authorize cooperation and sharing with respect to those types of library facilities and services which can be more economically or efficiently developed and maintained on a cooperative basis; and to authorize cooperation and sharing among localities, states and others in providing joint or cooperative library services in areas where the distribution of population or of existing and potential library resources make the provision of library service on an interstate basis the most effective way of providing adequate and efficient service.

ARTICLE II. DEFINITIONS

As used in this compact:

(a) "Public library agency" means any unit or agency of local or state government operating or having power to operate a library.

(b) "Private library agency" means any nongovernmental entity which operates or assumes a legal obligation to operate a library.

(c) "Library agreement" means a contract establishing an interstate library district pursuant to this compact or providing for the joint or cooperative furnishing of library services.

ARTICLE III. INTERSTATE LIBRARY DISTRICTS

(a) Any one or more public library agencies in a party state in cooperation with any public library agency or agencies in one or more other party states may establish and maintain an interstate library district. Subject to the provisions of this compact and any other laws of the party states which pursuant hereto remain applicable, such district may establish, maintain and operate some or all of the library facilities and services for the area concerned in accordance with the terms of a library agreement therefor. Any private library agency or agencies within an interstate library district may cooperate therewith, assume duties, responsibilities and obligations thereto, and receive benefits therefrom as provided in any library agreement to which such agency or agencies become party.

(b) Within an interstate library district, and as provided by a library agreement, the performance of library functions may be undertaken on a joint or cooperative basis or may be undertaken by means of one or more arrangements between or among public or private library agencies for the extension of library privileges to the use of facilities or services operated or rendered by one or more of the individual library agencies.

(c) If a library agreement provides for joint establishment, maintenance or operation of library facilities or services by an interstate library district, such district shall have power to do any one or more of the following in accordance with such library agreement:

1. Undertake, administer and participate in programs or arrangements for securing, lending or servicing books and other publications, any other materials suitable to be kept or made available by libraries, library equipment or for the dissemination of information about libraries, the value and significance of particular items therein, and the use thereof.

2. Accept for any of its purposes under this compact any and all donations, and grants of money, equipment, supplies, materials, and services, (conditional or otherwise), from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and receive, utilize and dispose of the same.

3. Operate mobile library units or equipment for the purpose of rendering bookmobile service within the district.

4. Employ professional, technical, clerical and other personnel, and fix terms of employment, compensation and other appropriate benefits; and where desirable, provide for the inservice training of such personnel.

5. Sue and be sued in any court of competent jurisdiction.

6. Acquire, hold, and dispose of any real or personal property or any interest or interests therein as may be appropriate to the rendering of library service.

7. Construct, maintain and operate a library, including any appropriate branches thereof.

8. Do such other things as may be incidental to or appropriate for the carrying out of any of the foregoing powers.

ARTICLE IV. INTERSTATE LIBRARY DISTRICTS, GOVERNING BOARD

(a) An interstate library district which establishes, maintains or operates any facilities or services in its own right shall have a governing board which shall direct the affairs of the district and act for it in all matters relating to its business. Each participating public library agency in the district shall be represented on the governing board which shall be organized and conduct its business in accordance with provision therefor in the library agreement. But in no event shall a governing board meet less often than twice a year.

(b) Any private library agency or agencies party to a library agreement establishing an interstate library district may be represented on or advise with the governing board of the district in such manner as the library agreement may provide.

ARTICLE V. STATE LIBRARY AGENCY COOPERATION

Any two or more state library agencies of two or more of the party states may undertake and conduct joint or cooperative library programs, render joint or cooperative library services, and enter into and perform arrangements for the cooperative or joint acquisition, use, housing and disposition of items or collections of materials which, by reason of expense, rarity, specialized nature, or infrequency of demand therefor would be appropriate for central collection and shared use. Any such programs, services or arrangements may include provision for the exercise on a cooperative or joint basis of any power exercisable by an interstate library district and an agreement embodying any such program, service or arrangement shall contain provisions covering the

subjects detailed in Article VI of this compact for interstate library agreements.

ARTICLE VI. LIBRARY AGREEMENTS

(a) In order to provide for any joint or cooperative undertaking pursuant to this compact, public and private library agencies may enter into library agreements. Any agreement executed pursuant to the provisions of this compact shall, as among the parties to the agreement:

1. Detail the specific nature of the services, programs, facilities, arrangements or properties to which it is applicable.
2. Provide for the allocation of costs and other financial responsibilities.
3. Specify the respective rights, duties, obligations and liabilities of the parties.
4. Set forth the terms and conditions for duration, renewal, termination, abrogation, disposal of joint or common property, if any, and all other matters which may be appropriate to the proper effectuation and performance of the agreement.

(b) No public or private library agency shall undertake to exercise itself, or jointly with any other library agency, by means of a library agreement any power prohibited to such agency by the constitution or statutes of its state.

(c) No library agreement shall become effective until filed with the compact administrator of each state involved, and approved in accordance with Article VII of this compact.

ARTICLE VII. APPROVAL OF LIBRARY AGREEMENTS

(a) Every library agreement made pursuant to this compact shall, prior to and as a condition precedent to its entry into force, be submitted to the attorney general of each state in which a public library agency party thereto is situated, who shall determine whether the agreement is in proper form and compatible with the laws of his state. The attorneys general shall approve any agreement submitted to them unless they shall find that it does not meet the conditions set forth herein and shall detail in writing addressed to the governing bodies of the public library agencies concerned the specific respects in which the proposed agreement fails to meet the requirements of law. Failure to disapprove an agreement submitted hereunder within ninety days of its submission shall constitute approval thereof.

(b) In the event that a library agreement made pursuant to this compact shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction in the same manner and subject to the same requirements governing the action of the attorneys general pursuant to paragraph (a) of this article. This requirement of submission and approval shall be in addition to and not in substitution for the requirement of submission to and approval by the attorneys general.

ARTICLE VIII. OTHER LAWS APPLICABLE

Nothing in this compact or in any library agreement shall be construed to supersede, alter or otherwise impair any obligation imposed on any library by otherwise applicable law, nor to authorize the transfer or disposition of any property held in trust by a library agency in a manner contrary to the terms of such trust.

ARTICLE IX. APPROPRIATIONS AND AID

(a) Any public library agency party to a library agreement may appropriate funds to the interstate library district established thereby in the same manner and to the same extent as to a library wholly maintained by it and, subject to the laws of the state in which such public library agency is situated, may pledge its credit in support of an interstate library district established by the agreement.

(b) Subject to the provisions of the library agreement pursuant to which it functions and the laws of the states in which such district is situated, an interstate library district may claim and receive any state and federal aid which may be available to library agencies.

ARTICLE X. COMPACT ADMINISTRATOR

Each state shall designate a compact administrator with whom copies of all library agreements to which his state or any public library agency thereof is party shall be filed. The administrator shall have such other powers as may be conferred upon him by the laws of his state and may consult and cooperate with the compact administrators of other party states and take such steps as may effectuate the purposes of this compact. If the laws of a party state so provide, such state may designate one or more deputy compact administrators in addition to its compact administrator.

ARTICLE XI. ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force and effect immediately upon its enactment into law by any two states. Thereafter, it shall enter into force and effect as to any other state upon the enactment thereof by such state.

(b) This compact shall continue in force with respect to a party state and remain binding upon such state until six months after such state has given notice to each other party state of the repeal thereof. Such withdrawal shall not be construed to relieve any party to a library agreement entered into pursuant to this compact from any obligation of that agreement prior to the end of its duration as provided therein.

ARTICLE XII. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact

shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1965 ex.s. c 93 § 2.]

27.18.030 Compact administrator—Deputies—Library agreements, submittal. The state librarian shall be the compact administrator pursuant to Article X of the compact. The state librarian shall appoint one or more deputy compact administrators. Every library agreement made pursuant to Article VI of the compact shall, as a condition precedent to its entry into force, be submitted to the state librarian for his recommendations. [1965 ex.s. c 93 § 3.]

27.18.040 Compliance with tax and bonding laws enjoined. No regional library, county library, rural county library district library, island library district library, inter-county rural library district library, or city library of this state shall be a party to a library agreement which provides for the construction or maintenance of a library pursuant to Article III, subdivision (c-7) of the compact, nor levy a tax or issue bonds to contribute to the construction or maintenance of such a library, except after compliance with any laws applicable to regional libraries, county libraries, rural county library district libraries, island library district libraries, intercounty rural library district libraries, or city libraries relating to or governing the levying of taxes or the issuance of bonds. [1982 c 123 § 18; 1965 ex.s. c 93 § 4.]

27.18.050 Withdrawal—Compact administrator to send and receive notices. In the event of withdrawal from the compact the compact administrator shall send and receive any notices required by Article XI(b) of the compact. [1965 ex.s. c 93 § 5.]

Chapter 27.20

STATE LAW LIBRARY

Sections

- 27.20.030 Library part of judicial branch.
27.20.040 State law librarian and assistants—Appointment, tenure, compensation.
27.20.050 Duties of law librarian.

27.20.030 Library part of judicial branch. The state law library shall be a part of the judicial branch of state government and shall be under the exclusive jurisdiction and control of the supreme court. [1959 c 188 § 1.]

Committee abolished: "The state law library committee is hereby abolished." [1959 c 188 § 5.] Provisions relating to the state law library committee were formerly codified in chapter 43.36 RCW but were repealed by 1959 c 188 § 6.

27.20.040 State law librarian and assistants—Appointment, tenure, compensation. The supreme court shall appoint a state law librarian, who may be removed at its pleasure. The librarian shall receive such compensation only as shall be fixed by the court.

The court may also appoint and fix the salaries of such assistants and clerical personnel as may be required. [1959 c 188 § 2.]

Rules of court: SAR 18.

(1996 Ed.)

27.20.050 Duties of law librarian. The duties of the state law librarian shall be as prescribed by statute and by rules of court. [1959 c 188 § 3.]

Duties of state law librarian relative to session laws, legislative journals and supreme court reports: Chapter 40.04 RCW.

Chapter 27.24

COUNTY LAW LIBRARIES

Sections

- 27.24.010 Establishment.
27.24.020 Board of trustees—Composition—Terms.
27.24.030 Powers of board.
27.24.040 Annual report.
27.24.062 Establishment of regional law libraries.
27.24.066 Library rooms and service.
27.24.067 Free use of library.
27.24.068 Establishment of county law library—Trustee—Free use of library.
27.24.070 Portion of filing fees for county or regional law library.
27.24.090 Discontinuance of fees.
27.24.900 Effective date—1992 c 62.

27.24.010 Establishment. Each county with a population of eight thousand or more shall have a county law library, which shall be governed and maintained as hereinafter provided. [1992 c 62 § 1; 1919 c 84 § 1; RRS § 8247.]

27.24.020 Board of trustees—Composition—Terms. (1) Every county with a population of three hundred thousand or more must have a board of law library trustees consisting of five members to be constituted as follows: The chairman of the county legislative authority is an ex officio trustee, the judges of the superior court of the county shall choose two of their number to be trustees, and the members of the county bar association shall choose two members of the bar of the county to be trustees.

(2) Every county with a population of eight thousand or more but less than three hundred thousand must have a board of law library trustees consisting of five members to be constituted as follows: The chairman of the county legislative authority is an ex officio trustee, the judges of the superior court of the county shall choose one of their number to be a trustee, and the members of the county bar association shall choose three members of the county to be trustees. If there is no county bar association, then the lawyers of the county shall choose three of their number to be trustees.

(3) If a county has a population of less than eight thousand, then the provisions contained in RCW 27.24.068 shall apply to the establishment and operation of the county law library.

(4) If a regional law library is created pursuant to RCW 27.24.062, then it shall be governed by one board of trustees. The board shall consist of the following representatives from each county: The judges of the superior court of the county shall choose one of their number to be a trustee, the county legislative authority shall choose one of their number to be a trustee, and the members of the county bar association shall choose one member of the bar of the county to be a trustee. If there is no county bar association, then the lawyers of the county shall choose one of their number to be a trustee.

(5) The term of office of a member of the board who is a judge is for as long as he or she continues to be a judge, and the term of a member who is from the bar is four years. Vacancies shall be filled as they occur and in the manner directed in this section. The office of trustee shall be without salary or other compensation. The board shall elect one of their number president and the librarian shall act as secretary, except that in counties with a population of eight thousand or more but less than three hundred thousand, the board shall elect one of their number to act as secretary if no librarian is appointed. Meetings shall be held at least once per year, and if more often, then at such times as may be prescribed by rule. [1992 c 62 § 2; 1919 c 84 § 2; RRS § 8248.]

27.24.030 Powers of board. The board of law library trustees shall have power:

(1) To make and enforce rules for their own procedure and for the government, care and use of the library, and for the guidance of employees.

(2) To remove any trustee, except an ex officio trustee, for neglect to attend the meetings of the board.

(3) To employ a librarian and assistants and to prescribe their duties, fix their compensation and remove them at will.

(4) To purchase books, periodicals and other property suitable for the library and to accept gifts and bequests of money and property for the library, and to sell property which is unsuitable or not needed for the library.

(5) To examine and approve for payment claims and demands payable out of the county law library fund. [1919 c 84 § 3; RRS § 8249.]

27.24.040 Annual report. The board of law library trustees shall, on or before the first Monday in September of each year, make a report to the county legislative authority of their county giving the condition of their trust, with a full statement of all property received and how used, the number of books and other publications on hand, the number added by purchase, gift or otherwise during the preceding year, the number lost or missing, and such other information as may be of public interest, together with a financial report showing all receipts and disbursements of money. [1992 c 62 § 3; 1919 c 84 § 4; RRS § 8250.]

27.24.062 Establishment of regional law libraries.

Two or more counties each with a population of from eight thousand to less than one hundred twenty-five thousand may, by agreement of the respective law library boards of trustees, create a regional law library and establish and maintain one principal law library at such location as the regional board of trustees may determine will best suit the needs of the users: PROVIDED, HOWEVER, That there shall be at all times a law library in such size as the board of trustees may determine necessary to be located at the courthouse where each superior court is located. [1992 c 62 § 4; 1991 c 363 § 18; 1971 ex.s. c 141 § 1; 1943 c 195 § 1; 1933 c 167 § 1; 1925 ex.s. c 94 § 1; Rem. Supp. 1943 § 8254-1.]

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

27.24.066 Library rooms and service. The county legislative authority of each county that is required to maintain a county law library shall upon demand by the board of law library trustees, provide a room suitable for the law library, with adequate heat, light, and janitor service. [1992 c 62 § 5; 1933 c 167 § 3, part; RRS § 8254-7.]

27.24.067 Free use of library. The use of the county law library shall be free to the judges of the state, to state and county officials, and to members of the bar, and to such others as the board of trustees may by rule provide. Residents of counties with a population of three hundred thousand or more shall have free use of the law library. [1992 c 62 § 6; 1933 c 167 § 3, part; RRS § 8254-8.]

27.24.068 Establishment of county law library—Trustee—Free use of library. In each county with a population of less than eight thousand, there may be a county law library which shall be governed and maintained by the prosecuting attorney who shall also serve as trustee of such library without additional salary or other compensation.

The use of the county law library shall be free to the judges of the state, to state and county officials, and to members of the bar, and to such others as the prosecuting attorney may by rule provide. [1991 c 363 § 19; 1975 c 37 § 1.]

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

27.24.070 Portion of filing fees for county or regional law library. In each county pursuant to this chapter, the county treasurer shall deposit in the county or regional law library fund a sum equal to twelve dollars for every new probate or civil filing fee, including appeals, collected by the clerk of the superior court and six dollars for every fee collected for the commencement of a civil action in district court for the support of the law library in that county or the regional law library to which the county belongs: PROVIDED, That upon a showing of need the twelve dollar contribution may be increased up to fifteen dollars upon the request of the law library board of trustees and with the approval of the county legislative body or bodies. [1992 c 54 § 6; 1985 c 389 § 2; 1984 c 258 § 310; 1979 c 126 § 1; 1971 ex.s. c 141 § 3; 1969 c 25 § 2; 1961 c 304 § 9; 1957 c 31 § 1; 1953 c 249 § 1. Prior: (i) 1937 c 32 § 1, part; 1919 c 84 § 8, part; RRS § 8254, part. (ii) 1933 c 167 § 2, part; 1925 ex.s. c 94 § 3, part; RRS § 8254-3, part. (iii) 1943 c 195 § 2; Rem. Supp. 1943 § 8254-9.]

Effective date—1992 c 54: See note following RCW 36.18.020.

Effective date—1985 c 389: "Sections 2 through 9 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 389 § 10.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

County clerk's fees: RCW 36.18.020.

District courts, filing fees in civil cases: RCW 3.62.060.

27.24.090 Discontinuance of fees. The collection of the fees directed in RCW 27.24.070 shall be discontinued

whenever the board of trustees of a county library or the prosecuting attorney, as the case may be, files with the county clerk and clerks of the district courts a written resolution to the effect that the county library fund in its county is sufficient for all present needs, which resolution shall remain effective until it is later rescinded. Upon its rescission, the county clerk and clerks of the district courts shall resume the collection of such fees. [1987 c 202 § 188; 1975 c 37 § 2; 1953 c 249 § 3; 1933 c 167 § 2, part; 1925 ex.s. c 94 § 3, part; RRS § 8254-3, part.]

Intent—1987 c 202: See note following RCW 2.04.190.

27.24.900 Effective date—1992 c 62. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1992. [1992 c 62 § 10.]

Chapter 27.26

WESTERN LIBRARY NETWORK

(Formerly: Washington library network)

Sections

27.26.010	Definitions.
27.26.020	Network established.
27.26.030	Western library network computer system revolving fund— Creation—Use.
27.26.040	Schedule of user fees.
27.26.050	Expenses related to promotion of products and services.
27.26.060	Contracts for promotion of network—Licenses for software.
27.26.070	Authority to establish private, nonprofit corporation— Termination of network services.
27.26.080	Establishment of successor organization—State not liable for successor organization.
27.26.090	Property, funds, and contracts not transferred to successor agency.
27.26.900	Severability—1989 c 96.
27.26.901	Effective date—1989 c 96.
27.26.950	Termination of network.
27.26.951	Repeal.

27.26.010 Definitions. (*Effective until June 30, 1997.*) As used in this chapter, unless otherwise required by the context, the following definitions shall apply:

(1) "Western library network computer system" means the communication facilities, computers, and peripheral computer devices supporting the automated library system developed by the state of Washington;

(2) "Network" means the western library network which is an organization of autonomous, geographically dispersed participants using the western library network computer system, telecommunications systems, interlibrary systems, and reference and referral systems;

(3) "Resources" are library materials which include but are not limited to print, nonprint (e.g., audiovisual, realia, etc.), and microform formats; network resources such as software, hardware, and equipment; electronic and magnetic records; data bases; communication technology; facilities; and human expertise;

(4) "Telecommunications" includes any point to point transmission, emission, or reception of signs, signals, writing, images, and sounds or intelligence of any nature by wire, radio, microwave radio, optical, or other electro-

magnetic system, including any intervening processing and storage serving a point to point system;

(5) "Interlibrary loan system" means the accepted procedures among libraries by which library materials are made available in some format to users of another library;

(6) "Reference and referral system" pertains to procedures among libraries whereby subject or fact-oriented queries may be referred to another institution when the answering resource or subject expertise is unavailable in the institution originally queried;

(7) "Successor organization" means a private, nonprofit corporation created specifically to assume responsibility for providing the services now being provided by the western library network under this chapter. Any such private, nonprofit corporation shall qualify as a tax-exempt, nonprofit corporation under section 501(C) of the federal internal revenue code; shall include on its board of directors a majority of representation by public sector libraries or other public agencies; and shall agree to provide access to a bibliographic data base and related service to network users. If no such corporation exists, which is capable, in the commission's opinion, of adequately assuming the network's operations, then another governmental entity, an organization created under the interlocal cooperation act, chapter 39.34 RCW, or a corporation currently providing automated bibliographic, telecommunications, computer network, or equivalent services to libraries in the state of Washington shall be the successor organization;

(8) "Commission" means the Washington state library commission. [1989 c 96 § 2; 1985 c 21 § 1; 1975-'76 2nd ex.s. c 31 § 2.]

Findings—1989 c 96: "The legislature finds that automated bibliographic, computer-based telecommunications, interlibrary, reference, and referral systems and related library services have proven to be a benefit to the citizens of the state of Washington; that these services have been provided through a network of public and private information providers both inside and outside the state; that the current governance structure of the network restricts the ability of the network to meet the needs of the library community and the citizens of Washington; that changes in the governance structure will result in increased efficiency, economy, and effectiveness of the network, in preserving the technology developed by the network, and in serving the library community and the citizens of Washington better; that the network now requires a new governance structure that allows the necessary operational flexibility in order to foster the continued availability of the benefits of the network to the citizens of Washington; and that the operation of the network as a private, nonprofit corporation is the best method to achieve these goals." [1989 c 96 § 1.]

Effective date—1985 c 21: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1985." [1985 c 21 § 11.]

27.26.020 Network established. (*Effective until June 30, 1997.*) There is hereby established the western library network, hereinafter called the network, which shall consist of the western library network computer system, telecommunications systems, interlibrary systems, and reference and referral systems.

Responsibility for the network shall reside with the Washington state library commission. The commission shall adopt and promulgate policies, rules, and regulations consistent with the purposes and provisions of this chapter pursuant to chapter 34.05 RCW, the administrative procedure act, except that nothing in this chapter shall abrogate the authority of a participating library, institution, or organiza-

tion to establish its own policies for collection development and use of its library resources. [1987 c 504 § 13; 1985 c 21 § 2; 1975-'76 2nd ex.s. c 31 § 1.]

Severability—Effective date—1987 c 504: See RCW 43.105.901 and 43.105.902.

Effective date—1985 c 21: See note following RCW 27.26.010.

27.26.030 Western library network computer system revolving fund—Creation—Use. (*Effective until June 30, 1997.*) There is hereby created a fund within the state treasury to be known as the "western library network computer system revolving fund" referred to as the "fund."

The fund shall be credited with all receipts from the rental, sale, or distribution of supplies, equipment, computer software, products, and services rendered to users and licensees of the western library network computer system. All gifts, grants, donations, and other moneys received by the network shall be deposited in the fund. All expenditures from the fund shall be authorized by law. [1987 c 389 § 4; 1985 c 21 § 4; 1975-'76 2nd ex.s. c 110 § 2. Formerly RCW 43.105.110.]

Severability—Effective date—1987 c 389: See notes following RCW 41.06.070.

Effective date—1985 c 21: See note following RCW 27.26.010.

Effective date—1975-'76 2nd ex.s. c 110: "This act shall take effect on July 1, 1977." [1975-'76 2nd ex.s. c 110 § 6.]

27.26.040 Schedule of user fees. (*Effective until June 30, 1997.*) The state library commission shall develop a schedule of user fees for users of the western library network computer system and a schedule of charges for the network's products and licenses for the purpose of distributing and apportioning to such users, buyers, and licensees the full cost of operation and continued development of data processing and data communication services related to the network. Such schedule shall generate sufficient revenue to cover the costs relating to the library network of:

(1) The payment of salaries, wages, and other costs including but not limited to the acquisition, operation, and administration of acquired information services, supplies, and equipment; and

(2) The promotion of network products and services.

As used in this section, the term "supplies" shall not be interpreted to delegate or abrogate the state purchasing and material control director's responsibilities and authority to purchase supplies as provided for in chapter 43.19 RCW. [1987 c 504 § 12; 1985 c 21 § 6; 1975-'76 2nd ex.s. c 110 § 4. Formerly RCW 43.105.130.]

Severability—Effective date—1987 c 504: See RCW 43.105.901 and 43.105.902.

Effective date—1985 c 21: See note following RCW 27.26.010.

Effective date—1975-'76 2nd ex.s. c 110: See note following RCW 27.26.030.

27.26.050 Expenses related to promotion of products and services. (*Effective until June 30, 1997.*) The western library network may incur reasonable expenses directly related to the promotion of network products and services, including travel expenses, promotional publications, and exhibits. [1985 c 21 § 7. Formerly RCW 43.105.140.]

Effective date—1985 c 21: See note following RCW 27.26.010.

27.26.060 Contracts for promotion of network—Licenses for software. (*Effective until June 30, 1997.*) The western library network may enter into contracts with public or private vendors for a portion or portions of the promotion of the network when cost-effective or otherwise in the best interest of the users and may provide for the issuance of licenses for network software. [1985 c 21 § 8. Formerly RCW 43.105.150.]

Effective date—1985 c 21: See note following RCW 27.26.010.

27.26.070 Authority to establish private, nonprofit corporation—Termination of network services. (*Effective until June 30, 1997.*) (1) The commission may cooperate with other agencies both inside and outside the state of Washington to establish a private, nonprofit corporation for the purpose of providing automated bibliographic, computer-based telecommunications, interlibrary, reference, and referral systems, computer network services, and related library services that are equivalent to the services provided by the western library network on June 1, 1989. The commission may adopt policies and rules consistent with the purposes and provisions of RCW 27.26.070 through 27.26.090 and section 11, chapter 96, Laws of 1989 and chapter 42.52 RCW pursuant to the administrative procedure act.

(2) The commission may terminate the services provided by the western library network before June 30, 1997, if a successor organization agrees to assume full responsibility for providing services that are equivalent to the services provided by the western library network on June 1, 1989, to the state library, other agencies of state and local government, and other users of the western library network. The commission may not terminate western library network services within six months after June 1, 1989. The commission may not enter into a contract with a successor organization for the delivery of network services after five and one-half years from June 1, 1989. [1994 c 154 § 305; 1989 c 96 § 3.]

Parts and captions not law—Effective date—Severability—1994 c 154: See RCW 42.52.902, 42.52.904, and 42.52.905.

Annual report—1989 c 96: "The commission shall submit an annual report on the status of the establishment of a successor organization to the appropriate committees of the senate and house of representatives, no later than January 1 of each year, with a final report to be submitted no later than January 1, 1998." [1989 c 96 § 12.]

Findings—1989 c 96: See note following RCW 27.26.010.

27.26.080 Establishment of successor organization—State not liable for successor organization. (*Effective until June 30, 1997.*) In order to accomplish the establishment of a successor organization, the commission may take all necessary and proper steps, including:

(1) Transfer any equipment, software, data base, other assets, or contracts for services to the successor organization under appropriate terms and conditions, including reasonable compensation deemed appropriate by the commission. However, the commission shall retain the right to repossess any such property transferred for a period of up to five years, in the event that the successor organization becomes bankrupt, insolvent, or is otherwise unable to provide network services that are satisfactory to a majority of the network users, or if the successor organization fails to

comply with the provisions of any contract with the commission during the five-year period. In the event that the commission exercises its right to repossess under this section, any such property returned to the commission shall become the property of the state of Washington and shall be administered by the commission. If such a repossession occurs, the commission may provide western library network services;

(2) Unless otherwise provided by agreement, assign any membership agreements, software contracts, and other duties and responsibilities to the successor organization that are related to the western library network;

(3) Provide for personnel services by western library network employees, or other necessary support services to the successor organization under contract for up to a two-year period after the effective date of a contract between a successor organization and the commission for delivery of network services. The successor organization shall provide full reimbursement for all costs of services contracted for under this provision;

(4) Pay an annual membership fee to the successor organization not to exceed the value of services received; and

(5) Designate one or more persons to serve in the capacity of a member of the board of directors of a successor organization. The state shall not be liable for either the actions of the director in that capacity, nor for the actions of the successor organization. [1989 c 96 § 4.]

Findings—1989 c 96: See note following RCW 27.26.010.

27.26.090 Property, funds, and contracts not transferred to successor agency. (*Effective until June 30, 1997.*) At the time western library network services are terminated by the commission pursuant to RCW 27.26.070(2):

(1) Any supplies, equipment, or other property, whether tangible or intangible, not transferred to the successor organization shall remain the property of the state of Washington and shall be administered by the commission;

(2) Any funds remaining in the western library network computer system revolving fund shall be used by the commission to meet outstanding obligations of the network not transferred to the successor organization. At such time as all such obligations have been fulfilled, any remaining funds shall be transferred to the general fund;

(3) Any contracts or other obligations of the western library network not transferred to the successor organization shall be the obligation of the Washington state library. [1989 c 96 § 5.]

Findings—1989 c 96: See note following RCW 27.26.010.

27.26.900 Severability—1989 c 96. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 96 § 13.]

27.26.901 Effective date—1989 c 96. Sections 1 through 6 and 9 through 14 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing

public institutions, and shall take effect on June 1, 1989. [1989 c 96 § 15.]

27.26.950 Termination of network. (*Effective until June 30, 1997.*) The western library network and its powers and duties shall be terminated on June 30, 1997. [1989 c 96 § 9.]

Findings—1989 c 96: See note following RCW 27.26.010.

27.26.951 Repeal. The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 1997:

(1) Section 2, chapter 31, Laws of 1975-'76 2nd ex. sess., section 1, chapter 21, Laws of 1985, section 2, chapter 96, Laws of 1989 and RCW 27.26.010;

(2) Section 1, chapter 31, Laws of 1975-'76 2nd ex. sess., section 2, chapter 21, Laws of 1985, section 13, chapter 504, Laws of 1987 and RCW 27.26.020;

(3) Section 2, chapter 110, Laws of 1975-'76 2nd ex. sess., section 4, chapter 21, Laws of 1985, section 4, chapter 389, Laws of 1987 and RCW 27.26.030;

(4) Section 4, chapter 110, Laws of 1975-'76 2nd ex. sess., section 6, chapter 21, Laws of 1985, section 12, chapter 504, Laws of 1987 and RCW 27.26.040;

(5) Section 7, chapter 21, Laws of 1985 and RCW 27.26.050;

(6) Section 8, chapter 21, Laws of 1985 and RCW 27.26.060;

(7) Section 1, chapter 96, Laws of 1989 (uncodified);

(8) Section 3, chapter 96, Laws of 1989 and RCW 27.26.070;

(9) Section 4, chapter 96, Laws of 1989 and RCW 27.26.080;

(10) [Section 4, chapter 426, Laws of 1987] Section 6, chapter 96, Laws of 1989 and RCW 27.26.—[*42.18.221];

(11) Section 9, chapter 96, Laws of 1989 and RCW 27.26.950; and

(12) Section 11, chapter 96, Laws of 1989 and RCW 27.26.—[uncodified]. [1989 c 96 § 10.]

*Reviser's note: RCW 42.18.221 was repealed by 1994 c 154 § 304, effective January 1, 1995.

Chapter 27.34

STATE HISTORICAL SOCIETIES—HISTORIC PRESERVATION

Sections

27.34.010	Purpose.
27.34.020	Definitions.
27.34.060	State historical societies—Budget requests.
27.34.070	State historical societies—Powers and duties.
27.34.075	Educational publications printing.
27.34.080	State historical societies—Appointment of directors—Removal.
27.34.200	Archaeology and historic preservation—Legislative declaration.
27.34.210	Office of archaeology and historic preservation—Preservation officer—Qualifications.
27.34.220	Director—Powers.
27.34.230	Director—Duties.
27.34.240	Apportionment of grants.
27.34.250	Advisory council on historic preservation—Members.
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- 27.34.270 Advisory council—Duties.
 27.34.280 Advisory council, heritage council—Financial and administrative services.
 27.34.310 Inventory of state-owned properties—Definitions.
 27.34.320 Inventory of state-owned properties—Procedure—Grants.
 27.34.330 Heritage capital projects—Proposals for funding—Prioritized list.
 27.34.340 Lewis and Clark trail committee—Planning assistance.
 27.34.900 State capital historical museum.
 27.34.906 Pickett House—In trust—Reverter.
 27.34.910 Effective date—1983 c 91.
 27.34.915 Severability—1993 c 101.
 27.34.916 Effective date—1993 c 101.

Archaeological sites and resources: Chapter 27.53 RCW.

Historic preservation—Authority of county, city, or town to acquire property, borrow money, issue bonds, etc.: RCW 35.21.395, 36.32.435.

27.34.010 Purpose. The legislature finds that those articles and properties which illustrate the history of the state of Washington should be maintained and preserved for the use and benefit of the people of the state. It is the purpose of this chapter to designate the two state historical societies as trustees of the state for these purposes, and to establish:

(1) A comprehensive and consistent state-wide policy pertaining to archaeology, history, historic preservation, and other historical matters;

(2) State-wide coordination of historical programs; and

(3) A coordinated budget for all state historical agencies.

[1993 c 101 § 9; 1983 c 91 § 1.]

Findings—1993 c 101: "The legislature finds that:

(1) There is a strong community of interest between the Washington state historical society and the state capital historical association. This community of interest is expressed through many common goals, missions, and heritage programs, as well as a close geographic proximity between these two state historical agencies.

(2) The capacity to preserve our state's rich and diverse heritage and the unique political and cultural history of the state capital will be strengthened if the programs of both agencies are combined into a single, cohesive entity.

(3) In a time of limited state resources, operational efficiencies and savings can be achieved if the programs and personnel of both agencies are managed by a single entity.

It is, therefore, the purpose of this act to transfer the powers and duties of the state historical agency known as the state capital historical association to the Washington state historical society. However, it is the intent of the legislature that as the consolidation of these two agencies occurs, the unique missions and programs of the state capital historical association and the state capital historical museum be preserved." [1993 c 101 § 1.]

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

(1) "Advisory council" means the advisory council on historic preservation.

(2) "Department" means the department of community, trade, and economic development.

(3) "Director" means the director of community, trade, and economic development.

(4) "Federal act" means the national historic preservation act of 1966 (Public Law 89-655; 80 Stat. 915).

(5) "Heritage council" means the Washington state heritage council.

(6) "Historic preservation" includes the protection, rehabilitation, restoration, identification, scientific excavation, and reconstruction of districts, sites, buildings, structures,

and objects significant in American and Washington state history, architecture, archaeology, or culture.

(7) "Office" means the office of archaeology and historic preservation within the department.

(8) "Preservation officer" means the state historic preservation officer as provided for in RCW 27.34.210.

(9) "Project" means programs leading to the preservation for public benefit of historical properties, whether by state and local governments or other public bodies, or private organizations or individuals, including the acquisition of title or interests in, and the development of, any district, site, building, structure, or object that is significant in American and Washington state history, architecture, archaeology, or culture, and property used in connection therewith, or for its development.

(10) "State historical agencies" means the state historical societies and the office of archaeology and historic preservation within the department.

(11) "State historical societies" means the Washington state historical society and the eastern Washington state historical society.

(12) "Cultural resource management plan" means a comprehensive plan which identifies and organizes information on the state of Washington's historic, archaeological, and architectural resources into a set of management criteria, and which is to be used for producing reliable decisions, recommendations, and advice relative to the identification, evaluation, and protection of these resources. [1995 c 399 § 13; 1993 c 101 § 10; 1986 c 266 § 9; 1983 c 91 § 2.]

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

Severability—1986 c 266: See note following RCW 38.52.005.

Transfer of powers and duties of office of archaeology and historic preservation—Construction of statutory references: See note following RCW 38.52.005.

27.34.060 State historical societies—Budget requests. Each state historical society shall submit its budget requests to the heritage council for review and comment. [1983 c 91 § 6.]

27.34.070 State historical societies—Powers and duties. (1) Each state historical society is designated a trustee for the state whose powers and duties include but are not limited to the following:

(a) To collect, catalog, preserve, and interpret objects, manuscripts, sites, photographs, and other materials illustrative of the cultural, artistic, and natural history of this state;

(b) To operate state museums and assist and encourage cultural and historical studies and museum interpretive efforts throughout the state, including those sponsored by local historical organizations, and city, county, and state agencies;

(c) To engage in cultural, artistic, and educational activities, including classes, exhibits, seminars, workshops, and conferences if these activities are related to the basic purpose of the society;

(d) To plan for and conduct celebrations of significant events in the history of the state of Washington and to give assistance to and coordinate with state agencies, local governments, and local historical organizations in planning and conducting celebrations;

(e) To create one or more classes of membership in the society;

(f) To engage in the sale of various articles which are related to the basic purpose of the society;

(g) To engage in appropriate fund-raising activities for the purpose of increasing the self-support of the society;

(h) To accept gifts, grants, conveyances, bequests, and devises, of real or personal property, or both, in trust or otherwise, and sell, lease, exchange, invest, or expend the same or the proceeds, rents, profits, and income therefrom except as limited by the donor's terms. The governing boards of the state historical societies shall adopt rules to govern and protect the receipt and expenditure of the proceeds, rents, profits, and income of all such gifts, grants, conveyances, bequests, and devises;

(i) To accept on loan or lend objects of historical interest, and sell, exchange, divest itself of, or refuse to accept, items which do not enhance the collection;

(j) To charge general or special admission fees to its museums or exhibits and to waive or decrease such fees as it finds appropriate; and

(k) To work with the heritage council in developing the plan under *RCW 27.34.050.

(2) All objects, sites, manuscripts, photographs, and all property, including real property, now held or hereafter acquired by the state historical societies shall be held by the societies in trust for the use and benefit of the people of Washington state. [1983 c 91 § 7.]

*Reviser's note: RCW 27.34.050 was repealed by 1994 sp.s. c 9 § 858, effective July 1, 1994.

27.34.075 Educational publications printing. The provisions of chapter 43.78 RCW shall not apply to the printing of educational publications of the state historical societies. [1994 c 82 § 2.]

27.34.080 State historical societies—Appointment of directors—Removal. The governing board of each state historical society shall appoint its respective director with the consent of the governor. The governor may remove a director for cause or if a majority of the society's governing board votes for removal. [1983 c 91 § 8.]

27.34.200 Archaeology and historic preservation—Legislative declaration. The legislature hereby finds that the promotion, enhancement, perpetuation, and use of structures, sites, districts, buildings, and objects of historic, archaeological, architectural, and cultural significance is desirable in the interest of the public pride and general welfare of the people of the state; and the legislature further finds that the economic, cultural, and aesthetic standing of the state can be maintained and enhanced by protecting the heritage of the state and by preventing the destruction or defacement of these assets; therefore, it is hereby declared by the legislature to be the public policy and in the public interest of the state to designate, preserve, protect, enhance, and perpetuate those structures, sites, districts, buildings, and objects which reflect outstanding elements of the state's historic, archaeological, architectural, or cultural heritage, for the inspiration and enrichment of the citizens of the state. [1983 c 91 § 10.]

27.34.210 Office of archaeology and historic preservation—Preservation officer—Qualifications. There is hereby established the office of archaeology and historic preservation within the department.

The director shall appoint the preservation officer to assist the director in implementing this chapter. The preservation officer shall have a background in program administration, an active involvement in historic preservation, and a knowledge of the national, state, and local preservation programs as they affect the state of Washington. [1995 c 399 § 14; 1986 c 266 § 10; 1983 c 91 § 11.]

Severability—1986 c 266: See note following RCW 38.52.005.

Identification of historic properties and sites in need of rehabilitation or renovation—Use of conservation corps members: RCW 43.220.180.

27.34.220 Director—Powers. The director or the director's designee is authorized:

(1) To promulgate and maintain a state register of districts, sites, buildings, structures, and objects significant in American or Washington state history, architecture, archaeology, and culture, and to prepare comprehensive state-wide historic surveys and plans and research and evaluation of surveyed resources for the preparation of nominations to the state and national registers of historic places, in accordance with criteria approved by the advisory council established under RCW 27.34.250. The nominations shall comply with any standards and regulations promulgated by the United States secretary of the interior for the preservation, acquisition, and development of such properties.

(2) To establish a program of matching grants-in-aid to public agencies, public or private organizations, or individuals for projects having as their purpose the preservation for public benefit of properties that are significant in American or Washington state history, architecture, archaeology, and culture.

(3) To promote historic preservation efforts throughout the state, including private efforts and those of city, county, and state agencies.

(4) To enhance the effectiveness of the state preservation program through the initiation of legislation, the use of varied funding sources, the creation of special purpose programs, and contact with state, county, and city officials, civic groups, and professionals.

(5) To spend funds, subject to legislative appropriation and the availability of funds, where necessary to assist the Indian tribes of Washington state in removing prehistoric human remains for scientific examination and reburial, if the human remains have been unearthed inadvertently or through vandalism and if no other public agency is legally responsible for their preservation.

(6) To consult with the governor and the legislature on issues relating to the conservation of the man-made environment and their impact on the well-being of the state and its citizens.

(7) To charge fees for professional and clerical services provided by the office.

(8) To adopt such rules, in accordance with chapter 34.05 RCW, as are necessary to carry out RCW 27.34.200 through 27.34.280. [1987 c 505 § 8; 1986 c 266 § 11; 1985 c 64 § 2; 1983 c 91 § 12.]

Severability—1986 c 266: See note following RCW 38.52.005.

27.34.230 Director—Duties. The director or the director's designee shall:

(1) Submit the budget requests for the office to the heritage council for review and comment;

(2) Receive, administer, and disburse such gifts, grants, and endowments from private sources as may be made in trust or otherwise for the purposes of RCW 27.34.200 through *27.34.290 or the federal act; and

(3) Develop and implement a cultural resource management plan. [1986 c 266 § 12; 1983 c 91 § 13.]

*Reviser's note: RCW 27.34.290 was repealed by 1986 c 266 § 53.
Severability—1986 c 266: See note following RCW 38.52.005.

27.34.240 Apportionment of grants. The amounts made available for grants to the public agencies, public or private organizations, or individuals for projects for each fiscal year shall be apportioned among program applicants by the director or the director's designee, with the advice of the preservation officer, in accordance with needs as contained in state-wide archaeology and historic preservation plans developed by the department. [1986 c 266 § 13; 1983 c 91 § 14.]

Severability—1986 c 266: See note following RCW 38.52.005.

27.34.250 Advisory council on historic preservation—Members. (1) There is hereby established an advisory council on historic preservation, which shall be composed of nine members appointed by the governor as follows:

(a) A representative of a local or state heritage organization;

(b) Six members of the public who are interested and experienced in matters to be considered by the council including the fields of history, architecture, and archaeology;

(c) A representative from the Washington archaeological community; and

(d) A native American.

(2) Each member of the council shall serve a four-year term.

(3) A vacancy in the council shall not affect its powers, but shall be filled in the same manner as the original appointment for the balance of the unexpired term.

(4) The chairperson of the council shall be designated by the governor.

(5) Five members of the council shall constitute a quorum. [1995 c 150 § 1. Prior: 1993 c 185 § 1; 1993 c 101 § 12; 1983 c 91 § 15.]

Effective date—1993 c 185: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1993." [1993 c 185 § 2.]

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

27.34.260 Advisory council—Compensation and reimbursement of members. The directors of the state historical societies shall serve as members of the advisory council on historic preservation without additional compensation. All other members of the advisory council shall be reimbursed for travel expenses incurred in the performance of the duties of the council in accordance with RCW 43.03.050 and 43.03.060. [1983 c 91 § 18.]

27.34.270 Advisory council—Duties. The advisory council shall:

(1) Advise the governor and the department on matters relating to historic preservation; recommend measures to coordinate activities of state and local agencies, private institutions, and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities; and

(2) Review and recommend nominations for the state and national registers of historic places to the preservation officer and the director. [1986 c 266 § 14; 1983 c 91 § 17.]

Severability—1986 c 266: See note following RCW 38.52.005.

27.34.280 Advisory council, heritage council—Financial and administrative services. The department shall provide administrative and financial services to the advisory council on historic preservation and to the Washington state heritage council. [1986 c 266 § 15; 1983 c 91 § 16.]

Severability—1986 c 266: See note following RCW 38.52.005.

27.34.310 Inventory of state-owned properties—Definitions. Unless the context clearly requires otherwise, the following definitions apply throughout RCW 27.34.320.

(1) "Agency" means the state agency, department, or institution that has ownership of historic property.

(2) "Historic properties" means those buildings, sites, objects, structures, and districts that are listed in or eligible for listing in the National Register of Historic Places.

(3) "Office" means the office of archaeology and historic preservation within the department of community, trade, and economic development. [1995 c 399 § 15; 1993 c 325 § 3.]

Purpose—1993 c 325 §§ 3, 4: "It is the purpose of sections 3 and 4 of this act to give authority to the office of archaeology and historic preservation to identify and record all state-owned facilities to determine which of these facilities may be considered historically significant and to require the office to provide copies of the inventory to departments, agencies, and institutions that have jurisdiction over the buildings and sites listed." [1993 c 325 § 2.]

27.34.320 Inventory of state-owned properties—Procedure—Grants. (1) By January 2, 1994, the office shall provide each agency with a list of the agency's properties currently listed on the National Register of Historic Places. By January 2, 1995, agencies that own property shall provide to the office a list of those properties that are either at least fifty years old or that may be eligible for listing in the National Register of Historic Places. If funding is available, the office may provide grants to state agencies to assist in the development of the agency's list. By June 30, 1995, the office shall compile and disseminate an inventory of state-owned historic properties.

(2) The office shall provide technical information to agency staff involved with the identification of historic properties, including the criteria for facilities to be placed on the National Register of Historic Places. [1993 c 325 § 4.]

Purpose—1993 c 325 §§ 3, 4: See note following RCW 27.34.310.

27.34.330 Heritage capital projects—Proposals for funding—Prioritized list. The Washington state historical society shall establish a competitive process to solicit

proposals for and prioritize heritage capital projects for potential funding in the state capital budget. The society shall adopt rules governing project eligibility and evaluation criteria. Application for funding of specific projects may be made to the society by local governments, public development authorities, nonprofit corporations, tribal governments, and other entities, as determined by the society. The society, with the advice of leaders in the heritage field, including but not limited to representatives from the office of the secretary of state, the eastern Washington state historical society, and the state office of archaeology and historic preservation, shall establish a prioritized list of heritage capital projects to be recommended to the governor and the legislature by September 1st of each even-numbered year, beginning in 1996. The prioritized list shall be developed through open and public meetings. The governor and the legislature shall consider the prioritized list of heritage projects as a guide for appropriating funds to heritage capital projects beginning with the 1997-99 biennium and thereafter. [1995 c 182 § 2.]

Findings—1995 c 182: "The legislature finds that the state of Washington has a rich heritage in historical sites and artifacts that have the potential to provide life-long learning opportunities for citizens of the state. Further, the legislature finds that many of these historical treasures are not readily accessible to citizens, and that there is a need to create an ongoing program to support the capital needs of heritage organizations and facilities." [1995 c 182 § 1.]

27.34.340 Lewis and Clark trail committee—Planning assistance. (1) The Washington state historical society shall work with and provide leadership to the Lewis and Clark trail committee in planning activities to commemorate Lewis and Clark's epic exploration to the northwest United States.

(2) The society shall coordinate its planning efforts with the parks and recreation commission, which provides staffing and administrative assistance to the Lewis and Clark trail committee.

(3) The society shall work with other associations and state agencies to coordinate, develop, and disseminate information regarding the planned activities. [1996 c 65 § 1.]

27.34.900 State capital historical museum. The building and grounds designated as Block 2, Grainger's Addition to the City of Olympia, County of Thurston, acquired by the state under senate joint resolution No. 18, session of 1939, is hereby designated a part of the state capitol, to be known as the state capital historical museum. This structure is to be used to house and interpret the collection of the Washington state historical society. This section does not limit the society's use of other structures. [1993 c 101 § 13; 1981 c 253 § 3; 1941 c 44 § 3; Rem. Supp. 1941 § 8265-6. Formerly RCW 27.36.020.]

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

27.34.906 Pickett House—In trust—Reverter. Said chapter, by acceptance of such conveyance, shall be deemed to have agreed to hold said property in trust for the state of Washington, and to maintain and keep the same open to the public as an historical site, and, in case of its failure so to do, title to said property shall revert to the state of Washington. [1965 c 31 § 2. Formerly RCW 27.28.022.]

(1996 Ed.)

27.34.910 Effective date—1983 c 91. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1983. [1983 c 91 § 27.]

27.34.915 Severability—1993 c.101. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 101 § 16.]

27.34.916 Effective date—1993 c 101. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 101 § 17.]

Chapter 27.40

THOMAS BURKE MEMORIAL WASHINGTON STATE MUSEUM OF UNIVERSITY OF WASHINGTON

(Formerly: Museum of University of Washington)

Sections

- 27.40.010 Thomas Burke Memorial Washington State Museum constituted state natural history and anthropology museum.
- 27.40.030 Acceptance of materials from private sources.
- 27.40.034 Permanent acquisition of documents and materials on loan to museum, procedure—Return of stolen documents and materials to owner.
- 27.40.036 Sale or trade of acquired documents or materials—Use of proceeds.
- 27.40.040 Management in board of regents.

27.40.010 Thomas Burke Memorial Washington State Museum constituted state natural history and anthropology museum. The Thomas Burke Memorial Washington State Museum of the University of Washington is hereby constituted the state natural history and anthropology museum as a repository for the preservation, exhibition, interpretation, and conservation of documents and objects of a systematic anthropological, geological, and zoological character for the state. [1985 c 29 § 1; 1899 c 30 § 1; RRS § 8255.]

Effective date—1985 c 29: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on June 30, 1985." [1985 c 29 § 3.]

27.40.030 Acceptance of materials from private sources. This museum may receive all such above named documents or material for preservation and exhibition from any private person under such rules and regulations as the board of regents of the University of Washington may deem proper to make for the care of the aforesaid museum. [1899 c 30 § 3; RRS § 8257.]

27.40.034 Permanent acquisition of documents and materials on loan to museum, procedure—Return of stolen documents and materials to owner. The board of regents may provide, by rule or regulation, for:

(1) The permanent acquisition of documents or materials on loan to the state museum at the University of Washington, if the documents or materials have not been claimed by the owner thereof within ninety days after notice is sent by certified mail, return receipt requested, to the owner at his last known address by the board of regents and if the certified letter be returned because it could not be delivered to the addressee, public notice shall be published by the University of Washington once each week during two successive weeks in a newspaper circulating in the city of Seattle and the county of King describing the unclaimed documents or materials, giving the name of the reputed owner thereof and requesting all persons who may have any knowledge of the whereabouts of the owner to contact the office of the museum of the University of Washington: PROVIDED HOWEVER, That more than one item may be described in each of the notices;

(2) The return to the rightful owner of documents or materials in the possession of the museum, which documents or materials are determined to have been stolen: PROVIDED, That any person claiming to be the rightful legal owner of the documents or materials who wishes to challenge the determination by the board shall have the right to commence a declaratory judgment action pursuant to chapter 7.24 RCW in the superior court for King county to determine the validity of his claim of ownership to the documents or materials. [1985 c 469 § 13; 1975 1st ex.s. c 159 § 1.]

27.40.036 Sale or trade of acquired documents or materials—Use of proceeds. Documents or materials acquired under the provisions of RCW 27.40.034 may be sold, or may be traded for other documents or materials. The proceeds from the sale of any such documents or materials may be used to acquire additional documents or materials or may be used to defray the cost of operating the museum. [1975 1st ex.s. c 159 § 2.]

27.40.040 Management in board of regents. The board of regents of the University of Washington ex officio shall have full charge and management of the state museum hereby created. [1899 c 30 § 4; RRS § 8258.]

Chapter 27.44

INDIAN GRAVES AND RECORDS

Sections

27.44.020	Examination permitted—Removal to archaeological repository.
27.44.030	Intent.
27.44.040	Protection of Indian graves—Penalty.
27.44.050	Civil action by Indian tribe or member—Time for commencing action—Venue—Damages—Attorneys' fees.
27.44.900	Captions not law—1989 c 44.
27.44.901	Liberal construction—1989 c 44.

27.44.020 Examination permitted—Removal to archaeological repository. Any archaeologist or interested person may copy and examine such glyptic or painted records or examine the surface of any such cairn or grave, but no such record or archaeological material from any such cairn or grave may be removed unless the same shall be destined for reburial or perpetual preservation in a duly

recognized archaeological repository and permission for scientific research and removal of specimens of such records and material has been granted by the state historic preservation officer. Whenever a request for permission to remove records or material is received, the state historic preservation officer shall notify the affected Indian tribe or tribes. [1985 c 64 § 1; 1977 ex.s. c 169 § 6; 1941 c 216 § 2; Rem. Supp. 1941 § 3207-11.]

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

27.44.030 Intent. The legislature hereby declares that:

(1) Native Indian burial grounds and historic graves are acknowledged to be a finite, irreplaceable, and nonrenewable cultural resource, and are an intrinsic part of the cultural heritage of the people of Washington. The legislature recognizes the value and importance of respecting all graves, and the spiritual significance of such sites to the people of this state;

(2) There have been reports and incidents of deliberate interference with native Indian and historic graves for profit-making motives;

(3) There has been careless indifference in cases of accidental disturbance of sites, graves, and burial grounds;

(4) Indian burial sites, cairns, glyptic markings, and historic graves located on public and private land are to be protected and it is therefore the legislature's intent to encourage voluntary reporting and respectful handling in cases of accidental disturbance and provide enhanced penalties for deliberate desecration. [1989 c 44 § 1.]

27.44.040 Protection of Indian graves—Penalty. (1) Any person who knowingly removes, mutilates, defaces, injures, or destroys any cairn or grave of any native Indian, or any glyptic or painted record of any tribe or peoples is guilty of a class C felony punishable under chapter 9A.20 RCW. Persons disturbing native Indian graves through inadvertence, including disturbance through construction, mining, logging, agricultural activity, or any other activity, shall reinter the human remains under the supervision of the appropriate Indian tribe. The expenses of reinterment are to be paid by the office of archaeology and historic preservation pursuant to RCW 27.34.220.

(2) Any person who sells any native Indian artifacts or any human remains that are known to have been taken from an Indian cairn or grave, is guilty of a class C felony punishable under chapter 9A.20 RCW.

(3) This section does not apply to:

(a) The possession or sale of native Indian artifacts discovered in or taken from locations other than native Indian cairns or graves, or artifacts that were removed from cairns or graves as may be authorized by RCW 27.53.060 or by other than human action; or

(b) Actions taken in the performance of official law enforcement duties.

(4) It shall be a complete defense in the prosecution under this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains, glyptic, or painted records, or artifacts accidentally disturbed or discovered, and that the accidental

discovery or disturbance was properly reported. [1989 c 44 § 2.]

27.44.050 Civil action by Indian tribe or member—Time for commencing action—Venue—Damages—Attorneys' fees. (1) Apart from any criminal prosecution, an Indian tribe or enrolled member thereof, shall have a civil action to secure an injunction, damages, or other appropriate relief against any person who is alleged to have violated RCW 27.44.040. The action must be brought within two years of the discovery of the violation by the plaintiff. The action may be filed in the superior or tribal court of the county in which the grave, cairn, remains, or artifacts are located, or in the superior court of the county within which the defendant resides.

(2) Any conviction pursuant to RCW 27.44.040 shall be prima facie evidence in an action brought under this section.

(3) If the plaintiff prevails:

(a) The court may award reasonable attorneys' fees to the plaintiff;

(b) The court may grant injunctive or such other equitable relief as is appropriate, including forfeiture of any artifacts or remains acquired or equipment used in the violation. The court shall order the disposition of any items forfeited as the court sees fit, including the reinterment of human remains;

(c) The plaintiff shall recover imputed damages of five hundred dollars or actual damages, whichever is greater. Actual damages include special and general damages, which include damages for emotional distress;

(d) The plaintiff may recover punitive damages upon proof that the violation was willful. Punitive damages may be recovered without proof of actual damages. All punitive damages shall be paid by the defendant to the office of archaeology and historic preservation for the purposes of Indian historic preservation and to cover the cost of reinterment expenses by the office; and

(e) An award of imputed or punitive damages may be made only once for a particular violation by a particular person, but shall not preclude the award of such damages based on violations by other persons or on other violations.

(4) If the defendant prevails, the court may award reasonable attorneys' fees to the defendant. [1989 c 44 § 3.]

27.44.900 Captions not law—1989 c 44. Section captions used in this act do not constitute any part of the law. [1989 c 44 § 10.]

27.44.901 Liberal construction—1989 c 44. This act is to be liberally construed to achieve the legislature's intent. [1989 c 44 § 11.]

Chapter 27.48

PRESERVATION OF HISTORICAL MATERIALS

Sections

27.48.010 Public purpose declared—Powers of counties and municipalities.

Preservation and destruction of public records, state archivist: Chapter 40.14 RCW.

27.48.010 Public purpose declared—Powers of counties and municipalities. The storage, preservation and exhibit of historical materials, including, but not restricted to, books, maps, writings, newspapers, ancient articles, and tools of handicraft, antiques, artifacts, and relics is declared to be a public project carried on for public purpose and the legislative body of any county, city or town, may provide quarters therefor within the territorial limits thereof and may provide funds necessary for the proper operation of any such institution already in operation, or otherwise provide for the preservation of historical material covered by this chapter. [1957 c 47 § 1; 1949 c 160 § 1; Rem. Supp. 1949 § 8265-9.]

Chapter 27.53

ARCHAEOLOGICAL SITES AND RESOURCES

Sections

- 27.53.010 Declaration.
- 27.53.020 Archaeological resource preservation, etc., declared public functions—Archaeological research center designated state agency—Cooperation enjoined.
- 27.53.030 Definitions.
- 27.53.040 Archaeological resources—Declaration.
- 27.53.045 Abandoned archaeological resources—Declaration.
- 27.53.060 Disturbing, etc., archaeological resource or site without written permit or permission unlawful—Conditions allowed—Exceptions.
- 27.53.070 Field investigations—Communication of site or resource location to research center.
- 27.53.080 Archaeological activities upon public lands—Entry—Agreement—Approval of activities.
- 27.53.090 Violations—Penalty.
- 27.53.100 Historic archaeological resources on state-owned aquatic lands—Discovery and report—Right of first refusal.
- 27.53.110 Contracts for discovery and salvage of state-owned historic archaeological resources.
- 27.53.120 Recovery of property from historic archaeological sites—Mitigation of damage—Refusal to issue salvage permit to prevent destruction of resource.
- 27.53.130 List of areas requiring permits.
- 27.53.140 Rule-making authority.
- 27.53.150 Proceeds from state's property—Deposit and use.
- 27.53.900 Severability—1975 1st ex.s. c 134.
- 27.53.901 Severability—1988 c 124.

Office of archaeology and historic preservation: RCW 27.34.200 through 27.34.240.

27.53.010 Declaration. The legislature hereby declares that the public has an interest in the conservation, preservation, and protection of the state's archaeological resources, and the knowledge to be derived and gained from the scientific study of these resources. [1975 1st ex.s. c 134 § 1.]

27.53.020 Archaeological resource preservation, etc., declared public functions—Archaeological research center designated state agency—Cooperation enjoined. The discovery, identification, excavation, and study of the state's archaeological resources, the providing of information on archaeological sites for their nomination to the state and national registers of historic places, the maintaining of a complete inventory of archaeological sites and collections, and the providing of information to state, federal, and private

construction agencies regarding the possible impact of construction activities on the state's archaeological resources, are proper public functions; and the Washington archaeological research center, created under the authority of chapter 39.34 RCW as now existing or hereafter amended, is hereby designated as an appropriate agency to carry out these functions. The director, in consultation with the Washington archaeological research center, shall provide guidelines for the selection of depositories designated by the state for archaeological resources. The legislature directs that there shall be full cooperation amongst the department, the Washington archaeological research center, and other agencies of the state. [1986 c 266 § 16; 1977 ex.s. c 195 § 12; 1975-'76 2nd ex.s. c 82 § 1; 1975 1st ex.s. c 134 § 2.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1977 ex.s. c 195: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 195 § 20.]

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

(1) "Archaeology" means systematic, scientific study of man's past through material remains.

(2) "Archaeological object" means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, and technological by-products.

(3) "Archaeological site" means a geographic locality in Washington, including but not limited to, submerged and submersible lands and the bed of the sea within the state's jurisdiction, that contains archaeological objects.

(4) "Department" means the department of community, trade, and economic development.

(5) "Director" means the director of community, trade, and economic development or the director's designee.

(6) "Historic" means peoples and cultures who are known through written documents in their own or other languages. As applied to underwater archaeological resources, the term historic shall include only those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

(7) "Prehistoric" means peoples and cultures who are unknown through contemporaneous written documents in any language.

(8) "Professional archaeologist" means a person who has met the educational, training, and experience requirements of the society of professional archaeologists.

(9) "Qualified archaeologist" means a person who has had formal training and/or experience in archaeology over a period of at least three years, and has been certified in writing to be a qualified archaeologist by two professional archaeologists.

(10) "Amateur society" means any organization composed primarily of persons who are not professional archaeologists, whose primary interest is in the archaeological

resources of the state, and which has been certified in writing by two professional archaeologists.

(11) "Historic archaeological resources" means those properties which are listed in or eligible for listing in the Washington State Register of Historic Places (RCW 27.34.220) or the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended. [1995 c 399 § 16; 1989 c 44 § 6; 1988 c 124 § 2; 1986 c 266 § 17; 1983 c 91 § 20; 1977 ex.s. c 195 § 13; 1975 1st ex.s. c 134 § 3.]

Intent—1989 c 44: See RCW 27.44.030.

Captions not law—Liberal construction—1989 c 44: See RCW 27.44.900 and 27.44.901.

Intent—1988 c 124: "It is the intent of the legislature that those historic archaeological resources located on state-owned aquatic lands that are of importance to the history of our state, or its communities, be protected for the people of the state. At the same time, the legislature also recognizes that divers have long enjoyed the recreation of diving near shipwrecks and picking up artifacts from the state-owned aquatic lands, and it is not the intent of the legislature to regulate these occasional, recreational activities except in areas where necessary to protect underwater historic archaeological sites. The legislature also recognizes that salvors who invest in a project to salvage underwater archaeological resources on state-owned aquatic lands should be required to obtain a state permit for their operation in order to protect the interest of the people of the state, as well as to protect the interest of the salvors who have invested considerable time and money in the salvage expedition." [1988 c 124 § 1.]

Application—1988 c 124: "This act shall not affect any ongoing salvage effort in which the state has entered into separate contracts or agreements prior to March 18, 1988." [1988 c 124 § 13.] For codification of "this act," see Codification Tables, Volume 0.

Severability—1986 c 266: See note following RCW 38.52.005.

Effective date—1983 c 91: See RCW 27.34.910.

Severability—1977 ex.s. c 195: See note following RCW 27.53.020.

27.53.040 Archaeological resources—Declaration. All sites, objects, structures, artifacts, implements, and locations of prehistorical or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to, those pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls and grinding stones, knives, scrapers, rock carvings and paintings, and other implements and artifacts of any material that are located in, on, or under the surface of any lands or waters owned by or under the possession, custody, or control of the state of Washington or any county, city, or political subdivision of the state are hereby declared to be archaeological resources. [1975 1st ex.s. c 134 § 4.]

27.53.045 Abandoned archaeological resources—Declaration. All historic archaeological resources abandoned for thirty years or more in, on, or under the surface of any public lands or waters owned by or under the possession, custody, or control of the state of Washington, including, but not limited to all ships, or aircraft, and any part or the contents thereof, and all treasure trove is hereby declared to be the property of the state of Washington. [1988 c 124 § 3.]

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

27.53.060 Disturbing, etc., archaeological resource or site without written permit or permission unlawful—Conditions allowed—Exceptions. (1) On the private and public lands of this state it shall be unlawful for any person, firm, corporation, or any agency or institution of the state or a political subdivision thereof to knowingly remove, alter, dig into, or excavate by use of any mechanical, hydraulic, or other means, or to damage, deface, or destroy any historic or prehistoric archaeological resource or site, or remove any archaeological object from such site, except for Indian graves or cairns, or any glyptic or painted record of any tribe or peoples, or historic graves as defined in chapter 68.05 RCW, disturbances of which shall be a class C felony punishable under chapter 9A.20 RCW, without having obtained a written permit from the director for such activities.

(2) The director must obtain the consent of the private or public property owner or agency responsible for the management thereof, prior to issuance of the permit. The property owner or agency responsible for the management of such land may condition its consent on the execution of a separate agreement, lease, or other real property conveyance with the applicant as may be necessary to carry out the legal rights or duties of the public property landowner or agency. The director, in consultation with the affected tribes, shall develop guidelines for the issuance and processing of permits. Such written permit and any agreement or lease or other conveyance required by any public property owner or agency responsible for management of such land shall be physically present while any such activity is being conducted. The provisions of this section shall not apply to the removal of artifacts found exposed on the surface of the ground which are not historic archaeological resources or sites. [1989 c 44 § 7; 1988 c 124 § 4; 1986 c 266 § 18; 1977 ex.s. c 195 § 14; 1975-'76 2nd ex.s. c 82 § 2; 1975 1st ex.s. c 134 § 6.]

Intent—1989 c 44: See RCW 27.44.030.

Captions not law—Liberal construction—1989 c 44: See RCW 27.44.900 and 27.44.901.

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

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1977 ex.s. c 195: See note following RCW 27.53.020.

27.53.070 Field investigations—Communication of site or resource location to research center. It is the declared intention of the legislature that field investigations on privately owned lands should be discouraged except in accordance with both the provisions and spirit of this chapter and persons having knowledge of the location of archaeological sites or resources are encouraged to communicate such information to the Washington archaeological research center. Such information shall not constitute a public record which requires disclosure pursuant to the exception authorized in RCW 42.17.310, as now or hereafter amended, to avoid site deprecation. [1975-'76 2nd ex.s. c 82 § 3; 1975 1st ex.s. c 134 § 7.]

27.53.080 Archaeological activities upon public lands—Entry—Agreement—Approval of activities. Qualified or professional archaeologists, in performance of

their duties, are hereby authorized to enter upon public lands of the state of Washington and its political subdivisions, at such times and in such manner as not to interfere with the normal management thereof, for the purposes of doing archaeological resource location and evaluation studies, including site sampling activities. Scientific excavations are to be carried out only after appropriate agreement has been made between a professional archaeologist or an institution of higher education and the agency or political subdivision responsible for such lands. Notice of such agreement shall be filed with the Washington archaeological research center and by them to the department. Amateur societies may engage in such activities by submitting and having approved by the responsible agency or political subdivision a written proposal detailing the scope and duration of the activity. Before approval, a proposal from an amateur society shall be submitted to the Washington archaeological research center for review and recommendation. [1986 c 266 § 19; 1977 ex.s. c 195 § 15; 1975 1st ex.s. c 134 § 8.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1977 ex.s. c 195: See note following RCW 27.53.020.

27.53.090 Violations—Penalty. Any person, firm, or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor. Each day of continued violation of any provision of this chapter shall constitute a distinct and separate offense. Offenses shall be reported to the appropriate law enforcement agency or to the director. [1986 c 266 § 20; 1977 ex.s. c 195 § 16; 1975-'76 2nd ex.s. c 82 § 4; 1975 1st ex.s. c 134 § 9.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1977 ex.s. c 195: See note following RCW 27.53.020.

27.53.100 Historic archaeological resources on state-owned aquatic lands—Discovery and report—Right of first refusal. Persons, firms, corporations, institutions, or agencies which discover a previously unreported historic archaeological resource on state-owned aquatic lands and report the site or location of such resource to the department shall have a right of first refusal to future salvage permits granted for the recovery of that resource, subject to the provisions of RCW 27.53.110. Such right of first refusal shall exist for five years from the date of the report. Should another person, firm, corporation, institution, or agency apply for a permit to salvage that resource, the reporting entity shall have sixty days to submit its own permit application and exercise its first refusal right, or the right shall be extinguished. [1988 c 124 § 5.]

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

27.53.110 Contracts for discovery and salvage of state-owned historic archaeological resources. The director is hereby authorized to enter into contracts with other state agencies or institutions and with qualified private institutions, persons, firms, or corporations for the discovery and salvage of state-owned historic archaeological resources. Such contracts shall include but are not limited to the following terms and conditions:

(1) Historic shipwrecks:

(a) The contract shall provide for fair compensation to a salvor. "Fair compensation" means an amount not less than ninety percent of the appraised value of the objects recovered following successful completion of the contract.

(b) The salvor may retain objects with a value of up to ninety percent of the appraised value of the total objects recovered, or cash, or a combination of objects and cash. In no event may the total of objects and cash exceed ninety percent of the total appraised value of the objects recovered. A salvor shall not be entitled to further compensation from any state sources.

(c) The contract shall provide that the state will be given first choice of which objects it may wish to retain for display purposes for the people of the state from among all the objects recovered. The state may retain objects with a value of up to ten percent of the appraised value of the total objects recovered. If the state chooses not to retain recovered objects with a value of up to ten percent of the appraised value, the state shall be entitled to receive its share in cash or a combination of recovered objects and cash so long as the state's total share does not exceed ten percent of the appraised value of the objects recovered.

(d) The contract shall provide that both the state and the salvor shall have the right to select a single appraiser or joint appraisers.

(e) The contract shall also provide that title to the objects shall pass to the salvor when the permit is issued. However, should the salvor fail to fully perform under the terms of the contract, title to all objects recovered shall revert to the state.

(2) Historic aircraft:

(a) The contract shall provide that historic aircraft belonging to the state of Washington may only be recovered if the purpose of that salvage operation is to recover the aircraft for a museum, historical society, nonprofit organization, or governmental entity.

(b) Title to the aircraft may only be passed by the state to one of the entities listed in (a) of this subsection.

(c) Compensation to the salvor shall only be derived from the sale or exchange of the aircraft to one of the entities listed in (a) of this subsection or such other compensation as one of the entities listed in (a) of this subsection and the salvor may arrange. The salvor shall not have a claim to compensation from state funds.

(3) Other historic archaeological resources: The director, in his or her discretion, may negotiate the terms of such contracts. [1988 c 124 § 6.]

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

27.53.120 . Recovery of property from historic archaeological sites—Mitigation of damage—Refusal to issue salvage permit to prevent destruction of resource. The salvor shall agree to mitigate any archaeological damage which occurs during the salvage operation. The department shall have access to all property recovered from historic archaeological sites for purposes of scholarly research and photographic documentation for a period to be agreed upon by the parties following completion of the salvage operation. The department shall also have the right to publish scientific papers concerning the results of all research conducted as project mitigation.

The director has the right to refuse to issue a permit for salvaging an historic archaeological resource if that resource would be destroyed beyond mitigation by the proposed salvage operation. Any agency, institution, person, firm, or corporation which has been denied a permit because the resource would be destroyed beyond mitigation by their method of salvage shall have a right of first refusal for that permit at a future date should technology be found which would make salvage possible without destroying the resource. Such right of first refusal shall be in effect for sixty days after the director has determined that salvage can be accomplished by a subsequent applicant without destroying the resource.

No person, firm, or corporation may conduct such salvage or recovery operation herein described without first obtaining such contract. [1988 c 124 § 7.]

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

27.53.130 List of areas requiring permits. The department shall publish annually and update as necessary a list of those areas where permits are required to protect historic archaeological sites on aquatic lands. [1995 c 399 § 17; 1988 c 124 § 10.]

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

27.53.140 Rule-making authority. The department shall have such rule-making authority as is necessary to carry out the provisions of this chapter. [1995 c 399 § 18; 1988 c 124 § 11.]

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

27.53.150 Proceeds from state's property—Deposit and use. Any proceeds from the state's share of property under this chapter shall be transmitted to the state treasurer for deposit in the general fund to be used only for the purposes of historic preservation and underwater archaeology. [1988 c 124 § 12.]

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

27.53.900 Severability—1975 1st ex.s. c 134. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 134 § 10.]

27.53.901 Severability—1988 c 124. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 124 § 14.]

Title 28A

COMMON SCHOOL PROVISIONS

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Chapter 28A.150

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- 28A.150.400 Apportionment factors to be based on current figures—Rules and regulations.
- 28A.150.410 Basic education certificated instructional staff—Salary allocation schedule—Limits on post-graduate credits.
- 28A.150.420 Reimbursement for classes provided outside regular school year.
- 28A.150.500 Educational agencies offering vocational education programs—Local advisory committees—Advice on current job needs.

DEFINITIONS

28A.150.010 Public schools. Public schools shall mean the common schools as referred to in Article IX of the state Constitution and those schools and institutions of learning having a curriculum below the college or university level as now or may be established by law and maintained at public expense. [1969 ex.s. c 223 § 28A.01.055. Formerly RCW 28A.01.055.]

28A.150.020 Common schools. "Common schools" means schools maintained at public expense in each school district and carrying on a program from kindergarten through

the twelfth grade or any part thereof including vocational educational courses otherwise permitted by law. [1969 ex.s. c 223 § 28A.01.060. Prior: 1909 c 97 p 261 § 1, part; RRS § 4680, part; prior: 1897 c 118 § 64, part; 1890 p 371 § 44, part. Formerly RCW 28A.01.060, 28.58.190, part, 28.01.060.]

28A.150.030 School day. A school day shall mean each day of the school year on which pupils enrolled in the common schools of a school district are engaged in educational activity planned by and under the direction of the school district staff, as directed by the administration and board of directors of the district. [1971 ex.s. c 161 § 1; 1969 ex.s. c 223 § 28A.01.010. Prior: (i) 1909 c 97 p 262 § 3, part; RRS § 4687, part; prior: 1903 c 104 § 22, part; 1897 c 118 § 66, part; 1890 p 372 § 46. Formerly RCW 28.01.010, part. (ii) 1917 c 127 § 1, part; RRS § 5098, part. Cf. 1911 c 82 § 1, part; 1909 c 97 p 371 subchapter 19, part; 1897 c 118 § 181, part. Formerly RCW 28A.01.010, 28.35.030, part.]

28A.150.040 School year—Beginning—End. The school year shall begin on the first day of September and end with the last day of August: PROVIDED, That any school district may elect to commence the minimum annual school term as required under RCW 28A.150.220 in the month of August of any calendar year and in such case the operation of a school district for such period in August shall be credited by the superintendent of public instruction to the succeeding school year for the purpose of the allocation and distribution of state funds for the support of such school district. [1990 c 33 § 101; 1982 c 158 § 5; 1977 ex.s. c 286 § 1; 1975-'76 2nd ex.s. c 118 § 22; 1969 ex.s. c 223 § 28A.01.020. Prior: 1909 c 97 p 262 § 4; RRS § 4688; prior: 1897 c 118 § 67; 1890 p 373 § 49. Formerly RCW 28A.01.020, 28.01.020.]

Severability—1982 c 158: See note following RCW 28A.150.220.

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.150.050 School holidays. The following are school holidays, and school shall not be taught on these days: Sunday; the first day of January, commonly called New Year's Day; the third Monday of January, being celebrated as the anniversary of the birth of Martin Luther King, Jr.; the third Monday in February to be known as Presidents' Day and to be celebrated as the anniversary of the births of Abraham Lincoln and George Washington; the last Monday in May, commonly known as Memorial Day; the fourth day of July, being the anniversary of the Declaration of Independence; the first Monday in September, to be known as Labor Day; the eleventh day of November, to be known as Veterans' Day, the fourth Thursday in November, commonly known as Thanksgiving Day; the day immediately following Thanksgiving Day; the twenty-fifth day of December, commonly called Christmas Day: PROVIDED, That no reduction from the teacher's time or salary shall be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school shall not be taught. [1989 c 233 § 11; 1985 c 189 § 2; 1984 c 92 § 1; 1975-'76 2nd ex.s. c 24 § 2; 1973 c 32 § 1; 1969

ex.s. c 283 § 13. Prior: 1969 ex.s. c 223 § 28A.02.060; prior: 1955 c 20 § 2; 1909 c 97 p 308 § 6; RRS § 4853. Formerly RCW 28A.02.061, 28A.02.060, 28.02.060.]

Severability—1969 ex.s. c 283: "If any provision of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 283 § 59.]

"Legal holidays": RCW 1.16.050.

28A.150.060 Certificated employee. The term "certificated employee" as used in RCW 28A.195.010, 28A.150.060, 28A.150.260, 28A.405.100, 28A.405.210, 28A.405.240, 28A.405.250, 28A.405.300 through 28A.405.380, and chapter 41.59 RCW, shall include those persons who hold certificates as authorized by rule or regulation of the state board of education or the superintendent of public instruction. [1990 c 33 § 102; 1977 ex.s. c 359 § 17; 1975 1st ex.s. c 288 § 21; 1973 1st ex.s. c 105 § 1. Formerly RCW 28A.01.130.]

Effective date—Severability—1977 ex.s. c 359: See notes following RCW 28A.150.200.

Effective dates—1975 1st ex.s. c 288: See RCW 41.59.940.

Severability—1975 1st ex.s. c 288: See RCW 41.59.950.

Basic Education Act, RCW 28A.150.060 as part of: RCW 28A.150.200.

Construction of chapter—Employee's rights preserved: RCW 41.59.920.

Construction of chapter—Employer's responsibilities and rights preserved: RCW 41.59.930.

28A.150.070 General public school system—Administration. The administration of the public school system shall be entrusted to such state and local officials, boards, and committees as the state Constitution and the laws of the state shall provide. [1969 ex.s. c 223 § 28A.02.020. Prior: 1909 c 97 p 230 § 2; RRS § 4519; prior: 1897 c 118 § 19; 1890 p 348 § 2; Code 1881 §§ 3154, 3155; 1861 p 55 § 1. Formerly RCW 28A.02.020, 28.02.020.]

28A.150.080 Superintendent of the school district. "Superintendent of the school district", if there be no such superintendent, shall mean such other administrative or certificated employee as the school district board of directors shall so designate. [1969 ex.s. c 223 § 28A.01.100. Formerly RCW 28A.01.100.]

28A.150.100 Basic education certificated instructional staff—Definition—Ratio to students. (1) For the purposes of this section and RCW 28A.150.410 and 28A.400.200, "basic education certificated instructional staff" shall mean all full time equivalent certificated instructional staff in the following programs as defined for state-wide school district accounting purposes: Basic education, secondary vocational education, general instructional support, and general supportive services.

(2) In the 1988-89 school year and thereafter, each school district shall maintain a ratio of at least forty-six basic education certificated instructional staff to one thousand annual average full time equivalent students. [1990 c 33 § 103; 1987 1st ex.s. c 2 § 203. Formerly RCW 28A.41.110.]

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

THE BASIC EDUCATION ACT

28A.150.200 Basic Education Act—Program contents—As meeting constitutional requirements. *This 1977 amendatory act shall be known and may be cited as "The Washington Basic Education Act of 1977." The program evolving from the Basic Education Act shall include (1) the goal of the school system as defined in RCW 28A.150.210, (2) those program requirements enumerated in RCW 28A.150.220, and (3) the determination and distribution of state resources as defined in RCW 28A.150.250 and 28A.150.260.

The requirements of the Basic Education Act are deemed by the legislature to comply with the requirements of Article IX, section 1 of the state Constitution, which states that "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex," and are adopted pursuant to Article IX, section 2 of the state Constitution, which states that "The legislature shall provide for a general and uniform system of public schools." [1990 c 33 § 104; 1977 ex.s. c 359 § 1. Formerly RCW 28A.58.750.]

***Reviser's note:** For codification of "this 1977 amendatory act" [1977 ex.s. c 359], see Codification Tables, Volume 0.

Effective date—1977 ex.s. c 359: "This 1977 amendatory act shall take effect September 1, 1978." [1977 ex.s. c 359 § 22.]

Severability—1977 ex.s. c 359: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 359 § 21.]

The above two annotations apply to 1977 ex.s. c 359. For codification of that act, see Codification Tables, Volume 0.

28A.150.205 Definition. (Contingent effective date.) Unless the context clearly requires otherwise, the definition in this section applies throughout RCW 28A.150.200 through 28A.150.295.

"Instructional hours" means those hours students are provided the opportunity to engage in educational activity planned by and under the direction of school district staff, as directed by the administration and board of directors of the district, inclusive of intermissions for class changes, recess, and teacher/parent-guardian conferences that are planned and scheduled by the district for the purpose of discussing students' educational needs or progress, and exclusive of time actually spent for meals. [1992 c 141 § 502.]

Contingent effective date—1992 c 141 §§ 502-504, 506, and 507: "Sections 502 through 504, 506, and 507 of this act shall take effect September 1, 2000. However, these sections shall not take effect if, by September 1, 2000, a law is enacted stating that a school accountability and academic assessment system is not in place." [1993 c 336 § 1202; 1992 c 141 § 509.]

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

28A.150.210 Basic Education Act—Goal. The goal of the Basic Education Act for the schools of the state of Washington set forth in this chapter shall be to provide students with the opportunity to become responsible citizens, to contribute to their own economic well-being and to that of their families and communities, and to enjoy productive and satisfying lives. To these ends, the goals of each school

district, with the involvement of parents and community members, shall be to provide opportunities for all students to develop the knowledge and skills essential to:

(1) Read with comprehension, write with skill, and communicate effectively and responsibly in a variety of ways and settings;

(2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history; geography; arts; and health and fitness;

(3) Think analytically, logically, and creatively, and to integrate experience and knowledge to form reasoned judgments and solve problems; and

(4) Understand the importance of work and how performance, effort, and decisions directly affect future career and educational opportunities. [1993 c 336 § 101; (1992 c 141 § 501 repealed by 1993 c 336 § 1203); 1977 ex.s. c 359 § 2. Formerly RCW 28A.58.752.]

Findings—Intent—1993 c 336: "The legislature finds that student achievement in Washington must be improved to keep pace with societal changes, changes in the workplace, and an increasingly competitive international economy.

To increase student achievement, the legislature finds that the state of Washington needs to develop a public school system that focuses more on the educational performance of students, that includes high expectations for all students, and that provides more flexibility for school boards and educators in how instruction is provided.

The legislature further finds that improving student achievement will require:

(1) Establishing what is expected of students, with standards set at internationally competitive levels;

(2) Parents to be primary partners in the education of their children, and to play a significantly greater role in local school decision making;

(3) Students taking more responsibility for their education;

(4) Time and resources for educators to collaboratively develop and implement strategies for improved student learning;

(5) Making instructional programs more relevant to students' future plans;

(6) All parties responsible for education to focus more on what is best for students; and

(7) An educational environment that fosters mutually respectful interactions in an atmosphere of collaboration and cooperation.

It is the intent of the legislature to provide students the opportunity to achieve at significantly higher levels, and to provide alternative or additional instructional opportunities to help students who are having difficulty meeting the essential academic learning requirements in RCW 28A.630.885.

It is also the intent of the legislature that students who have met or exceeded the essential academic learning requirements be provided with alternative or additional instructional opportunities to help advance their educational experience.

The provisions of chapter 336, Laws of 1993 shall not be construed to change current state requirements for students who receive home-based instruction under chapter 28A.200 RCW, or for students who attend state-approved private schools under chapter 28A.195 RCW." [1993 c 336 § 1.]

Effective date—1993 c 336 § 101: "Section 101 of this act shall take effect September 1, 1994." [1993 c 336 § 102.]

Part headings not law—1993 c 336: "Part headings as used in this act constitute no part of the law." [1993 c 336 § 1204.]

Findings—1993 c 336: See note following RCW 28A.630.879.

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Effective date—Severability—1977 ex.s. c 359: See notes following RCW 28A.150.200.

28A.150.211 Values and traits recognized. The legislature also recognizes that certain basic values and character traits are essential to individual liberty, fulfillment, and happiness. However, these values and traits are not intended to be assessed or be standards for graduation. The

legislature intends that local communities have the responsibility for determining how these values and character traits are learned as determined by consensus at the local level. These values and traits include the importance of:

(1) Honesty, integrity, and trust;

(2) Respect for self and others;

(3) Responsibility for personal actions and commitments;

(4) Self-discipline and moderation;

(5) Diligence and a positive work ethic;

(6) Respect for law and authority;

(7) Healthy and positive behavior; and

(8) Family as the basis of society. [1994 c 245 § 10.]

Effective date—1994 c 245 § 10: "Section 10 of this act shall take effect September 1, 1994." [1994 c 245 § 15.]

28A.150.220 Basic Education Act—Definitions—Program requirements—Program accessibility—Rules and regulations. (Contingent expiration date.) (1) For the purposes of this section and RCW 28A.150.250 and 28A.150.260:

(a) The term "total program hour offering" shall mean those hours when students are provided the opportunity to engage in educational activity planned by and under the direction of school district staff, as directed by the administration and board of directors of the district, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences which are planned and scheduled by the district for the purpose of discussing students' educational needs or progress, and exclusive of time actually spent for meals.

(b) "Instruction in work skills" shall include instruction in one or more of the following areas: Industrial arts, home and family life education, business and office education, distributive education, agricultural education, health occupations education, vocational education, trade and industrial education, technical education and career education.

(2) Satisfaction of the basic education goal identified in RCW 28A.150.210 shall be considered to be implemented by the following program requirements:

(a) Each school district shall make available to students in kindergarten at least a total program offering of four hundred fifty hours. The program shall include reading, arithmetic, language skills and such other subjects and such activities as the school district shall determine to be appropriate for the education of the school district's students enrolled in such program;

(b) Each school district shall make available to students in grades one through three, at least a total program hour offering of two thousand seven hundred hours. A minimum of ninety-five percent of the total program hour offerings shall be in the basic skills areas of reading/language arts (which may include languages other than English, including American Indian languages), mathematics, social studies, science, music, art, health and physical education. The remaining five percent of the total program hour offerings may include such subjects and activities as the school district shall determine to be appropriate for the education of the school district's students in such grades;

(c) Each school district shall make available to students in grades four through six at least a total program hour offering of two thousand nine hundred seventy hours. A

minimum of ninety percent of the total program hour offerings shall be in the basic skills areas of reading/language arts (which may include languages other than English, including American Indian languages), mathematics, social studies, science, music, art, health and physical education. The remaining ten percent of the total program hour offerings may include such subjects and activities as the school district shall determine to be appropriate for the education of the school district's students in such grades;

(d) Each school district shall make available to students in grades seven through eight, at least a total program hour offering of one thousand nine hundred eighty hours. A minimum of eighty-five percent of the total program hour offerings shall be in the basic skills areas of reading/language arts (which may include languages other than English, including American Indian languages), mathematics, social studies, science, music, art, health and physical education. A minimum of ten percent of the total program hour offerings shall be in the area of work skills. The remaining five percent of the total program hour offerings may include such subjects and activities as the school district shall determine to be appropriate for the education of the school district's students in such grades;

(e) Each school district shall make available to students in grades nine through twelve at least a total program hour offering of four thousand three hundred twenty hours. A minimum of sixty percent of the total program hour offerings shall be in the basic skills areas of language arts, languages other than English, which may be American Indian languages, mathematics, social studies, science, music, art, health and physical education. A minimum of twenty percent of the total program hour offerings shall be in the area of work skills. The remaining twenty percent of the total program hour offerings may include traffic safety or such subjects and activities as the school district shall determine to be appropriate for the education of the school district's students in such grades, with not less than one-half thereof in basic skills and/or work skills: PROVIDED, That each school district shall have the option of including grade nine within the program hour offering requirements of grades seven and eight so long as such requirements for grades seven through nine are increased to two thousand nine hundred seventy hours and such requirements for grades ten through twelve are decreased to three thousand two hundred forty hours.

(3) In order to provide flexibility to the local school districts in the setting of their curricula, and in order to maintain the intent of this legislation, which is to stress the instruction of basic skills and work skills, any local school district may establish minimum course mix percentages that deviate by up to five percentage points above or below those minimums required by subsection (2) of this section, so long as the total program hour requirement is still met.

(4) Nothing contained in subsection (2) of this section shall be construed to require individual students to attend school for any particular number of hours per day or to take any particular courses.

(5) Each school district's kindergarten through twelfth grade basic educational program shall be accessible to all students who are five years of age, as provided by RCW 28A.225.160, and less than twenty-one years of age and shall consist of a minimum of one hundred eighty school days per school year in such grades as are conducted by a school

district, and one hundred eighty half-days of instruction, or equivalent, in kindergarten: PROVIDED, That effective May 1, 1979, a school district may schedule the last five school days of the one hundred and eighty day school year for noninstructional purposes in the case of students who are graduating from high school, including, but not limited to, the observance of graduation and early release from school upon the request of a student, and all such students may be claimed as a full time equivalent student to the extent they could otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260.

(6) The state board of education shall adopt rules to implement and ensure compliance with the program requirements imposed by this section, RCW 28A.150.250 and 28A.150.260, and such related supplemental program approval requirements as the state board may establish: PROVIDED, That each school district board of directors shall establish the basis and means for determining and monitoring the district's compliance with the basic skills and work skills percentage and course requirements of this section. The certification of the board of directors and the superintendent of a school district that the district is in compliance with such basic skills and work skills requirements may be accepted by the superintendent of public instruction and the state board of education.

(7) Special education programs for students with disabilities, vocational-technical institute programs, state institution and state residential school programs, all of which programs are conducted for the common school age, kindergarten through secondary school program students encompassed by this section, shall be exempt from the basic skills and work skills percentage and course requirements of this section in order that the unique needs, abilities or limitations of such students may be met.

(8) Any school district may petition the state board of education for a reduction in the total program hour offering requirements for one or more of the grade level groupings specified in this section. The state board of education shall grant all such petitions that are accompanied by an assurance that the minimum total program hour offering requirements in one or more other grade level groupings will be exceeded concurrently by no less than the number of hours of the reduction. [1995 c 77 § 1; 1993 c 371 § 1; 1990 c 33 § 105; 1982 c 158 § 1; 1979 ex.s. c 250 § 1; 1977 ex.s. c 359 § 3. Formerly RCW 28A.58.754.]

Contingent expiration date—1995 c 77 § 1: "Section 1 of this act shall expire September 1, 2000. However, section 1 of this act shall not expire if, by September 1, 2000, a law is not enacted stating that a school accountability and academic assessment system is not in place." [1995 c 77 § 32.]

Severability—1982 c 158: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 158 § 8.] For codification of 1982 c 158, see Codification Tables, Volume 0.

Effective date—1979 ex.s. c 250: "This amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and except as otherwise provided in subsection (5) of section 1, and section 2 of this amendatory act, shall take effect August 15, 1979." [1979 ex.s. c 250 § 10.]

Severability—1979 ex.s. c 250: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the

remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 250 § 11.]

The above two annotations apply to 1979 ex.s. c 250. For codification of that act, see Codification Tables, Volume 0.

Effective date—Severability—1977 ex.s. c 359: See notes following RCW 28A.150.200.

28A.150.220 Basic Education Act—Program requirements—Program accessibility—Rules. (Contingent effective date.) (1) Satisfaction of the basic education program requirements identified in RCW 28A.150.210 shall be considered to be implemented by the following program:

(a) Each school district shall make available to students enrolled in kindergarten at least a total instructional offering of four hundred fifty hours. The program shall include instruction in the essential academic learning requirements under RCW 28A.630.885 and such other subjects and such activities as the school district shall determine to be appropriate for the education of the school district's students enrolled in such program;

(b) Each school district shall make available to students enrolled in grades one through twelve, at least a district-wide annual average total instructional hour offering of one thousand hours. The state board of education may define alternatives to classroom instructional time for students in grades nine through twelve enrolled in alternative learning experiences. The state board of education shall establish rules to determine annual average instructional hours for districts including fewer than twelve grades. The program shall include the essential academic learning requirements under RCW 28A.630.885 and such other subjects and such activities as the school district shall determine to be appropriate for the education of the school district's students enrolled in such group;

(c) If the essential academic learning requirements include a requirement of languages other than English, the requirement may be met by students receiving instruction in one or more American Indian languages.

(2) Nothing contained in subsection (1) of this section shall be construed to require individual students to attend school for any particular number of hours per day or to take any particular courses.

(3) Each school district's kindergarten through twelfth grade basic educational program shall be accessible to all students who are five years of age, as provided by RCW 28A.225.160, and less than twenty-one years of age and shall consist of a minimum of one hundred eighty school days per school year in such grades as are conducted by a school district, and one hundred eighty half-days of instruction, or equivalent, in kindergarten: PROVIDED, That effective May 1, 1979, a school district may schedule the last five school days of the one hundred and eighty day school year for noninstructional purposes in the case of students who are graduating from high school, including, but not limited to, the observance of graduation and early release from school upon the request of a student, and all such students may be claimed as a full time equivalent student to the extent they could otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260.

(4) The state board of education shall adopt rules to implement and ensure compliance with the program requirements imposed by this section, RCW 28A.150.250 and

28A.150.260, and such related supplemental program approval requirements as the state board may establish. [1993 c 371 § 2; 1992 c 141 § 503; 1990 c 33 § 105; 1982 c 158 § 1; 1979 ex.s. c 250 § 1; 1977 ex.s. c 359 § 3. Formerly RCW 28A.58.754.]

Contingent effective date—1993 c 371 § 2: "Section 2 of this act shall take effect September 1, 2000. However, section 2 of this act shall not take effect if, by September 1, 2000, a law is enacted stating that a school accountability and academic assessment system is not in place." [1993 c 371 § 5.]

Contingent effective date—1992 c 141 §§ 502-504, 506, and 507: See note following RCW 28A.150.205.

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Severability—1982 c 158: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 158 § 8.] For codification of 1982 c 158, see Codification Tables, Volume 0.

Effective date—1979 ex.s. c 250: "This amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and except as otherwise provided in subsection (5) of section 1, and section 2 of this amendatory act, shall take effect August 15, 1979." [1979 ex.s. c 250 § 10.]

Severability—1979 ex.s. c 250: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 250 § 11.]

The above two annotations apply to 1979 ex.s. c 250. For codification of that act, see Codification Tables, Volume 0.

Effective date—Severability—1977 ex.s. c 359: See notes following RCW 28A.150.200.

28A.150.230 Basic Education Act—District school directors as accountable for proper operation of district—Scope—Responsibilities. (1) It is the intent and purpose of this section to guarantee that each common school district board of directors, whether or not acting through its respective administrative staff, be held accountable for the proper operation of their district to the local community and its electorate. In accordance with the provisions of Title 28A RCW, as now or hereafter amended, each common school district board of directors shall be vested with the final responsibility for the setting of policies ensuring quality in the content and extent of its educational program and that such program provide students with the opportunity to achieve those skills which are generally recognized as requisite to learning.

(2) In conformance with the provisions of Title 28A RCW, as now or hereafter amended, it shall be the responsibility of each common school district board of directors to adopt policies to:

(a) Establish performance criteria and an evaluation process for its certificated personnel, including administrative staff, and for all programs constituting a part of such district's curriculum;

(b) Determine the final assignment of staff, certificated or classified, according to board enumerated classroom and program needs;

(c) Determine the amount of instructional hours necessary for any student to acquire a quality education in such district, in not less than an amount otherwise required in RCW 28A.150.220, or rules and regulations of the state board of education;

(d) Determine the allocation of staff time, whether certificated or classified;

(e) Establish final curriculum standards consistent with law and rules and regulations of the state board of education, relevant to the particular needs of district students or the unusual characteristics of the district, and ensuring a quality education for each student in the district; and

(f) Evaluate teaching materials, including text books, teaching aids, handouts, or other printed material, in public hearing upon complaint by parents, guardians or custodians of students who consider dissemination of such material to students objectionable. [1994 c 245 § 9; 1991 c 61 § 1; 1990 c 33 § 106; 1979 ex.s. c 250 § 7; 1977 ex.s. c 359 § 18. Formerly RCW 28A.58.758.]

Effective date—Severability—1979 ex.s. c 250: See notes following RCW 28A.150.220.

Effective date—Severability—1977 ex.s. c 359: See notes following RCW 28A.150.200.

28A.150.240 Basic Education Act—Certificated teaching and administrative staff as accountable for classroom teaching—Scope—Responsibilities—Penalty.

(1) It is the intended purpose of this section to guarantee that the certificated teaching and administrative staff in each common school district be held accountable for the proper and efficient conduct of classroom teaching in their school which will provide students with the opportunity to achieve those skills which are generally recognized as requisite to learning.

(2) In conformance with the other provisions of Title 28A RCW, it shall be the responsibility of the certificated teaching and administrative staff in each common school to:

(a) Implement the district's prescribed curriculum and enforce, within their area of responsibility, the rules and regulations of the school district, the state superintendent of public instruction, and the state board of education, taking into due consideration individual differences among students, and maintain and render appropriate records and reports pertaining thereto.

(b) Maintain good order and discipline in their classrooms at all times.

(c) Hold students to a strict accountability while in school for any disorderly conduct while under their supervision.

(d) Require excuses from the parents, guardians, or custodians of minor students in all cases of absence, late arrival to school, or early dismissal.

(e) Give careful attention to the maintenance of a healthful atmosphere in the classroom.

(f) Give careful attention to the safety of the student in the classroom and report any doubtful or unsafe conditions to the building administrator.

(g) Evaluate each student's educational growth and development and make periodic reports thereon to parents, guardians, or custodians and to school administrators.

Failure to carry out such requirements as set forth in subsection (2) (a) through (g) above shall constitute sufficient cause for discharge of any member of such teaching or administrative staff. [1979 ex.s. c 250 § 5; 1977 ex.s. c 359 § 19. Formerly RCW 28A.58.760.]

Effective date—Severability—1979 ex.s. c 250: See notes following RCW 28A.150.220.

Effective date—Severability—1977 ex.s. c 359: See notes following RCW 28A.150.200.

28A.150.250 Annual basic education allocation of funds according to average FTE student enrollment—Student/teacher ratio standard. From those funds made available by the legislature for the current use of the common schools, the superintendent of public instruction shall distribute annually as provided in RCW 28A.510.250 to each school district of the state operating a program approved by the state board of education an amount which, when combined with an appropriate portion of such locally available revenues, other than receipts from federal forest revenues distributed to school districts pursuant to RCW 28A.520.010 and 28A.520.020, as the superintendent of public instruction may deem appropriate for consideration in computing state equalization support, excluding excess property tax levies, will constitute a basic education allocation in dollars for each annual average full time equivalent student enrolled, based upon one full school year of one hundred eighty days, except that for kindergartens one full school year shall be one hundred eighty half days of instruction, or the equivalent as provided in RCW 28A.150.220.

Basic education shall be considered to be fully funded by those amounts of dollars appropriated by the legislature pursuant to RCW 28A.150.250 and 28A.150.260 to fund those program requirements identified in RCW 28A.150.220 in accordance with the formula and ratios provided in RCW 28A.150.260 and those amounts of dollars appropriated by the legislature to fund the salary requirements of RCW 28A.150.100 and 28A.150.410.

Operation of a program approved by the state board of education, for the purposes of this section, shall include a finding that the ratio of students per classroom teacher in grades kindergarten through three is not greater than the ratio of students per classroom teacher in grades four and above for such district: PROVIDED, That for the purposes of this section, "classroom teacher" shall be defined as an instructional employee possessing at least a provisional certificate, but not necessarily employed as a certificated employee, whose primary duty is the daily educational instruction of students: PROVIDED FURTHER, That the state board of education shall adopt rules and regulations to insure compliance with the student/teacher ratio provisions of this section, and such rules and regulations shall allow for exemptions for those special programs and/or school districts which may be deemed unable to practicably meet the student/teacher ratio requirements of this section by virtue of a small number of students.

If a school district's basic education program fails to meet the basic education requirements enumerated in RCW 28A.150.250, 28A.150.260, and 28A.150.220, the state board of education shall require the superintendent of public instruction to withhold state funds in whole or in part for the basic education allocation until program compliance is assured: PROVIDED, That the state board of education may waive this requirement in the event of substantial lack of classroom space. [1990 c 33 § 107; 1987 1st ex.s. c 2 § 201; 1986 c 144 § 1; 1983 c 3 § 30; 1982 c 158 § 3; 1982 c 158 § 2; 1980 c 154 § 12; 1979 ex.s. c 250 § 2; 1977 ex.s. c 359 § 4; 1975 1st ex.s. c 211 § 1; 1973 2nd ex.s. c 4 § 1; 1973 1st ex.s. c 195 § 9; 1973 c 46 § 2. See also 1973 1st

ex.s. c 195 §§ 136, 137, 138 and 139. Prior: 1972 ex.s. c 124 § 1; 1972 ex.s. c 105 § 2; 1971 ex.s. c 294 § 19; 1969 c 138 § 2; 1969 ex.s. c 223 § 28A.41.130; prior: 1967 ex.s. c 140 § 3; 1965 ex.s. c 171 § 1; 1965 ex.s. c 154 § 2; prior: (i) 1949 c 212 § 1, part; 1945 c 141 § 4, part; 1923 c 96 § 1, part; 1911 c 118 § 1, part; 1909 c 97 p 312 §§ 7-10, part; Rem. Supp. 1949 § 4940-4, part. (ii) 1949 c 212 § 2, part; 1945 c 141 § 5, part; 1909 c 97 p 312 §§ 7-10, part; Rem. Supp. 1949 § 4940-5, part. Formerly RCW 28A.41.130, 28.41.130.]

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Effective date—1986 c 144: "Section 1 of this act shall be effective September 1, 1987." [1986 c 144 § 2.]

Severability—1982 c 158: See note following RCW 28A.150.220.

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82.45 RCW digest.

Effective date—Severability—1979 ex.s. c 250: See notes following RCW 28A.150.220.

Effective date—Severability—1977 ex.s. c 359: See notes following RCW 28A.150.200.

Emergency—Effective date—1973 2nd ex.s. c 4: See notes following RCW 84.52.043.

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

Effective date—1972 ex.s. c 124: "This 1972 amendatory act is necessary for the immediate preservation of the public peace, health and safety and the support of the state government and its existing public institutions, and sections 2, 3, 4, 6, 7 and 11 shall take effect immediately [February 25, 1972]; sections 1, 8, 9 and 10 hereof shall take effect July 1, 1973; and section 5 hereof shall take effect July 1, 1974." [1972 ex.s. c 124 § 12.] For codification of 1972 ex.s. c 124, see Codification Tables, Volume 0.

Severability—1972 ex.s. c 124: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 124 § 13.]

Effective date—1972 ex.s. c 105: "This act except for section 4 will take effect July 1, 1973." [1972 ex.s. c 105 § 5.] Section 4 was codified as RCW 28A.41.170.

Severability—1972 ex.s. c 105: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 105 § 6.]

Basic Education Act, RCW 28A.150.250 as part of: RCW 28A.150.200.

Distribution of forest reserve funds—As affects basic education allocation: RCW 28A.520.020.

28A.150.260 Annual basic education allocation of funds according to average FTE student enrollment—Procedure to determine distribution formula—Submittal to legislature—Enrollment, FTE student, certificated and classified staff, defined—Minimum classroom contact hours—Waiver. (Contingent expiration date.) The basic education allocation for each annual average full time equivalent student shall be determined in accordance with the following procedures:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula based on a ratio of students to staff for the distribution of a basic education allocation for each annual average full time equivalent student enrolled in a common school. The distribution formula shall have the primary objective of equalizing educational opportunities and shall provide

appropriate recognition of the following costs among the various districts within the state:

(a) Certificated instructional staff and their related costs;
(b) Certificated administrative staff and their related costs;

(c) Classified staff and their related costs;

(d) Nonsalary costs;

(e) Extraordinary costs of remote and necessary schools and small high schools, including costs of additional certificated and classified staff; and

(f) The attendance of students pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district.

(2)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature. The formula shall be for allocation purposes only. While the legislature intends that the allocations for additional instructional staff be used to increase the ratio of such staff to students, nothing in this section shall require districts to reduce the number of administrative staff below existing levels.

(b) The formula adopted by the legislature shall reflect the following ratios at a minimum: (i) Forty-nine certificated instructional staff to one thousand annual average full time equivalent students enrolled in grades kindergarten through three; (ii) forty-six certificated instructional staff to one thousand annual average full time equivalent students in grades four through twelve; (iii) four certificated administrative staff to one thousand annual average full time equivalent students in grades kindergarten through twelve; and (iv) sixteen and sixty-seven one-hundredths classified personnel to one thousand annual average full time equivalent students enrolled in grades kindergarten through twelve.

(c) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect: PROVIDED, That the distribution formula developed pursuant to this section shall be for state apportionment and equalization purposes only and shall not be construed as mandating specific operational functions of local school districts other than those program requirements identified in RCW 28A.150.220 and 28A.150.100. The enrollment of any district shall be the annual average number of full time equivalent students and part time students as provided in RCW 28A.150.350, enrolled on the first school day of each month and shall exclude full time equivalent students with disabilities recognized for the purposes of allocation of state funds for programs under RCW 28A.155.010 through 28A.155.100. The definition of full time equivalent student shall be determined by rules of the superintendent of public instruction: PROVIDED, That the definition shall be included as part of the superintendent's biennial budget request: PROVIDED, FURTHER, That any revision of the present definition shall not take effect until approved by the house appropriations committee and the senate ways and means committee: PROVIDED, FURTHER, That the office of financial management shall make a monthly review of the superintendent's reported full time equivalent students in the common schools in conjunction with RCW 43.62.050.

(3)(a) Certificated instructional staff shall include those persons employed by a school district who are nonsupervisory employees within the meaning of RCW 41.59.020(8): PROVIDED, That in exceptional cases, people of unusual competence but without certification may teach students so long as a certificated person exercises general supervision: PROVIDED, FURTHER, That the hiring of such noncertificated people shall not occur during a labor dispute and such noncertificated people shall not be hired to replace certificated employees during a labor dispute.

(b) Certificated administrative staff shall include all those persons who are chief executive officers, chief administrative officers, confidential employees, supervisors, principals, or assistant principals within the meaning of RCW 41.59.020(4).

(4) Each annual average full time equivalent certificated classroom teacher's direct classroom contact hours shall average at least twenty-five hours per week. Direct classroom contact hours shall be exclusive of time required to be spent for preparation, conferences, or any other nonclassroom instruction duties. Up to two hundred minutes per week may be deducted from the twenty-five contact hour requirement, at the discretion of the school district board of directors, to accommodate authorized teacher/parent-guardian conferences, recess, passing time between classes, and informal instructional activity. Implementing rules to be adopted by the state board of education pursuant to RCW 28A.150.220(4) shall provide that compliance with the direct contact hour requirement shall be based upon teachers' normally assigned weekly instructional schedules, as assigned by the district administration. Additional record-keeping by classroom teachers as a means of accounting for contact hours shall not be required. Waivers from contact hours may be requested under RCW 28A.305.140. [1995 c 77 § 2; 1992 c 141 § 303; 1991 c 116 § 10; 1990 c 33 § 108; 1987 1st ex.s. c 2 § 202; 1985 c 349 § 5; 1983 c 229 § 1; 1979 ex.s. c 250 § 3; 1979 c 151 § 12; 1977 ex.s. c 359 § 5; 1969 ex.s. c 244 § 14. Prior: 1969 ex.s. c 217 § 3; 1969 c 130 § 7; 1969 ex.s. c 223 § 28A.41.140; prior: 1965 ex.s. c 154 § 3. Formerly RCW 28A.41.140, 28.41.140.]

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Severability—1985 c 349: See note following RCW 28A.320.200.

Effective date—Severability—1979 ex.s. c 250: See notes following RCW 28A.150.220.

Effective date—Severability—1977 ex.s. c 359: See notes following RCW 28A.150.200.

Basic Education Act, RCW 28A.150.260 as part of: RCW 28A.150.200.

Distribution of forest reserve funds—As affects basic education allocation: RCW 28A.520.020.

28A.150.260 Annual basic education allocation of funds according to average FTE student enrollment—Procedure to determine distribution formula—Submittal to legislature—Enrollment, FTE student, certificated and classified staff, defined. (Contingent effective date.) The basic education allocation for each annual average full time equivalent student shall be determined in accordance with the following procedures:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula based on a ratio of students to staff for the distribution of a basic education allocation for each annual average full time equivalent student enrolled in a common school. The distribution formula shall have the primary objective of equalizing educational opportunities and shall provide appropriate recognition of the following costs among the various districts within the state:

(a) Certificated instructional staff and their related costs;

(b) Certificated administrative staff and their related costs;

(c) Classified staff and their related costs;

(d) Nonsalary costs;

(e) Extraordinary costs of remote and necessary schools and small high schools, including costs of additional certificated and classified staff; and

(f) The attendance of students pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district.

(2)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature. The formula shall be for allocation purposes only. While the legislature intends that the allocations for additional instructional staff be used to increase the ratio of such staff to students, nothing in this section shall require districts to reduce the number of administrative staff below existing levels.

(b) The formula adopted by the legislature shall reflect the following ratios at a minimum: (i) Forty-nine certificated instructional staff to one thousand annual average full time equivalent students enrolled in grades kindergarten through three; (ii) forty-six certificated instructional staff to one thousand annual average full time equivalent students in grades four through twelve; (iii) four certificated administrative staff to one thousand annual average full time equivalent students in grades kindergarten through twelve; and (iv) sixteen and sixty-seven one-hundredths classified personnel to one thousand annual average full time equivalent students enrolled in grades kindergarten through twelve.

(c) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect: PROVIDED, That the distribution formula developed pursuant to this section shall be for state apportionment and equalization purposes only and shall not be construed as mandating specific operational functions of local school districts other than those program requirements identified in RCW 28A.150.220 and 28A.150.100. The enrollment of any district shall be the annual average number of full time equivalent students and part time students as provided in RCW 28A.150.350, enrolled on the first school day of each month and shall exclude full time equivalent students with disabilities recognized for the purposes of allocation of state funds for programs under RCW 28A.155.010 through 28A.155.100. The definition of full time equivalent student shall be determined by rules of the superintendent of public instruction: PROVIDED, That the definition shall be included as part of the superintendent's biennial budget

request: PROVIDED, FURTHER, That any revision of the present definition shall not take effect until approved by the house appropriations committee and the senate ways and means committee: PROVIDED, FURTHER, That the office of financial management shall make a monthly review of the superintendent's reported full time equivalent students in the common schools in conjunction with RCW 43.62.050.

(3)(a) Certificated instructional staff shall include those persons employed by a school district who are nonsupervisory employees within the meaning of RCW 41.59.020(8): PROVIDED, That in exceptional cases, people of unusual competence but without certification may teach students so long as a certificated person exercises general supervision: PROVIDED, FURTHER, That the hiring of such noncertificated people shall not occur during a labor dispute and such noncertificated people shall not be hired to replace certificated employees during a labor dispute.

(b) Certificated administrative staff shall include all those persons who are chief executive officers, chief administrative officers, confidential employees, supervisors, principals, or assistant principals within the meaning of RCW 41.59.020(4). [1995 c 77 § 3; 1992 c 141 § 507; 1992 c 141 § 303; 1991 c 116 § 10; 1990 c 33 § 108; 1987 1st ex.s. c 2 § 202; 1985 c 349 § 5; 1983 c 229 § 1; 1979 ex.s. c 250 § 3; 1979 c 151 § 12; 1977 ex.s. c 359 § 5; 1969 ex.s. c 244 § 14. Prior: 1969 ex.s. c 217 § 3; 1969 c 130 § 7; 1969 ex.s. c 223 § 28A.41.140; prior: 1965 ex.s. c 154 § 3. Formerly RCW 28A.41.140, 28.41.140.]

Contingent effective date—1995 c 77 § 3: "Section 3 of this act shall take effect September 1, 2000. However, section 3 of this act shall not take effect if, by September 1, 2000, a law is enacted stating that a school accountability and academic assessment system is not in place." [1995 c 77 § 33.]

Contingent effective date—1992 c 141 §§ 502-504, 506, and 507: See note following RCW 28A.150.205.

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Severability—1985 c 349: See note following RCW 28A.320.200.

Effective date—Severability—1979 ex.s. c 250: See notes following RCW 28A.150.220.

Effective date—Severability—1977 ex.s. c 359: See notes following RCW 28A.150.200.

Basic Education Act, RCW 28A.150.260 as part of: RCW 28A.150.200.

Distribution of forest reserve funds—As affects basic education allocation: RCW 28A.520.020.

28A.150.270 Annual basic education allocation of funds according to average FTE student enrollment—Procedure for crediting portion for school building purposes. The board of directors of a school district may, by properly executed resolution, request that the superintendent of public instruction direct a portion of the district's basic education allocation be credited to the district's capital projects fund and/or bond redemption fund. Moneys so credited shall be used solely for school building purposes. [1985 c 7 § 89; 1980 c 154 § 13. Formerly RCW 28A.41.143.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82.45 RCW digest. *School funds enumerated—Deposits—Uses: RCW 28A.320.330.*

28A.150.275 Annual basic education allocation for students in technical colleges. The basic education allocation, including applicable vocational entitlements and special education program money, generated under this chapter and under state appropriation acts by school districts for students enrolled in a technical college program established by an interlocal agreement under RCW 28B.50.533 shall be allocated in amounts as determined by the superintendent of public instruction to the serving college rather than to the school district, unless the college chooses to continue to receive the allocations through the school districts. This section does not apply to students enrolled in the running start program established in RCW 28A.600.310. [1995 c 77 § 4; 1993 c 223 § 1.]

28A.150.280 Reimbursement for acquisition of approved transportation equipment—Method. Costs of acquisition of approved transportation equipment purchased prior to September 1, 1982, shall be reimbursed up to one hundred percent of the cost to be reimbursed over the anticipated life of the vehicle, as determined by the state superintendent: PROVIDED, That commencing with the 1980-81 school year, reimbursement shall be at one hundred percent or as close thereto as reasonably possible: PROVIDED FURTHER, That reimbursements for the acquisition of approved transportation equipment received by school districts shall be placed in the transportation vehicle fund for the current or future purchase of approved transportation equipment and for major transportation equipment repairs consistent with rules and regulations authorized in RCW 28A.160.130. [1993 c 111 § 1. Prior: 1990 c 33 § 110; 1990 c 33 § 109; 1981 c 343 § 1; 1981 c 265 § 9; 1981 c 265 § 8; 1977 ex.s. c 359 § 6; 1977 c 80 § 3; 1975 1st ex.s. c 275 § 60; 1972 ex.s. c 85 § 1; 1971 c 48 § 14; 1969 ex.s. c 223 § 28A.41.160; prior: 1965 ex.s. c 154 § 5. Formerly RCW 28A.41.160, 28.41.160.]

Reviser's note: *(1) Chapter 340, Laws of 1981, the state operating budget act, is uncodified.

(2) RCW 28A.150.280 was amended twice during the 1981 regular legislative session, each without reference to the other. For rule of construction concerning sections amended more than once at any session of the same legislature, see RCW 1.12.025.

Effective date—Severability—1981 c 265: See notes following RCW 28A.160.150.

Effective date—Severability—1977 ex.s. c 359: See notes following RCW 28A.150.200.

Severability—1977 c 80: See note following RCW 28A.160.030.

Severability—1971 c 48: See note following RCW 28A.305.040.

Additional programs for which legislative appropriations must or may be made: RCW 28A.150.370.

Basic Education Act, RCW 28A.150.280 as part of: RCW 28A.150.200.

Transportation vehicle fund—Deposits in—Use—Rules for establishment and use: RCW 28A.160.130.

28A.150.290 State superintendent to make rules and regulations—Unforeseen conditions or actions to be recognized—Paperwork limited. (Contingent expiration date.) (1) The superintendent of public instruction shall have the power and duty to make such rules and regulations as are necessary for the proper administration of this chapter and RCW 28A.160.150 through *28A.160.220, 28A.300.170, and 28A.500.010 not inconsistent with the provisions thereof, and

in addition to require such reports as may be necessary to carry out his or her duties under this chapter and RCW 28A.160.150 through *28A.160.220, 28A.300.170, and 28A.500.010.

(2) The superintendent of public instruction shall have the authority to make rules and regulations which establish the terms and conditions for allowing school districts to receive state basic education moneys as provided in RCW 28A.150.250 when said districts are unable to fulfill for one or more schools as officially scheduled the requirement of a full school year of one hundred eighty days or the total program hour offering, teacher contact hour, or course mix and percentage requirements imposed by RCW 28A.150.220 and 28A.150.260 due to one or more of the following conditions:

(a) An unforeseen natural event, including, but not necessarily limited to, a fire, flood, explosion, storm, earthquake, epidemic, or volcanic eruption that has the direct or indirect effect of rendering one or more school district facilities unsafe, unhealthy, inaccessible, or inoperable; and

(b) An unforeseen mechanical failure or an unforeseen action or inaction by one or more persons, including negligence and threats, that (i) is beyond the control of both a school district board of directors and its employees and (ii) has the direct or indirect effect of rendering one or more school district facilities unsafe, unhealthy, inaccessible, or inoperable. Such actions, inactions or mechanical failures may include, but are not necessarily limited to, arson, vandalism, riots, insurrections, bomb threats, bombings, delays in the scheduled completion of construction projects, and the discontinuance or disruption of utilities such as heating, lighting and water: PROVIDED, That an unforeseen action or inaction shall not include any labor dispute between a school district board of directors and any employee of the school district.

A condition is foreseeable for the purposes of this subsection to the extent a reasonably prudent person would have anticipated prior to August first of the preceding school year that the condition probably would occur during the ensuing school year because of the occurrence of an event or a circumstance which existed during such preceding school year or a prior school year. A board of directors of a school district is deemed for the purposes of this subsection to have knowledge of events and circumstances which are a matter of common knowledge within the school district and of those events and circumstances which can be discovered upon prudent inquiry or inspection.

(3) The superintendent of public instruction shall make every effort to reduce the amount of paperwork required in administration of this chapter and RCW 28A.160.150 through *28A.160.220, 28A.300.170, and 28A.500.010; to simplify the application, monitoring and evaluation processes used; to eliminate all duplicative requests for information from local school districts; and to make every effort to integrate and standardize information requests for other state education acts and federal aid to education acts administered by the superintendent of public instruction so as to reduce paperwork requirements and duplicative information requests. [1990 c 33 § 111; 1981 c 285 § 1; 1979 ex.s. c 250 § 6; 1973 1st ex.s. c 78 § 1; 1972 ex.s. c 105 § 4; 1971 c 46 § 1; 1969 ex.s. c 3 § 2; 1969 ex.s. c 223 § 28A.41.170. Prior:

1965 ex.s. c 154 § 6. Formerly RCW 28A.41.170, 28.41.170.]

*Reviser's note: RCW 28A.160.220 was recodified as RCW 28A.300.035 pursuant to 1994 c 113 § 2.

Effective date—Severability—1979 ex.s. c 250: See notes following RCW 28A.150.220.

Effective date—Severability—1972 ex.s. c 105: See notes following RCW 28A.150.250.

28A.150.290 State superintendent to make rules and regulations—Unforeseen conditions or actions to be recognized—Paperwork limited. (Contingent effective date.) (1) The superintendent of public instruction shall have the power and duty to make such rules and regulations as are necessary for the proper administration of this chapter and RCW 28A.160.150 through *28A.160.220, 28A.300.170, and 28A.500.010 not inconsistent with the provisions thereof, and in addition to require such reports as may be necessary to carry out his or her duties under this chapter and RCW 28A.160.150 through *28A.160.220, 28A.300.170, and 28A.500.010.

(2) The superintendent of public instruction shall have the authority to make rules and regulations which establish the terms and conditions for allowing school districts to receive state basic education moneys as provided in RCW 28A.150.250 when said districts are unable to fulfill for one or more schools as officially scheduled the requirement of a full school year of one hundred eighty days or the annual average total instructional hour offering imposed by RCW 28A.150.220 and 28A.150.260 due to one or more of the following conditions:

(a) An unforeseen natural event, including, but not necessarily limited to, a fire, flood, explosion, storm, earthquake, epidemic, or volcanic eruption that has the direct or indirect effect of rendering one or more school district facilities unsafe, unhealthy, inaccessible, or inoperable; and

(b) An unforeseen mechanical failure or an unforeseen action or inaction by one or more persons, including negligence and threats, that (i) is beyond the control of both a school district board of directors and its employees and (ii) has the direct or indirect effect of rendering one or more school district facilities unsafe, unhealthy, inaccessible, or inoperable. Such actions, inactions or mechanical failures may include, but are not necessarily limited to, arson, vandalism, riots, insurrections, bomb threats, bombings, delays in the scheduled completion of construction projects, and the discontinuance or disruption of utilities such as heating, lighting and water: PROVIDED, That an unforeseen action or inaction shall not include any labor dispute between a school district board of directors and any employee of the school district.

A condition is foreseeable for the purposes of this subsection to the extent a reasonably prudent person would have anticipated prior to August first of the preceding school year that the condition probably would occur during the ensuing school year because of the occurrence of an event or a circumstance which existed during such preceding school year or a prior school year. A board of directors of a school district is deemed for the purposes of this subsection to have knowledge of events and circumstances which are a matter of common knowledge within the school district and of those

events and circumstances which can be discovered upon prudent inquiry or inspection.

(3) The superintendent of public instruction shall make every effort to reduce the amount of paperwork required in administration of this chapter and RCW 28A.160.150 through *28A.160.220, 28A.300.170, and 28A.500.010; to simplify the application, monitoring and evaluation processes used; to eliminate all duplicative requests for information from local school districts; and to make every effort to integrate and standardize information requests for other state education acts and federal aid to education acts administered by the superintendent of public instruction so as to reduce paperwork requirements and duplicative information requests. [1992 c 141 § 504; 1990 c 33 § 111; 1981 c 285 § 1; 1979 ex.s. c 250 § 6; 1973 1st ex.s. c 78 § 1; 1972 ex.s. c 105 § 4; 1971 c 46 § 1; 1969 ex.s. c 3 § 2; 1969 ex.s. c 223 § 28A.41.170. Prior: 1965 ex.s. c 154 § 6. Formerly RCW 28A.41.170, 28.41.170.]

*Reviser's note: RCW 28A.160.220 was recodified as RCW 28A.300.035 pursuant to 1994 c 113 § 2.

Contingent effective date—1992 c 141 §§ 502-504, 506, and 507: See note following RCW 28A.150.205.

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Effective date—Severability—1979 ex.s. c 250: See notes following RCW 28A.150.220.

Effective date—Severability—1972 ex.s. c 105: See notes following RCW 28A.150.250.

28A.150.295 General public school system—Maintained. A general and uniform system of public schools embracing the common schools shall be maintained throughout the state of Washington in accordance with Article IX of the state Constitution. [1969 ex.s. c 223 § 28A.02.010. Prior: 1909 c 97 p 230 § 1; RRS § 4518; prior: 1897 c 118 § 1; 1890 p 348 § 1. Formerly RCW 28A.02.010, 28.02.010.]

28A.150.300 Corporal punishment prohibited—Adoption of policy. The use of corporal punishment in the common schools is prohibited. The state board of education, in consultation with the superintendent of public instruction, shall develop and adopt a policy prohibiting the use of corporal punishment in the common schools. The policy shall be adopted by the state board of education no later than February 1, 1994, and shall take effect in all school districts September 1, 1994. [1993 c 68 § 1.]

APPROPRIATIONS AND ADJUSTMENTS

28A.150.350 Part time students—Defined—Enrollment authorized—Reimbursement for costs—Funding authority recognition—Rules, regulations. (1) For purposes of this section, the following definitions shall apply:

(a) "Private school student" shall mean any student enrolled full time in a private school;

(b) "School" shall mean any primary, secondary or vocational school;

(c) "School funding authority" shall mean any nonfederal governmental authority which provides moneys to common schools;

(d) "Part time student" shall mean and include: Any student enrolled in a course of instruction in a private school and taking courses at and/or receiving ancillary services offered by any public school not available in such private school; or any student who is not enrolled in a private school and is receiving home-based instruction under RCW 28A.225.010 which instruction includes taking courses at or receiving ancillary services from the local school district or both; or any student involved in any work training program and taking courses in any public school, which work training program is approved by the school board of the district in which such school is located.

(2) The board of directors of any school district is authorized and, in the same manner as for other public school students, shall permit the enrollment of and provide ancillary services for part time students: PROVIDED, That this section shall only apply to part time students who would be otherwise eligible for full time enrollment in the school district.

(3) The superintendent of public instruction shall recognize the costs to each school district occasioned by enrollment of and/or ancillary services provided for part time students authorized by subsection (2) of this section and shall include such costs in the distribution of funds to school districts pursuant to RCW 28A.150.260. Each school district shall be reimbursed for the costs or a portion thereof, occasioned by attendance of and/or ancillary services provided for part time students on a part time basis, by the superintendent of public instruction, according to law.

(4) Each school funding authority shall recognize the costs occasioned to each school district by enrollment of and ancillary services provided for part time students authorized by subsection (2) of this section, and shall include said costs in funding the activities of said school districts.

(5) The superintendent of public instruction is authorized to adopt rules and regulations to carry out the purposes of RCW 28A.150.260 and 28A.150.350. [1990 c 33 § 112; 1985 c 441 § 5; 1977 ex.s. c 359 § 8; 1972 ex.s. c 14 § 1; 1969 ex.s. c 217 § 4. Formerly RCW 28A.41.145.]

Severability—1985 c 441: See note following RCW 28A.225.010.

Effective date—Severability—1977 ex.s. c 359: See notes following RCW 28A.150.200.

Severability—1972 ex.s. c 14: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is held invalid." [1972 ex.s. c 14 § 2.]

Basic Education Act, RCW 28A.150.350 as part of: RCW 28A.150.200.

28A.150.360 Adjustments to meet emergencies. In the event of an unforeseen emergency, in the nature of either an unavoidable cost to a district or unexpected variation in anticipated revenues to a district, the state superintendent is authorized, for not to exceed two years, to make such an adjustment in the allocation of funds as is consistent with the intent of this chapter, RCW 28A.160.150 through 28A.160.210, 28A.300.170, and 28A.500.010 in providing an equal educational opportunity for the children of such district or districts. [1995 c 335 § 101; 1990 c 33 § 113; 1969 ex.s.

c 223 § 28A.41.150. Prior: 1965 ex.s. c 154 § 4. Formerly RCW 28A.41.150, 28.41.150.]

Part headings, table of contents not law—1995 c 335: "Part headings and the table of contents as used in this act do not constitute any part of the law." [1995 c 335 § 805.]

28A.150.370 Additional programs for which legislative appropriations must or may be made. In addition to those state funds provided to school districts for basic education, the legislature shall appropriate funds for pupil transportation, in accordance with this chapter, RCW 28A.160.150 through 28A.160.210, 28A.300.035, 28A.300.170, and 28A.500.010, and for special education programs for students with disabilities, in accordance with RCW 28A.155.010 through 28A.155.100. The legislature may appropriate funds to be distributed to school districts for population factors such as urban costs, enrollment fluctuations and for special programs, including but not limited to, vocational-technical institutes, compensatory programs, bilingual education, urban, rural, racial and disadvantaged programs, programs for gifted students, and other special programs. [1995 c 335 § 102; 1995 c 77 § 5; 1990 c 33 § 114; 1982 1st ex.s. c 24 § 1; 1977 ex.s. c 359 § 7. Formerly RCW 28A.41.162.]

Reviser's note: This section was amended by 1995 c 77 § 5 and by 1995 c 335 § 102, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Effective date—1982 1st ex.s. c 24: "Sections 2 and 3 of this amendatory act shall take effect September 1, 1982." [1982 1st ex.s. c 24 § 6.]

Severability—1982 1st ex.s. c 24: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 24 § 7.]

The above two annotations apply to 1982 1st ex.s. c 24. For codification of that act, see Codification Tables, Volume 0.

Effective date—Severability—1977 ex.s. c 359: See notes following RCW 28A.150.200.

Basic Education Act, RCW 28A.150.370 as part of: RCW 28A.150.200.

28A.150.380 Appropriations by legislature. The state legislature shall, at each regular session in an odd-numbered year, appropriate from the state general fund for the current use of the common schools such amounts as needed for state support to the common schools during the ensuing biennium as provided in this chapter, RCW 28A.160.150 through 28A.160.210, 28A.300.170, and 28A.500.010. [1995 c 335 § 103; 1990 c 33 § 115; 1980 c 6 § 3; 1969 ex.s. c 223 § 28A.41.050. Prior: 1945 c 141 § 2; Rem. Supp. 1945 § 4940-2. Formerly RCW 28A.41.050, 28.41.050.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Severability—1980 c 6: See note following RCW 28A.515.320.

28A.150.390 Appropriations for special education programs. The superintendent of public instruction shall submit to each regular session of the legislature during an odd-numbered year a programmed budget request for special education programs for students with disabilities. Funding

for programs operated by local school districts shall be on an excess cost basis from appropriations provided by the legislature for special education programs for students with disabilities and shall take account of state funds accruing through RCW 28A.150.250, 28A.150.260, federal medical assistance and private funds accruing under RCW 74.09.5249 through 74.09.5253 and 74.09.5254 through 74.09.5256, and other state and local funds, excluding special excess levies. [1995 c 77 § 6; 1994 c 180 § 8; 1993 c 149 § 9; 1990 c 33 § 116; 1989 c 400 § 2; 1980 c 87 § 5; 1971 ex.s. c 66 § 11. Formerly RCW 28A.41.053.]

Conflict with federal requirements—Severability—1994 c 180: See notes following RCW 74.09.5243.

Conflict with federal requirements—Severability—Effective dates—1993 c 149: See notes following RCW 74.09.5241.

Intent—1989 c 400: "The legislature finds that there is increasing demand for school districts' special education programs to include medical services necessary for handicapped children's participation and educational progress. In some cases, these services could qualify for federal funding under Title XIX of the social security act. The legislature intends to establish a process for school districts to obtain reimbursement for eligible services from medical assistance funds. In this way, state dollars for handicapped education can be leveraged to generate federal matching funds, thereby increasing the overall level of resources available for school districts' special education programs." [1989 c 400 § 1.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.150.400 Apportionment factors to be based on current figures—Rules and regulations. State and county funds which may become due and apportionable to school districts shall be apportioned in such a manner that any apportionment factors used shall utilize data and statistics derived in the school year that such funds are paid: PROVIDED, That the superintendent of public instruction may make necessary administrative provision for the use of estimates, and corresponding adjustments to the extent necessary: PROVIDED FURTHER, That as to those revenues used in determining the amount of state funds to be apportioned to school districts pursuant to RCW 28A.150.250, any apportionment factors shall utilize data and statistics derived in an annual period established pursuant to rules and regulations promulgated by the superintendent of public instruction in cooperation with the department of revenue. [1990 c 33 § 117; 1972 ex.s. c 26 § 3; 1969 ex.s. c 223 § 28A.41.055. Prior: 1955 c 350 § 1. Formerly RCW 28A.41.055, 28.41.055.]

Severability—1972 ex.s. c 26: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 26 § 4.]

28A.150.410 Basic education certificated instructional staff—Salary allocation schedule—Limits on post-graduate credits. (1) The legislature shall establish for each school year in the appropriations act a state-wide salary allocation schedule, for allocation purposes only, to be used to distribute funds for basic education certificated instructional staff salaries under RCW 28A.150.260.

(2) The superintendent of public instruction shall calculate salary allocations for state funded basic education certificated instructional staff by determining the district average salary for basic education instructional staff using the salary allocation schedule established pursuant to this

section. However, no district shall receive an allocation based upon an average basic education certificated instructional staff salary which is less than the average of the district's 1986-87 actual basic education certificated instructional staff salaries, as reported to the superintendent of public instruction prior to June 1, 1987, and the legislature may grant minimum salary increases on that base: PROVIDED, That the superintendent of public instruction may adjust this allocation based upon the education and experience of the district's certificated instructional staff.

(3) Beginning January 1, 1992, no more than ninety college quarter-hour credits received by any employee after the baccalaureate degree may be used to determine compensation allocations under the state salary allocation schedule and LEAP documents referenced in the biennial appropriations act, or any replacement schedules and documents, unless:

(a) The employee has a masters degree; or

(b) The credits were used in generating state salary allocations before January 1, 1992. [1990 c 33 § 118; 1989 1st ex.s. c 16 § 1; 1987 3rd ex.s. c 1 § 4; 1987 1st ex.s. c 2 § 204. Formerly RCW 28A.41.112.]

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

28A.150.420 Reimbursement for classes provided outside regular school year. The superintendent of public instruction shall establish procedures to allow school districts to claim basic education allocation funds for students attending classes that are provided outside the regular school year to the extent such attendance is in lieu of attendance during the regular school year: PROVIDED, That nothing in this section shall be construed to alter the basic education allocation for which the district is otherwise eligible. [1989 c 233 § 10. Formerly RCW 28A.41.172.]

28A.150.500 Educational agencies offering vocational education programs—Local advisory committees—Advice on current job needs. (1) Each local education agency or college district offering vocational educational programs shall establish local advisory committees to provide that agency or district with advice on current job needs and on the courses necessary to meet these needs.

(2) The local program committees shall:

(a) Participate in the determination of program goals;

(b) Review and evaluate program curricula, equipment, and effectiveness;

(c) Include representatives of business and labor who reflect the local industry, and the community; and

(d) Actively consult with other representatives of business, industry, labor, and agriculture. [1991 c 238 § 76.]

Effective dates—Severability—1991 c 238: See RCW 28B.50.917 and 28B.50.918.

Chapter 28A.155

SPECIAL EDUCATION

Sections

28A.155.010	Purpose.
28A.155.020	Administrative section or unit for the education of children with disabling conditions—"Children with

disabilities" and "appropriate education" defined—Approval when child under jurisdiction of juvenile court.

28A.155.030 Division administrative officer—Appointment—Duties.
28A.155.040 Authority of districts—Participation of department of social and health services.

28A.155.050 Aid for children unable to attend school—Apportionment—Allocations from state excess funds.

28A.155.060 District authority to contract with approved agencies—Approval standards.

28A.155.070 Services to children of preschool age with disabilities—Apportionment—Allocations from state excess cost funds.

28A.155.080 Appeal from superintendent's denial of educational program.

28A.155.090 Superintendent of public instruction's duty and authority.

28A.155.100 Sanctions applied to noncomplying districts.

28A.155.105 Braille instruction—Definitions.

28A.155.115 Braille instruction—Assessment—Provision in student's curriculum.

28A.155.140 Curriculum-based assessment procedures for programs for children with handicapping conditions.

28A.155.010 Purpose. It is the purpose of RCW 28A.155.010 through 28A.155.100, 28A.160.030, and 28A.150.390 to ensure that all children with disabilities as defined in RCW 28A.155.020 shall have the opportunity for an appropriate education at public expense as guaranteed to them by the Constitution of this state. [1995 c 77 § 7; 1990 c 33 § 120; 1971 ex.s. c 66 § 1. Formerly RCW 28A.13.005.]

Severability—1971 ex.s. c 66: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 66 § 13.]

Effective date—1971 ex.s. c 66: "This 1971 amendatory act will take effect July 1, 1973." [1971 ex.s. c 66 § 14.]

28A.155.020 Administrative section or unit for the education of children with disabling conditions—"Children with disabilities" and "appropriate education" defined—Approval when child under jurisdiction of juvenile court. There is established in the office of the superintendent of public instruction an administrative section or unit for the education of children with disabling conditions.

Children with disabilities are those children in school or out of school who are temporarily or permanently retarded in normal educational processes by reason of physical or mental disability, or by reason of emotional maladjustment, or by reason of other disability, and those children who have specific learning and language disabilities resulting from perceptual-motor disabilities, including problems in visual and auditory perception and integration.

The superintendent of public instruction shall require each school district in the state to insure an appropriate educational opportunity for all children with disabilities between the ages of three and twenty-one, but when the twenty-first birthday occurs during the school year, the educational program may be continued until the end of that school year. The superintendent of public instruction, by rule, shall establish for the purpose of excess cost funding, as provided in RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.100, functional definitions of

the various types of disabling conditions and eligibility criteria for special education programs for students with disabilities. For the purposes of RCW 28A.155.010 through 28A.155.100, an appropriate education is defined as an education directed to the unique needs, abilities, and limitations of the children with disabilities. School districts are strongly encouraged to provide parental training in the care and education of the children and to involve parents in the classroom.

Nothing in this section shall prohibit the establishment or continuation of existing cooperative programs between school districts or contracts with other agencies approved by the superintendent of public instruction, which can meet the obligations of school districts to provide education for children with disabilities, or prohibit the continuation of needed related services to school districts by the department of social and health services.

This section shall not be construed as in any way limiting the powers of local school districts set forth in RCW 28A.155.070.

No child shall be removed from the jurisdiction of juvenile court for training or education under RCW 28A.155.010 through 28A.155.100 without the approval of the superior court of the county. [1995 c 77 § 8; 1990 c 33 § 121; 1985 c 341 § 4; 1984 c 160 § 1; 1971 ex.s. c 66 § 2; 1969 ex.s. c 2 § 2; 1969 ex.s. c 223 § 28A.13.010. Prior: 1951 c 92 § 1; prior: (i) 1943 c 120 § 1; Rem. Supp. 1943 § 4679-25. (ii) 1943 c 120 § 2, part; Rem. Supp. 1943 § 4679-26, part. Formerly RCW 28A.13.010, 28.13.010.]

Effective date—1985 c 341 §§ 4, 13: "Sections 4 and 13 of this act shall take effect August 1, 1985." [1985 c 341 § 18.]

Severability—1984 c 160: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 160 § 6.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.030 Division administrative officer—Appointment—Duties. The superintendent of public instruction shall appoint an administrative officer of the division. The administrative officer, under the direction of the superintendent of public instruction, shall coordinate and supervise the program of special education for eligible children with disabilities in the school districts of the state. He or she shall cooperate with the educational service district superintendents and local school district superintendents and with all other interested school officials in ensuring that all school districts provide an appropriate educational opportunity for all children with disabilities and shall cooperate with the state secretary of social and health services and with county and regional officers on cases where medical examination or other attention is needed. [1995 c 77 § 9; 1990 c 33 § 122; 1975 1st ex.s. c 275 § 52; 1972 ex.s. c 10 § 1. Prior: 1971 ex.s. c 66 § 3; 1971 c 48 § 3; 1969 ex.s. c 223 § 28A.13.020; prior: 1943 c 120 § 3; Rem. Supp. 1943 § 4679-27. Formerly RCW 28A.13.020, 28.13.020.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.040 Authority of districts—Participation of department of social and health services. The board of directors of each school district, for the purpose of compliance with the provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.100, shall cooperate with the superintendent of public instruction and with the administrative officer and shall provide an appropriate educational opportunity and give other appropriate aid and special attention to children with disabilities in regular or special school facilities within the district or shall contract for such services with other agencies as provided in RCW 28A.155.060 or shall participate in an interdistrict arrangement in accordance with RCW 28A.335.160 and 28A.225.220 and/or 28A.225.250 and 28A.225.260.

In carrying out their responsibilities under this chapter, school districts severally or jointly with the approval of the superintendent of public instruction are authorized to establish, operate, support and/or contract for residential schools and/or homes approved by the department of social and health services for aid and special attention to children with disabilities.

The cost of board and room in facilities approved by the department of social and health services shall be provided by the department of social and health services for those students with disabilities eligible for such aid under programs of the department. The cost of approved board and room shall be provided for those students with disabilities not eligible under programs of the department of social and health services but deemed in need of the same by the superintendent of public instruction: PROVIDED, That no school district shall be financially responsible for special aid programs for students who are attending residential schools operated by the department of social and health services: PROVIDED FURTHER, That the provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.100 shall not preclude the extension by the superintendent of public instruction of special education opportunities to children with disabilities in residential schools operated by the department of social and health services. [1995 c 77 § 10; 1990 c 33 § 123; 1971 ex.s. c 66 § 4; 1969 ex.s. c 223 § 28A.13.030. Prior: 1959 c 122 § 1; 1953 c 135 § 1; 1943 c 120 § 4; Rem. Supp. 1943 § 4679-28. Formerly RCW 28A.13.030, 28.13.030.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.050 Aid for children unable to attend school—Apportionment—Allocations from state excess funds. Any child who is not able to attend school and who is eligible for special excess cost aid programs authorized under RCW 28A.155.010 through 28A.155.100 shall be given such aid at home or at such other place as determined by the board of directors of the school district in which such child resides. Any school district within which such a child resides shall thereupon be granted regular apportionment of state and county school funds and, in addition, allocations from state excess funds made available for such special services for such period of time as such special aid program is given: PROVIDED, That should such child or any other child with disabilities attend and participate in a special aid program operated by another school district in accordance with the provisions of RCW 28A.225.210, 28A.225.220, and/

or 28A.225.250, such regular apportionment shall be granted to the receiving school district, and such receiving school district shall be reimbursed by the district in which such student resides in accordance with rules adopted by the superintendent of public instruction for the entire approved excess cost not reimbursed from such regular apportionment. [1995 c 77 § 11; 1990 c 33 § 124; 1971 ex.s. c 66 § 5; 1969 ex.s. c 223 § 28A.13.040. Prior: 1943 c 120 § 5; Rem. Supp. 1943 § 4679-29. Formerly RCW 28A.13.040, 28.13.040.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.060 District authority to contract with approved agencies—Approval standards. For the purpose of carrying out the provisions of RCW 28A.155.020 through 28A.155.050, the board of directors of every school district shall be authorized to contract with agencies approved by the state board of education for operating special education programs for students with disabilities. Approval standards for such agencies shall conform substantially with those promulgated for approval of special education aid programs in the common schools. [1995 c 77 § 12; 1990 c 33 § 125; 1971 ex.s. c 66 § 6. Formerly RCW 28A.13.045.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.070 Services to children of preschool age with disabilities—Apportionment—Allocations from state excess cost funds. Special educational and training programs provided by the state and the school districts thereof for children with disabilities may be extended to include children of preschool age. School districts which extend such special programs to children of preschool age shall be entitled to the regular apportionments from state and county school funds, as provided by law, and in addition to allocations from state excess cost funds made available for such special services for those children with disabilities who are given such special services. [1995 c 77 § 13; 1971 ex.s. c 66 § 7; 1969 ex.s. c 223 § 28A.13.050. Prior: 1951 c 92 § 2; 1949 c 186 § 1; Rem. Supp. 1949 § 4901-3. Formerly RCW 28A.13.050, 28.13.050.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.080 Appeal from superintendent's denial of educational program. Where a child with disabilities as defined in RCW 28A.155.020 has been denied the opportunity of an educational program by a local school district superintendent under the provisions of RCW 28A.225.010, or for any other reason there shall be an affirmative showing by the school district superintendent in a writing directed to the parents or guardian of such a child within ten days of such decision that

(1) No agency or other school district with whom the district may contract under RCW 28A.155.040 can accommodate such child, and

(2) Such child will not benefit from an alternative educational opportunity as permitted under RCW 28A.155.050.

There shall be a right of appeal by the parent or guardian of such child to the superintendent of public instruction pursuant to procedures established by the superintendent and in accordance with RCW 28A.155.090. [1995 c 77 § 14; 1990 c 33 § 126; 1971 ex.s. c 66 § 8. Formerly RCW 28A.13.060.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.090 Superintendent of public instruction's duty and authority. The superintendent of public instruction shall have the duty and authority, through the administrative section or unit for the education of children with disabling conditions, to:

(1) Assist school districts in the formation of total school programs to meet the needs of children with disabilities;

(2) Develop interdistrict cooperation programs for children with disabilities as authorized in RCW 28A.225.250;

(3) Provide, upon request, to parents or guardians of children with disabilities, information as to the special education programs for students with disabilities offered within the state;

(4) Assist, upon request, the parent or guardian of any child with disabilities in the placement of any child with disabilities who is eligible for but not receiving special educational aid for children with disabilities;

(5) Approve school district and agency programs as being eligible for special excess cost financial aid to children with disabilities;

(6) Adjudge, upon appeal by a parent or guardian of a child with disabilities who is not receiving an educational program, whether the decision of a local school district superintendent under RCW 28A.155.080 to exclude such child with disabilities was justified by the available facts and consistent with the provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.100. If the superintendent of public instruction shall decide otherwise he or she shall apply sanctions as provided in RCW 28A.155.100 until such time as the school district assures compliance with the provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.100; and

(7) Promulgate such rules as are necessary to implement the several provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.100 and to ensure educational opportunities within the common school system for all children with disabilities who are not institutionalized. [1995 c 77 § 15; 1990 c 33 § 127; 1985 c 341 § 5; 1971 ex.s. c 66 § 9. Formerly RCW 28A.13.070.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.100 Sanctions applied to noncomplying districts. The superintendent of public instruction is hereby authorized and directed to establish appropriate sanctions to be applied to any school district of the state failing to comply with the provisions of RCW 28A.150.390, 28A.160.030, and 28A.155.010 through 28A.155.100 to be applied beginning upon the effective date thereof, which sanctions shall include withholding of any portion of state

aid to such district until such time as compliance is assured. [1990 c 33 § 128; 1971 ex.s. c 66 § 12. Formerly RCW 28A.13.080.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.155.105 Braille instruction—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply in RCW 28A.155.115.

(1) "Student" means a student who:

(a) Has a visual acuity of 20/200 or less in the better eye with conventional correction or having a limited field of vision such that the widest diameter of the visual field subtends an angular distance not greater than twenty degrees;

(b) Is unable to read printed material at a competitive rate with facility due to functional visual impairment or lack of visual acuity; or

(c) Has a physical condition with a medical prognosis of a significant visual deterioration to the extent that (a) or (b) of this subsection could apply.

(2) "Braille" means the system of reading and writing through touch commonly known as standard English Braille. [1996 c 135 § 2.]

Findings—1996 c 135: "It is the goal of the legislature to encourage persons who are blind or visually impaired to participate fully in the social and economic life of the state and to engage in remunerative employment. The legislature finds that literacy is essential to the achievement of this goal. Furthermore, the legislature finds that literacy for most persons who are blind or visually impaired means the ability to read and write Braille with proficiency. The legislature sets as a further goal that students who are legally blind or visually impaired shall be given the opportunity to learn Braille in order to communicate effectively and efficiently." [1996 c 135 § 1.]

28A.155.115 Braille instruction—Assessment—Provision in student's curriculum. (1) Each student shall be assessed individually to determine the appropriate learning media for the student including but not limited to Braille.

(2) No student may be denied the opportunity for instruction in Braille reading and writing solely because the student has some remaining vision.

(3) This section does not require the exclusive use of Braille if there are other special education services to meet the student's educational needs. The provision of special education or other services does not preclude Braille use or instruction.

(4) If a student's individualized learning media assessment indicates that Braille is an appropriate learning medium, instruction in Braille shall be provided as a part of such student's educational curriculum and if such student has an individualized education program, such instruction shall be provided as part of that program.

(5) If Braille will not be provided to a student, the reason for not incorporating it in the student's individualized education program shall be documented in such plan. If no individualized education program exists, such documentation, signed by the parent or guardian, shall be placed in the student's file. [1996 c 135 § 3.]

Findings—1996 c.135: See note following RCW 28A.155.105.

28A.155.140 Curriculum-based assessment procedures for programs for children with handicapping

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conditions. School districts may use curriculum-based assessment procedures as measures for developing academic early intervention programs and curriculum planning: PROVIDED, That the use of curriculum-based assessment procedures shall not deny a student the right to an assessment to determine eligibility or participation in learning disabilities programs as provided by RCW 28A.155.010 through 28A.155.100. [1991 c 116 § 4; 1990 c 33 § 131; 1987 c 398 § 1. Formerly RCW 28A.03.367.]

Chapter 28A.160

STUDENT TRANSPORTATION

Sections	
28A.160.010	Operation of student transportation program—Responsibility of local district—Scope—Transporting of elderly—Insurance.
28A.160.020	Authorization for private school students to ride buses—Conditions.
28A.160.030	Authorizing individual transportation or other arrangements.
28A.160.040	Lease of buses to transport children with disabilities and elderly—Limitation.
28A.160.050	Lease of buses to transport children with disabilities and elderly—Directors to authorize.
28A.160.060	Lease of buses to transport children with disabilities and elderly—Lease at local level—Criteria.
28A.160.070	Lease of buses to transport children with disabilities and elderly—Elderly persons defined—Program limitation.
28A.160.080	School buses, rental or lease for emergency purposes—Authorization.
28A.160.090	School buses, rental or lease for emergency purposes—Board to determine district policy—Conditions if rent or lease.
28A.160.100	School buses, transport of general public to interscholastic activities—Limitations.
28A.160.110	School buses, authorization for parent, guardian or custodian of a student to ride—Limitations.
28A.160.115	Bus routes.
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28A.160.130	Transportation vehicle fund—Deposits in—Use—Rules for establishment and use.
28A.160.140	Contract for pupil transportation services with private nongovernmental entity—Competitive bid procedures.
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28A.160.160	Student transportation allocation—Definitions.
28A.160.170	Student transportation allocation—District's annual report to superintendent.
28A.160.180	Student transportation allocation—Allocation rates, adjustment—District-owned passenger cars—Report.
28A.160.190	Student transportation allocation—Notice—Revised eligible student data, when—Allocation payments, amounts, when.
28A.160.195	Vehicle acquisition—School bus categories—Competitive specifications—Purchase—Reimbursement—Rules.
28A.160.200	Vehicle acquisition—Reimbursement schedule—Maintenance and operation—Depreciation schedule.
28A.160.210	School bus drivers, training and qualifications—Rules and regulations for.

Age limit for bus drivers: RCW 46.20.045.

School buses—Crossing arms: RCW 46.37.620.

28A.160.010 Operation of student transportation program—Responsibility of local district—Scope—Transporting of elderly—Insurance. The operation of each local school district's student transportation program is declared to be the responsibility of the respective board of directors, and each board of directors shall determine such matters as which individual students shall be transported and what routes shall be most efficiently utilized. State moneys allocated to local districts for student transportation shall be spent only for student transportation activities, but need not be spent by the local district in the same manner as calculated and allocated by the state.

A school district is authorized to provide for the transportation of students enrolled in the school or schools of the district both in the case of students who reside within the boundaries of the district and of students who reside outside the boundaries of the district.

When children are transported from one school district to another the board of directors of the respective districts may enter into a written contract providing for a division of the cost of such transportation between the districts.

School districts may use school buses and drivers hired by the district or commercial chartered bus service for the transportation of school children and the school employees necessary for their supervision to and from any school activities within or without the school district during or after school hours and whether or not a required school activity, so long as the school board has officially designated it as a school activity. For any extra-curricular uses, the school board shall charge an amount sufficient to reimburse the district for its cost.

In addition to the right to contract for the use of buses provided in RCW 28A.160.080 and 28A.160.090, any school district may contract to furnish the use of school buses of that district to other users who are engaged in conducting an educational or recreational program supported wholly or in part by tax funds or programs for elderly persons at times when those buses are not needed by that district and under such terms as will fully reimburse such school district for all costs related or incident thereto: PROVIDED, HOWEVER, That no such use of school district buses shall be permitted except where other public or private transportation certificated or licensed by the Washington utilities and transportation commission is not reasonably available to the user: PROVIDED FURTHER, That no user shall be required to accept any charter bus for services which the user believes might place the health or safety of the children or elderly persons in jeopardy.

Whenever any persons are transported by the school district in its own motor vehicles and by its own employees, the board may provide insurance to protect the district against loss, whether by reason of theft, fire or property damage to the motor vehicle or by reason of liability of the district to persons from the operation of such motor vehicle.

The board may provide insurance by contract purchase for payment of hospital and medical expenses for the benefit of persons injured while they are on, getting on, or getting off any vehicles enumerated herein without respect to any fault or liability on the part of the school district or operator. This insurance may be provided without cost to the persons notwithstanding the provisions of RCW 28A.400.350.

If the transportation of children or elderly persons is arranged for by contract of the district with some person, the board may require such contractor to procure such insurance as the board deems advisable. [1990 c 33 § 132; 1986 c 32 § 1; 1983 1st ex.s. c 61 § 1; 1981 c 265 § 10; 1980 c 122 § 2; 1973 c 45 § 1; 1971 c 24 § 3; 1969 ex.s. c 153 § 3; 1969 ex.s. c 223 § 28A.24.055. Prior: (i) 1969 c 53 § 1; 1967 ex.s. c 29 § 1, part; 1967 c 12 § 1, part; 1965 ex.s. c 49 § 1, part; 1963 c 104 § 1, part; 1963 c 5 § 1, part; 1961 c 305 § 1, part; 1961 c 237 § 1, part; 1961 c 66 § 1, part; 1955 c 68 § 2, part; prior: 1943 c 52 § 1, part; 1941 c 179 § 1, part; 1939 c 131 § 1, part; 1925 ex.s. c 57 § 1, part; 1919 c 90 § 3, part; 1915 c 44 § 1, part; 1909 c 97 p 285 § 2, part; 1907 c 240 § 5, part; 1903 c 104 § 17, part; Rem. Supp. 1943 § 4776, part. Formerly RCW 28.58.100, part. (ii) 1965 ex.s. c 86 § 1. Formerly RCW 28A.24.055, 28.58.421.]

Severability—1983 1st ex.s. c 61: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 61 § 9.]

Effective date—Severability—1981 c 265: See notes following RCW 28A.160.150.

Elderly persons defined—Program limitation: RCW 28A.160.070.

28A.160.020 Authorization for private school students to ride buses—Conditions. Every school district board of directors may authorize children attending a private school approved in accordance with RCW 28A.195.010 to ride a school bus or other student transportation vehicle to and from school so long as the following conditions are met:

(1) The board of directors shall not be required to alter those bus routes or stops established for transporting public school students;

(2) Private school students shall be allowed to ride on a seat-available basis only; and

(3) The board of directors shall charge an amount sufficient to reimburse the district for the actual per seat cost of providing such transportation. [1990 c 33 § 133; 1981 c 307 § 1. Formerly RCW 28A.24.065.]

Severability—1981 c 307: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 307 § 2.]

28A.160.030 Authorizing individual transportation or other arrangements. Individual transportation, board and room, and other arrangements may be authorized or provided and, in whole or part, paid for or reimbursed by a school district, when approved by the educational service district superintendent or his or her designee pursuant to rules promulgated by the superintendent of public instruction for that purpose: PROVIDED, That the total of payments for board and room and transportation incidental thereto shall not exceed the amount which would otherwise be paid for such individual transportation. [1981 c 265 § 11; 1977 c 80 § 2; 1971 ex.s. c 66 § 10; 1969 ex.s. c 223 § 28A.24.100. Prior: 1965 ex.s. c 154 § 9. Formerly RCW 28A.24.100, 28.24.100.]

Effective date—Severability—1981 c 265: See notes following RCW 28A.160.150.

Severability—1977 c 80: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the

remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 c 80 § 5.]

Severability—Effective date—1971 ex.s. c 66: See notes following RCW 28A.155.010.

28A.160.040 Lease of buses to transport children with disabilities and elderly—Limitation. The directors of school districts are authorized to lease school buses to nonprofit organizations to transport children with disabilities and elderly persons to and from the site of activities or programs deemed beneficial to such persons by such organizations: PROVIDED, That commercial bus transportation is not reasonably available for such purposes. [1995 c 77 § 16; 1973 c 45 § 2; 1971 c 78 § 1. Formerly RCW 28A.24.110.]

Elderly persons defined—Program limitation: RCW 28A.160.070.

28A.160.050 Lease of buses to transport children with disabilities and elderly—Directors to authorize. The directors of school districts may authorize leases under RCW 28A.160.040 through 28A.160.060: PROVIDED, That such leases do not conflict with regular school purposes. [1990 c 33 § 134; 1971 c 78 § 2. Formerly RCW 28A.24.111.]

28A.160.060 Lease of buses to transport children with disabilities and elderly—Lease at local level—Criteria. The lease of the equipment shall be handled by the school directors at a local level. The school directors may establish criteria for bus use and lease, including, but not limited to, minimum costs, and driver requirements. [1971 c 78 § 3. Formerly RCW 28A.24.112.]

28A.160.070 Lease of buses to transport children with disabilities and elderly—Elderly persons defined—Program limitation. For purposes of RCW 28A.160.010 and 28A.160.040, "elderly person" shall mean a person who is at least sixty years of age. No school district funds may be used for the operation of such a program. [1990 c 33 § 135; 1973 c 45 § 3. Formerly RCW 28A.24.120.]

28A.160.080 School buses, rental or lease for emergency purposes—Authorization. It is the intent of the legislature and the purpose of RCW 28A.160.010, 28A.160.080, and 28A.160.090 that in the event of major forest fires, floods, or other natural emergencies that boards of directors of school districts, in their discretion, may rent or lease school buses to governmental agencies for the purposes of transporting personnel, supplies and/or evacuees. [1990 c 33 § 136; 1971 c 24 § 1. Formerly RCW 28A.24.170.]

28A.160.090 School buses, rental or lease for emergency purposes—Board to determine district policy—Conditions if rent or lease. Each school district board shall determine its own policy as to whether or not its school buses will be rented or leased for the purposes of RCW 28A.160.080, and if the board decision is to rent or lease, under what conditions, subject to the following:

(1) Such renting or leasing may take place only after the director of community, trade, and economic development or any of his or her agents so authorized has, at the request of

an involved governmental agency, declared that an emergency exists in a designated area insofar as the need for additional transport is concerned.

(2) The agency renting or leasing the school buses must agree, in writing, to reimburse the school district for all costs and expenses related to their use and also must provide an indemnity agreement protecting the district against any type of claim or legal action whatsoever, including all legal costs incident thereto. [1995 c 399 § 20; 1990 c 33 § 137; 1986 c 266 § 21; 1985 c 7 § 88; 1974 ex.s. c 171 § 1; 1971 c 24 § 2. Formerly RCW 28A.24.172.]

Severability—1986 c 266: See note following RCW 38.52.005.

28A.160.100 School buses, transport of general public to interscholastic activities—Limitations. In addition to the authority otherwise provided in RCW 28A.160.010 through 28A.160.120 to school districts for the transportation of persons, whether school children, school personnel, or otherwise, any school district authorized to use school buses and drivers hired by the district for the transportation of school children to and from a school activity, along with such school employees as necessary for their supervision, shall, if such school activity be an interscholastic activity, be authorized to transport members of the general public to such event and utilize the school district's buses, transportation equipment and facilities, and employees therefor: PROVIDED, That provision shall be made for the reimbursement and payment to the school district by such members of the general public of not less than the district's actual costs and the reasonable value of the use of the district's buses and facilities provided in connection with such transportation: PROVIDED FURTHER, That wherever private transportation certified or licensed by the utilities and transportation commission or public transportation is reasonably available as determined by rule and regulation of the state board of education, this section shall not apply. [1990 c 33 § 138; 1980 c 91 § 1. Formerly RCW 28A.24.175.]

28A.160.110 School buses, authorization for parent, guardian or custodian of a student to ride—Limitations. Every school district board of directors may authorize any parent, guardian or custodian of a student enrolled in the district to ride a school bus or other student transportation vehicle at the request of school officials or employees designated by the board: PROVIDED, That excess seating space is available on the vehicle after the transportation needs of students have been met: PROVIDED FURTHER, That private or other public transportation of the parent, guardian or custodian is not reasonable in the board's judgment. [1980 c 122 § 1. Formerly RCW 28A.24.178.]

28A.160.115 Bus routes. On highways divided into separate roadways as provided in RCW 46.61.150 and highways with three or more marked traffic lanes, public school district bus routes and private school bus routes shall serve each side of the highway so that students do not have to cross the highway, unless there is a traffic control signal as defined in RCW 46.04.600 or an adult crossing guard within three hundred feet of the bus stop to assist students while crossing such multiple-lane highways. [1990 c 241 § 11.]

28A.160.120 Agreements with other governmental entities for transportation of public or other noncommon school purposes—Limitations. Any school district board of directors or any intermediate school district board may enter into agreements pursuant to chapter 39.34 RCW or chapter 35.58 RCW, as now or hereafter amended, with any city, town, county, metropolitan municipal corporation, and any federal or other state governmental entity, or any combination of the foregoing, for the purpose of providing for the transportation of students and/or members of the public through the use, in whole or part, of the school district's buses, transportation equipment and facilities, and employees: PROVIDED, That any agreement entered into for purposes of transportation pursuant to this section shall conform with the provisions of RCW 35.58.250 where applicable and shall provide for the reimbursement and payment to the school district of not less than the district's actual costs and the reasonable value of the use of the district's buses, and transportation equipment and supplies which are incurred and otherwise provided in connection with the transportation of members of the public or other noncommon school purposes: PROVIDED FURTHER, That wherever public transportation, or private transportation certified or licensed by the Washington utilities and transportation commission is not reasonably available, the school district or intermediate school district may transport members of the public so long as they are reimbursed for the cost of such transportation, and such transportation has been approved by any metropolitan municipal corporation performing public transportation pursuant to chapter 35.58 RCW in the area to be served by the district. [1974 ex.s. c 93 § 1. Formerly RCW 28A.24.180.]

28A.160.130 Transportation vehicle fund—Deposits in—Use—Rules for establishment and use. (1) There is created a fund on deposit with each county treasurer for each school district of the county, which shall be known as the transportation vehicle fund. Money to be deposited into the transportation vehicle fund shall include, but is not limited to, the following:

(a) The balance of accounts held in the general fund of each school district for the purchase of approved transportation equipment and for major transportation equipment repairs under RCW 28A.150.280. The amount transferred shall be the balance of the account as of September 1, 1982;

(b) Reimbursement payments provided for in RCW 28A.160.200 except those provided under *RCW 28A.160.200(4) that are necessary for contracted payments to private carriers;

(c) Earnings from transportation vehicle fund investments as authorized in RCW 28A.320.300; and

(d) The district's share of the proceeds from the sale of transportation vehicles, as determined by the superintendent of public instruction.

(2) Funds in the transportation vehicle fund may be used for the following purposes:

(a) Purchase of pupil transportation vehicles pursuant to RCW 28A.160.200 and 28A.150.280;

(b) Payment of conditional sales contracts as authorized in RCW 28A.335.200 or payment of obligations authorized

in RCW 28A.530.080, entered into or issued for the purpose of pupil transportation vehicles;

(c) Major repairs to pupil transportation vehicles.

The superintendent of public instruction shall adopt rules which shall establish the standards, conditions, and procedures governing the establishment and use of the transportation vehicle fund. The rules shall not permit the transfer of funds from the transportation vehicle fund to any other fund of the district. [1991 c 114 § 2; 1990 c 33 § 139; 1981 c 265 § 7. Formerly RCW 28A.58.428.]

***Reviser's note:** RCW 28A.160.200 was amended by 1995 1st sp.s. c 10 § 2, changing subsection (4) to subsection (3).

Effective date—Severability—1981 c 265: See notes following RCW 28A.160.150.

28A.160.140 Contract for pupil transportation services with private nongovernmental entity—Competitive bid procedures. As a condition of entering into a pupil transportation services contract with a private nongovernmental entity, each school district shall engage in an open competitive process at least once every five years. This requirement shall not be construed to prohibit a district from entering into a pupil transportation services contract of less than five years in duration with a district option to renew, extend, or terminate the contract, if the district engages in an open competitive process at least once every five years after July 26, 1987. As used in this section:

(1) "Open competitive process" means either one of the following, at the choice of the school district:

(a) The solicitation of bids or quotations and the award of contracts under RCW 28A.335.190; or

(b) The competitive solicitation of proposals and their evaluation consistent with the process and criteria recommended or required, as the case may be, by the office of financial management for state agency acquisition of personal service contractors;

(2) "Pupil transportation services contract" means a contract for the operation of privately owned or school district owned school buses, and the services of drivers or operators, management and supervisory personnel, and their support personnel such as secretaries, dispatchers, and mechanics, or any combination thereof, to provide students with transportation to and from school on a regular basis; and

(3) "School bus" means a motor vehicle as defined in RCW 46.04.521 and under the rules of the superintendent of public instruction. [1990 c 33 § 140; 1987 c 141 § 2. Formerly RCW 28A.58.133.]

Severability—1987 c 141: See note following RCW 28A.335.170.

28A.160.150 Student transportation allocation—Operating costs, determination and funding. Funds allocated for transportation costs shall be in addition to the basic education allocation. The distribution formula developed in RCW 28A.160.150 through 28A.160.180 shall be for allocation purposes only and shall not be construed as mandating specific levels of pupil transportation services by local districts. Operating costs as determined under RCW 28A.160.150 through 28A.160.180 shall be funded at one hundred percent or as close thereto as reasonably possible for transportation of an eligible student to and from school as defined in RCW 28A.160.160(3). In addition, funding

shall be provided for transportation services for students living within one radius mile from school as determined under RCW 28A.160.180(2). [1996 c 279 § 1; 1990 c 33 § 141; 1983 1st ex.s. c 61 § 2; 1981 c 265 § 1. Formerly RCW 28A.41.505.]

Application—1996 c 279: "This act shall be effective for school transportation programs in the 1996-97 school year and thereafter." [1996 c 279 § 4.]

Severability—1983 1st ex.s. c 61: See note following RCW 28A.160.010.

Effective date—1981 c 265: "With the exception of sections 8 and 13 of this amendatory act, the effective date of this amendatory act is September 1, 1982. The superintendent of public instruction and the office thereof prior to the effective date of this amendatory act may take such actions as necessary for the orderly implementation thereof and during such period may carry out such data collection activities and district notification provisions as provided for herein." [1981 c 265 § 16.] For codification of 1981 c 265, see Codification Tables, Volume 0.

Severability—1981 c 265: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 265 § 17.]

28A.160.160 Student transportation allocation—Definitions. For purposes of RCW 28A.160.150 through 28A.160.190, except where the context shall clearly indicate otherwise, the following definitions apply:

(1) "Eligible student" means any student served by the transportation program of a school district or compensated for individual transportation arrangements authorized by RCW 28A.160.030 whose route stop is more than one radius mile from the student's school, except if the student to be transported is disabled under RCW 28A.155.020 and is either not ambulatory or not capable of protecting his or her own welfare while traveling to or from the school or agency where special education services are provided, in which case no mileage distance restriction applies.

(2) "Superintendent" means the superintendent of public instruction.

(3) "To and from school" means the transportation of students for the following purposes:

(a) Transportation to and from route stops and schools;

(b) Transportation to and from schools pursuant to an interdistrict agreement pursuant to RCW 28A.335.160;

(c) Transportation of students between schools and learning centers for instruction specifically required by statute; and

(d) Transportation of students with disabilities to and from schools and agencies for special education services.

Extended day transportation shall not be considered part of transportation of students "to and from school" for the purposes of chapter 61, Laws of 1983 1st ex. sess.

(4) "Transportation services" for students living within one radius mile from school means school transportation services including the use of buses, funding of crossing guards, and matching funds for local and state transportation projects intended to mitigate hazardous walking conditions. Priority for transportation services shall be given to students in grades kindergarten through five. [1996 c 279 § 2; 1995 c 77 § 17; 1990 c 33 § 142; 1983 1st ex.s. c 61 § 3; 1981 c 265 § 2. Formerly RCW 28A.41.510.]

Application—1996 c 279: See note following RCW 28A.160.150.

Severability—1983 1st ex.s. c 61: See note following RCW 28A.160.010.

Effective date—Severability—1981 c 265: See notes following RCW 28A.160.150.

28A.160.170 Student transportation allocation—District's annual report to superintendent. Each district shall submit to the superintendent of public instruction during October of each year a report containing the following:

(1)(a) The number of eligible students transported to and from school as provided for in RCW 28A.160.150 for the current school year and the number of miles estimated to be driven for pupil transportation services, along with a map describing student route stop locations and school locations, and (b) the number of miles driven for pupil transportation services as authorized in RCW 28A.160.150 the previous school year; and

(2) Other operational data and descriptions as required by the superintendent to determine allocation requirements for each district.

Each district shall submit the information required in this section on a timely basis as a condition of the continuing receipt of school transportation moneys. [1990 c 33 § 143; 1983 1st ex.s. c 61 § 4; 1981 c 265 § 3. Formerly RCW 28A.41.515.]

Severability—1983 1st ex.s. c 61: See note following RCW 28A.160.010.

Effective date—Severability—1981 c 265: See notes following RCW 28A.160.150.

28A.160.180 Student transportation allocation—Allocation rates, adjustment—District-owned passenger cars—Report. Each district's annual student transportation allocation shall be based on differential rates determined by the superintendent of public instruction in the following manner:

(1) The superintendent shall annually calculate a standard student mile allocation rate for determining the transportation allocation for those services provided for in RCW 28A.160.150. "Standard student mile allocation rate," as used in this chapter, means the per mile allocation rate for transporting an eligible student. The standard student mile allocation rate may be adjusted to include such additional differential factors as distance; restricted passenger load; circumstances that require use of special types of transportation vehicles; student with disabilities load; and small fleet maintenance.

(2) For transportation services for students living within one radius mile from school, the allocation shall be based on the number of students in grades kindergarten through five living within one radius mile as specified in the biennial appropriations act.

(3) The superintendent of public instruction shall annually calculate allocation rate(s), which shall include vehicle amortization, for determining the transportation allocation for transporting students in district-owned passenger cars, as defined in RCW 46.04.382, pursuant to RCW 28A.160.010 for services provided for in RCW 28A.160.150 if a school district deems it advisable to use such vehicles after the school district board of directors has considered the safety of the students being transported as well as the economy of utilizing a district-owned passenger car in lieu of a school bus.

(4) Prior to June 1st of each year the superintendent shall submit to the office of financial management, and the committees on education and ways and means of the senate and house of representatives a report outlining the methodology and rationale used in determining the allocation rates to be used the following year. [1996 c 279 § 3; 1995 c 77 § 18; 1990 c 33 § 144; 1985 c 59 § 1; 1983 1st ex.s. c 61 § 5; 1982 1st ex.s. c 24 § 2; 1981 c 265 § 4. Formerly RCW 28A.41.520.]

Application—1996 c 279: See note following RCW 28A.160.150.

Severability—1983 1st ex.s. c 61: See note following RCW 28A.160.010.

Effective date—Severability—1982 1st ex.s. c 24: See notes following RCW 28A.150.370.

Effective date—Severability—1981 c 265: See notes following RCW 28A.160.150.

28A.160.190 Student transportation allocation—Notice—Revised eligible student data, when—Allocation payments, amounts, when. The superintendent shall notify districts of their student transportation allocation before January 15th. If the number of eligible students in a school district changes ten percent or more from the October report, and the change is maintained for a period of twenty consecutive school days or more, the district may submit revised eligible student data to the superintendent of public instruction. The superintendent shall, to the extent funds are available, recalculate the district's allocation for the transportation of pupils to and from school.

The superintendent shall make the student transportation allocation in accordance with the apportionment payment schedule in RCW 28A.510.250. Such allocation payments may be based on estimated amounts for payments to be made in September, October, November, December, and January. [1990 c 33 § 145; 1985 c 59 § 2; 1983 1st ex.s. c 61 § 6; 1982 1st ex.s. c 24 § 3; 1981 c 265 § 5. Formerly RCW 28A.41.525.]

Severability—1983 1st ex.s. c 61: See note following RCW 28A.160.010.

Effective date—Severability—1982 1st ex.s. c 24: See notes following RCW 28A.150.370.

Effective date—Severability—1981 c 265: See notes following RCW 28A.160.150.

28A.160.195 Vehicle acquisition—School bus categories—Competitive specifications—Purchase—Reimbursement—Rules. (1) The superintendent of public instruction, in consultation with the regional transportation coordinators of the educational service districts, shall establish a minimum number of school bus categories considering the capacity and type of vehicles required by school districts in Washington. The superintendent, in consultation with the regional transportation coordinators of the educational service districts, shall establish competitive specifications for each category of school bus. The categories shall be developed to produce minimum long-range operating costs, including costs of equipment and all costs in operating the vehicles. The categories, for purposes of comparative studies, will be at a minimum the same as those in the beginning of the 1994-95 school year. The competitive specifications shall meet federal motor vehicle safety standards, minimum state specifications as established by

rule by the superintendent, and supported options as determined by the superintendent in consultation with the regional transportation coordinators of the educational service districts.

(2) After establishing school bus categories and competitive specifications, the superintendent of public instruction shall solicit competitive price quotes from school bus dealers to be in effect for one year and establish a list of the lowest competitive price quotes obtained under this subsection.

(3) The superintendent shall base the level of reimbursement to school districts and educational service districts for school buses on the lowest quote in each category.

(4) Notwithstanding RCW 28A.335.190, school districts and educational service districts may purchase at the quoted price directly from the dealer who is providing the lowest competitive price quote on the list established under subsection (2) of this section. School districts and educational service districts may make their own selections for school buses, but shall be reimbursed at the rates determined under this section and RCW 28A.160.200. District-selected options shall not be reimbursed by the state.

(5) This section does not prohibit school districts or educational service districts from conducting their own competitive bid process.

(6) The superintendent of public instruction may adopt rules under chapter 34.05 RCW to implement this section. [1995 1st sp.s. c 10 § 1.]

Effective dates—1995 1st sp.s. c 10 §§ 1 and 2: "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [June 14, 1995].

(2) Section 2 of this act shall take effect September 1, 1995." [1995 1st sp.s. c 10 § 5.]

28A.160.200 Vehicle acquisition—Reimbursement schedule—Maintenance and operation—Depreciation schedule. (1) The superintendent shall develop a reimbursement schedule to pay districts for the cost of student transportation vehicles purchased after September 1, 1982. While it is the responsibility of each district to select and pay for each student transportation vehicle purchased by the district, each district shall be paid a sum based on the category of vehicle, anticipated lifetime of vehicles of this category, and state reimbursement rate for the category plus inflation as recognized by the reimbursement schedule established in this section as set by the superintendent. Categories and reimbursement rates of vehicles shall be those established under RCW 28A.160.195. The accumulated value of the payments and the potential investment return thereon shall be designed to be equal to the replacement cost of the vehicle less its salvage value at the end of its anticipated lifetime. The superintendent shall revise at least annually the reimbursement payments based on the current and anticipated future cost of comparable categories of transportation equipment. Reimbursements to school districts for approved transportation equipment shall be placed in a separate transportation vehicle fund established for each school district under RCW 28A.160.130. However, educational service districts providing student transportation services pursuant to RCW 28A.310.180(4) and receiving moneys generated pursuant to this section shall establish and maintain a separate transportation vehicle account in the educational service district's

general expense fund for the purposes and subject to the conditions under RCW 28A.160.130 and 28A.320.300.

(2) To the extent possible, districts shall operate vehicles acquired under this section not less than the number of years or useful lifetime now, or hereafter, assigned to the category of vehicles by the superintendent. School districts shall properly maintain the transportation equipment acquired under the provisions of this section, in accordance with rules established by the office of the superintendent of public instruction. If a district fails to follow generally accepted standards of maintenance and operation, the superintendent of public instruction shall penalize the district by deducting from future reimbursements under this section an amount equal to the original cost of the vehicle multiplied by the fraction of the useful lifetime or miles the vehicle failed to operate.

(3) The superintendent shall annually develop a depreciation schedule to recognize the cost of depreciation to districts contracting with private carriers for student transportation. Payments on this schedule shall be a straight line depreciation based on the original cost of the appropriate category of vehicle. [1995 1st sp.s. c 10 § 2; 1990 c 33 § 146; 1987 c 508 § 4; 1981 c 265 § 6. Formerly RCW 28A.41.540.]

Effective dates—1995 1st sp.s. c 10 §§ 1 and 2: See note following RCW 28A.160.195.

Effective date—Severability—1981 c 265: See notes following RCW 28A.160.150.

Transportation vehicle fund—Deposits in—Use—Rules for establishment and use: RCW 28A.160.130.

28A.160.210 School bus drivers, training and qualifications—Rules and regulations for. In addition to other powers and duties, the state board of education shall adopt rules and regulations governing the training and qualifications of school bus drivers. Such rules and regulations shall be designed to insure that persons will not be employed to operate school buses unless they possess such physical health and driving skills as are necessary to safely operate school buses: PROVIDED, That such rules and regulations shall insure that school bus drivers are provided a due process hearing before any certification required by such rules and regulations is cancelled: PROVIDED FURTHER, That such rules and regulations shall not conflict with the authority of the department of licensing to license school bus drivers in accordance with chapter 46.25 RCW. The state board of education may obtain a copy of the driving record, as maintained by the department of licensing, for consideration when evaluating a school bus driver's driving skills. [1989 c 178 § 20; 1981 c 200 § 1; 1979 c 158 § 89; 1969 ex.s. c 153 § 4. Formerly RCW 28A.04.131.]

Severability—Effective dates—1989 c 178: See RCW 46.25.900 and 46.25.901.

Chapter 28A.165

LEARNING ASSISTANCE PROGRAM

Sections

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28A.165.010 Intent. The legislature finds that an important and effective means of improving the educational performance of many students with special needs is to improve the general education program. The legislature also finds that there is a continuum of educational program needs among students with learning problems or poor academic performance. The legislature wants to encourage school districts to serve students with special needs within the regular classroom. Therefore, the legislature intends to replace the remediation program with a broader range of program options, without reducing special instructional programs when those services are both necessary and appropriate. The legislature intends to enhance the ability of basic education teachers to identify and address learning problems within the regular classroom. The legislature further intends to stimulate development by local schools and school districts of innovative and effective means of serving students with special needs. The goal is to increase the achievement of students with special needs in a shorter period of time using processes that are more timely, appropriate and effective in producing better outcomes. [1989 c 233 § 1; 1987 c 478 § 1. Formerly RCW 28A.120.010.]

28A.165.012 Program created. There is hereby created a state-wide program designed to enhance educational opportunities for public school students who are deficient in basic skills achievement. This program shall be known as the learning assistance program. [1987 c 478 § 2. Formerly RCW 28A.120.012.]

28A.165.030 Definitions. Unless the context clearly indicates otherwise the definitions in this section apply throughout RCW 28A.165.010 through 28A.165.090.

(1) "Basic skills" means reading, mathematics, and language arts as well as readiness activities associated with such skills.

(2) "Placement testing" means the administration of objective measures by a school district for the purposes of diagnosing the basic skills achievement levels, determining the basic skills areas of greatest need, and establishing the learning assistance needs of individual students in conformance with instructions established by the superintendent of public instruction for such purposes.

(3) "Approved program" means a program conducted pursuant to a plan submitted by a district and approved by the superintendent of public instruction under RCW 28A.165.040.

(4) "Participating student" means a student in kindergarten through grade nine who scores below grade level in basic skills, as determined by placement testing, and who is identified under RCW 28A.165.050 to receive additional services or support under an approved program.

(5) "Basic skills tests" means state-wide tests at the fourth and eighth grade levels established pursuant to RCW 28A.230.190. [1990 c 33 § 148; 1987 c 478 § 3. Formerly RCW 28A.120.014.]

28A.165.040 Application for state funds—Needs assessment—Plan. Each school district which applies for state funds distributed pursuant to RCW 28A.165.070 shall conduct a needs assessment and, on the basis of its findings, shall develop a plan for the use of these funds. The plan may incorporate plans developed by each eligible school. Districts are encouraged to place special emphasis on addressing the needs of students in the early grades. The needs assessment and plan shall be updated at least biennially, and shall be determined in consultation with an advisory committee including but not limited to members of the following groups: Parents, including parents of students served by the program; teachers; principals; administrators; and school directors. The district shall submit a biennial application specifying this plan to the office of the superintendent of public instruction for approval. Plans shall include:

(1) The means which the district will use to identify participating students to receive additional services or support under the proposed program;

(2) The specific services or activities which the funds will be used to support, and their estimated costs;

(3) A plan for annual evaluation of the program by the district, based on performance objectives related to basic skills achievement of participating students, and a plan for reporting the results of this evaluation to the superintendent of public instruction;

(4) Procedures for recordkeeping or other program documentation as may be required by the superintendent of public instruction; and

(5) The approval of the local school district board of directors. [1990 c 33 § 149; 1989 c 233 § 2; 1987 c 478 § 4. Formerly RCW 28A.120.016.]

28A.165.050 Identification of students—Coordination of use of funds. Identification of participating students for an approved program of learning assistance shall be determined in each district through the implementation of the findings of the district's needs assessment and through placement testing. School districts are encouraged to coordinate the use of funds from federal, state, and local sources in serving students who are below grade level in basic skills, and to make efficient use of these resources in meeting the needs of students with the greatest academic deficits. [1987 c 478 § 5. Formerly RCW 28A.120.018.]

28A.165.060 Services or activities under program. Services or activities which may be supported under an approved program of learning assistance shall include but not be limited to:

(1) Consultant teachers to assist classroom teachers in meeting the needs of participating students;

(2) Instructional support staff and instructional assistants to assist classroom teachers in meeting the needs of participating students;

(3) In-service training for classroom teachers, instructional support staff, and instructional assistants in multicultural differences and the identification of learning problems or in instructional methods for teaching students with learning problems;

(4) Special instructional programs for participating students, of sufficient size, scope, and quality to address the needs of these students and to give reasonable promise of substantial progress toward meeting their educational objectives;

(5) Tutoring assistance during or after school or on Saturday provided by instructional support staff, a student tutor, teacher, or instructional assistant;

(6) In-service training for parents of participating students; and

(7) Counseling, with an emphasis on services for elementary students who are in need of learning assistance, provided by instructional support staff such as school counselors, school psychologists, school nurses, and school social workers. Pursuant to the provisions of *section 4(2) of this act, learning assistance funds may be used to provide counseling for students who in the absence of counseling would likely become in need of such learning assistance. [1989 c 233 § 3; 1987 c 478 § 6. Formerly RCW 28A.120.020.]

*Reviser's note: Section 4(2) of this act was vetoed by the governor.

28A.165.070 Eligibility for funds—Distribution of funds—Development of allocation formula. Each school district which has established an approved program shall be eligible, as determined by the superintendent of public instruction, for state funds made available for the purposes of such programs.

(1) For the 1995-96 school year and thereafter, the superintendent of public instruction shall distribute funds appropriated for the learning assistance program in accordance with the biennial appropriations act. The distribution formula shall be based upon an assessment of students and a poverty factor.

(2) The distribution of funds is for allocation purposes only.

(3) The superintendent of public instruction shall recommend to the legislature a new allocation formula that uses additional elements consistent with performance-based education and the new assessment system developed by the commission on student learning. The superintendent of public instruction shall develop the recommendations for a new allocation formula not later than the 1997-98 school year, based upon the initial implementation of the assessment system for reading, writing, communication, and mathematics. [1995 1st sp.s. c 13 § 1; 1993 sp.s. c 24 § 520; 1990 c 33 § 150; 1987 c 478 § 7. Formerly RCW 28A.120.022.]

Severability—1993 sp.s. c 24: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 sp.s. c 24 § 932.]

Effective dates—1993 sp.s. c 24: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993, except for section 308(5) of this act which shall take effect immediately [May 28, 1993]." [1993 sp.s. c 24 § 933.]

28A.165.080 Monitoring. In order to insure that school districts are meeting the requirements of an approved program, the superintendent of public instruction shall monitor such programs no less than once every three years. The results of the evaluations required by RCW 28A.165.040 shall be transmitted to the superintendent of public instruction annually. Individual student records shall be maintained at the school district. [1990 c 33 § 151; 1987 c 478 § 8. Formerly RCW 28A.120.024.]

28A.165.090 Rules. The superintendent of public instruction shall promulgate rules pursuant to chapter 34.05 RCW which he or she deems necessary to implement RCW 28A.165.010 through 28A.165.080. [1990 c 33 § 152; 1987 c 478 § 9. Formerly RCW 28A.120.026.]

Chapter 28A.170

SUBSTANCE ABUSE AWARENESS PROGRAM

Sections

28A.170.050	Advisory committee—Members—Duties.
28A.170.075	Findings—Intent.
28A.170.080	Grants—Substance abuse intervention.
28A.170.090	Selection of grant recipients—Program rules.

28A.170.050 Advisory committee—Members—Duties. The superintendent of public instruction shall appoint a substance abuse advisory committee comprised of: Representatives of certificated and noncertificated staff; administrators; parents; students; school directors; the bureau of alcohol and substance abuse within the department of social and health services; the traffic safety commission; and county coordinators of alcohol and drug treatment. The committee shall advise the superintendent on matters of local program development, coordination, and evaluation. [1987 c 518 § 209. Formerly RCW 28A.120.038.]

Intent—1994 c 166; 1987 c 518: See note following RCW 28A.215.150.

Severability—1987 c 518: See note following RCW 28A.215.150.

28A.170.075 Findings—Intent. (1) The legislature finds that the provision of drug and alcohol counseling and related prevention and intervention services in schools will enhance the classroom environment for students and teachers, and better enable students to realize their academic and personal potentials.

(2) The legislature finds that it is essential that resources be made available to school districts to provide early drug and alcohol prevention and intervention services to students and their families; to assist in referrals to treatment providers; and to strengthen the transition back to school for students who have had problems of drug and alcohol abuse.

(3) Substance abuse awareness programs funded under this chapter do not fall within the definition of basic education for purposes of Article IX of the state Constitution and the state's funding duty thereunder.

(4) The legislature intends to provide grants for drug and alcohol abuse prevention and intervention in schools, targeted to those schools with the highest concentrations of students at risk. [1995 c 335 § 204; 1990 c 33 § 156; 1989 c 271 § 310. Formerly RCW 28A.120.080.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Severability—1989 c 271: See note following RCW 9.94A.310.

28A.170.080 Grants—Substance abuse intervention.

(1) Grants provided under RCW 28A.170.090 may be used solely for services provided by a substance abuse intervention specialist or for dedicated staff time for counseling and intervention services provided by any school district certificated employee who has been trained by and has access to consultation with a substance abuse intervention specialist. Services shall be directed at assisting students in kindergarten through twelfth grade in overcoming problems of drug and alcohol abuse, and in preventing abuse and addiction to such substances, including nicotine. The grants shall require local matching funds so that the grant amounts support a maximum of eighty percent of the costs of the services funded. The services of a substance abuse intervention specialist may be obtained by means of a contract with a state or community services agency or a drug treatment center. Services provided by a substance abuse intervention specialist may include:

- (a) Individual and family counseling, including preventive counseling;
- (b) Assessment and referral for treatment;
- (c) Referral to peer support groups;
- (d) Aftercare;
- (e) Development and supervision of student mentor programs;
- (f) Staff training, including training in the identification of high-risk children and effective interaction with those children in the classroom; and
- (g) Development and coordination of school drug and alcohol core teams, involving staff, students, parents, and community members.

(2) For the purposes of this section, "substance abuse intervention specialist" means any one of the following, except that diagnosis and assessment, counseling and aftercare specifically identified with treatment of chemical dependency shall be performed only by personnel who meet the same qualifications as are required of a qualified chemical dependency counselor employed by an alcoholism or drug treatment program approved by the department of social and health services.

(a) An educational staff associate employed by a school district or educational service district who holds certification as a school counselor, school psychologist, school nurse, or school social worker under state board of education rules adopted pursuant to RCW 28A.305.130;

(b) An individual who meets the definition of a qualified drug or alcohol counselor established by the bureau of alcohol and substance abuse;

(c) A counselor, social worker, or other qualified professional employed by the department of social and health services;

(d) A psychologist licensed under chapter 18.83 RCW;
or

(e) A children's mental health specialist as defined in RCW 71.34.020. [1990 c 33 § 157; 1989 c 271 § 311. Formerly RCW 28A.120.082.]

Severability—1989 c 271: See note following RCW 9.94A.310.

28A.170.090 Selection of grant recipients—Program rules. (1) The superintendent of public instruction shall select school districts and cooperatives of school districts to receive grants for drug and alcohol abuse prevention and intervention programs for students in kindergarten through twelfth grade, from funds appropriated by the legislature for this purpose. The minimum annual grant amount per district or cooperative of districts shall be twenty thousand dollars. Factors to be used in selecting proposals for funding and in determining grant awards shall be developed in consultation with the substance abuse advisory committee appointed under RCW 28A.170.050, with the intent of targeting funding to districts with high-risk populations. These factors may include:

(a) Characteristics of the school attendance areas to be served, such as the number of students from low-income families, truancy rates, juvenile justice referrals, and social services caseloads;

(b) The total number of students who would have access to services; and

(c) Participation of community groups and law enforcement agencies in drug and alcohol abuse prevention and intervention activities.

(2) The application procedures for grants under this section shall include provisions for comprehensive planning, establishment of a school and community substance abuse advisory committee, and documentation of the district's needs assessment. Planning and application for grants under this section may be integrated with the development of other substance abuse awareness programs by school districts. School districts shall, to the maximum extent feasible, coordinate the use of grants provided under this section with other funding available for substance abuse awareness programs. School districts should allocate resources giving emphasis to drug and alcohol abuse intervention services for students in grades five through nine. Grants may be used to provide services for students who are enrolled in approved private schools.

(3) School districts receiving grants under this section shall be required to establish a means of accessing formal assessment services for determining treatment needs of students with drug and alcohol problems. The grant applications submitted by districts shall identify the districts' plan for meeting this requirement.

(4) School districts receiving grants under this section shall be required to perform biennial evaluations of their drug and alcohol abuse prevention and intervention programs, and to report on the results of these evaluations to the superintendent of public instruction.

(5) The superintendent of public instruction may adopt rules to implement RCW 28A.170.080 and 28A.170.090. [1995 c 335 § 205; 1990 c 33 § 158; 1989 c 271 § 312. Formerly RCW 28A.120.084.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Severability—1989 c 271: See note following RCW 9.94A.310.

Chapter 28A.175

DROPOUT PREVENTION AND RETRIEVAL PROGRAM

Sections

28A.175.010 Educational progress information—Reporting requirements—Rules—Reports to legislature.

28A.175.010 Educational progress information—Reporting requirements—Rules—Reports to legislature. Each school district shall account for the educational progress of each of its students. To achieve this, school districts shall be required to report annually to the superintendent of public instruction:

(1) For students enrolled in each of a school district's high school programs:

(a) The number of students eligible for graduation in fewer than four years;

(b) The number of students who graduate in four years;

(c) The number of students who remain in school for more than four years but who eventually graduate and the number of students who remain in school for more than four years but do not graduate;

(d) The number of students who transfer to other schools;

(e) The number of students who enter from other schools;

(f) The number of students in the ninth through twelfth grade who drop out of school over a four-year period; and

(g) The number of students whose status is unknown.

(2) Dropout rates of students in each of the grades nine through twelve.

(3) Dropout rates for student populations in each of the grades nine through twelve by:

(a) Ethnicity;

(b) Gender;

(c) Socioeconomic status; and

(d) Disability status.

(4) The causes or reasons, or both, attributed to students for having dropped out of school in grades nine through twelve.

(5) The superintendent of public instruction shall adopt rules under chapter 34.05 RCW to assure uniformity in the information districts are required to report under subsections (1) through (4) of this section. In developing rules, the superintendent of public instruction shall consult with school districts, including administrative and counseling personnel, with regard to the methods through which information is to be collected and reported.

(6) In reporting on the causes or reasons, or both, attributed to students for having dropped out of school, school building officials shall, to the extent reasonably practical, obtain such information directly from students. In lieu of obtaining such information directly from students, building principals and counselors shall identify the causes or reasons, or both, based on their professional judgment.

(7) The superintendent of public instruction shall report annually to the legislature the information collected under subsections (1) through (4) of this section. [1991 c 235 § 4; 1986 c 151 § 1. Formerly RCW 28A.58.087.]

Chapter 28A.180

TRANSITIONAL BILINGUAL INSTRUCTION PROGRAM

Sections

28A.180.010	Transitional bilingual instruction program—Short title—Purpose.
28A.180.020	Transitional bilingual instruction program—Annual report by superintendent of public instruction.
28A.180.030	Transitional bilingual instruction program—Definitions.
28A.180.040	Transitional bilingual instruction program—School board duties.
28A.180.060	Transitional bilingual instruction program—Guidelines and rules.
28A.180.080	Transitional bilingual instruction program—Budget request for—Allocation of moneys, priorities—English language skills test.

28A.180.010 Transitional bilingual instruction program—Short title—Purpose. RCW 28A.180.010 through 28A.180.080 shall be known and cited as "The Transitional Bilingual Instruction Act." The legislature finds that there are large numbers of children who come from homes where the primary language is other than English. The legislature finds that a transitional bilingual education program can meet the needs of these children. Pursuant to the policy of this state to insure equal educational opportunity to every child in this state, it is the purpose of RCW 28A.180.010 through 28A.180.080 to provide for the implementation of transitional bilingual education programs in the public schools, and to provide supplemental financial assistance to school districts to meet the extra costs of these programs. [1990 c 33 § 163; 1984 c 124 § 1; 1979 c 95 § 1. Formerly RCW 28A.58.800.]

Severability—1979 c 95: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1979 c 95 § 9.]

28A.180.020 Transitional bilingual instruction program—Annual report by superintendent of public instruction. The superintendent of public instruction shall review annually the transitional bilingual instruction program and shall submit a report of such review to the legislature on or before January 1 of each year. [1984 c 124 § 8. Formerly RCW 28A.58.801.]

28A.180.030 Transitional bilingual instruction program—Definitions. As used in RCW 28A.180.010 through 28A.180.080, unless the context thereof indicates to the contrary:

(1) "Transitional bilingual instruction" means:

(a) A system of instruction which uses two languages, one of which is English, as a means of instruction to build upon and expand language skills to enable the pupil to achieve competency in English. Concepts and information are introduced in the primary language and reinforced in the

second language: PROVIDED, That the program shall include testing in the subject matter in English; or

(b) In those cases in which the use of two languages is not practicable as established by the superintendent of public instruction and unless otherwise prohibited by law, an alternative system of instruction which may include English as a second language and is designed to enable the pupil to achieve competency in English.

(2) "Primary language" means the language most often used by the student for communication in his/her home.

(3) "Eligible pupil" means any enrollee of the school district whose primary language is other than English and whose English language skills are sufficiently deficient or absent to impair learning. [1990 c 33 § 164; 1984 c 124 § 2; 1979 c 95 § 2. Formerly RCW 28A.58.802.]

Severability—1979 c 95: See note following RCW 28A.180.010.

28A.180.040 Transitional bilingual instruction program—School board duties. Every school district board of directors shall:

(1) Make available to each eligible pupil transitional bilingual instruction to achieve competency in English, in accord with rules of the superintendent of public instruction.

(2) Wherever feasible, ensure that communications to parents emanating from the schools shall be appropriately bilingual for those parents of pupils in the bilingual instruction program.

(3) Determine, by administration of an English test approved by the superintendent of public instruction the number of eligible pupils enrolled in the school district at the beginning of a school year and thereafter during the year as necessary in individual cases. If, however, a preliminary interview indicates little or no English speaking ability, eligibility testing shall not be necessary.

(4) Before the conclusion of each school year, measure each eligible pupil's improvement in learning the English language by means of a test approved by the superintendent of public instruction.

(5) Provide in-service training for teachers, counselors, and other staff, who are involved in the district's transitional bilingual program. Such training shall include appropriate instructional strategies for children of culturally different backgrounds, use of curriculum materials, and program models. [1984 c 124 § 3; 1979 c 95 § 3. Formerly RCW 28A.58.804.]

Effective date—1979 c 95 § 3: "Section 3 of this act shall take effect September 1, 1980." [1979 c 95 § 7.]

Severability—1979 c 95: See note following RCW 28A.180.010.

28A.180.060 Transitional bilingual instruction program—Guidelines and rules. The superintendent of public instruction shall:

(1) Promulgate and issue program development guidelines to assist school districts in preparing their programs;

(2) Promulgate rules for implementation of RCW 28A.180.010 through 28A.180.080 in accordance with chapter 34.05 RCW. The rules shall be designed to maximize the role of school districts in selecting programs appropriate to meet the needs of eligible students. The rules shall identify the process and criteria to be used to determine when a student is no longer eligible for transitional bilingual

instruction pursuant to RCW 28A.180.010 through 28A.180.080. [1990 c 33 § 165; 1984 c 124 § 5; 1979 c 95 § 5. Formerly RCW 28A.58.808.]

Severability—1979 c 95: See note following RCW 28A.180.010.

28A.180.080 Transitional bilingual instruction program—Budget request for—Allocation of moneys, priorities—English language skills test. The superintendent of public instruction shall prepare and submit biennially to the governor and the legislature a budget request for bilingual instruction programs. Moneys appropriated by the legislature for the purposes of RCW 28A.180.010 through 28A.180.080 shall be allocated by the superintendent of public instruction to school districts for the sole purpose of operating an approved bilingual instruction program; priorities for funding shall exist for the early elementary grades. No moneys shall be allocated pursuant to this section to fund more than three school years of bilingual instruction for each eligible pupil within a district: PROVIDED, That such moneys may be allocated to fund more than three school years of bilingual instruction for any pupil who fails to demonstrate improvement in English language skills adequate to remove impairment of learning when taught only in English. The superintendent of public instruction shall set standards and approve a test for the measurement of such English language skills. [1995 c 335 § 601; 1990 c 33 § 167; 1979 c 95 § 6. Formerly RCW 28A.58.810.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Severability—1979 c 95: See note following RCW 28A.180.010.

Chapter 28A.185

HIGHLY CAPABLE STUDENTS

Sections

28A.185.010	Program—Duties of superintendent of public instruction.
28A.185.020	Funding.
28A.185.030	Programs—Authority of local school districts—Selection of students.
28A.185.040	Contracts with University of Washington for education of highly capable students at early entrance program or transition school—Allocation of funds—Rules.

28A.185.010 Program—Duties of superintendent of public instruction. Pursuant to rules and regulations adopted by the superintendent of public instruction for the administration of this chapter, the superintendent of public instruction shall carry out a program for highly capable students. Such program may include conducting, coordinating and aiding in research (including pilot programs), disseminating information to local school districts, providing statewide staff development, and allocating to school districts supplementary funds for additional costs of district programs, as provided by RCW 28A.185.020. [1984 c 278 § 12. Formerly RCW 28A.16.040.]

Severability—1984 c 278: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 278 § 24.]

28A.185.020 Funding. Supplementary funds as may be provided by the state for this program, in accordance with RCW 28A.150.370, shall be categorical funding on an excess cost basis based upon a per student amount not to exceed three percent of any district's full-time equivalent enrollment. [1990 c 33 § 168; 1984 c 278 § 14. Formerly RCW 28A.16.050.]

Severability—1984 c 278: See note following RCW 28A.185.010.

28A.185.030 Programs—Authority of local school districts—Selection of students. Local school districts may establish and operate, either separately or jointly, programs for highly capable students. Such authority shall include the right to employ and pay special instructors and to operate such programs jointly with a public institution of higher education. Local school districts which establish and operate programs for highly capable students shall adopt identification procedures and provide educational opportunities as follows:

(1) In accordance with rules and regulations adopted by the superintendent of public instruction, school districts shall implement procedures for nomination, assessment and selection of their most highly capable students. Nominations shall be based upon data from teachers, other staff, parents, students, and members of the community. Assessment shall be based upon a review of each student's capability as shown by multiple criteria intended to reveal, from a wide variety of sources and data, each student's unique needs and capabilities. Selection shall be made by a broadly based committee of professionals, after consideration of the results of the multiple criteria assessment.

(2) Students selected pursuant to procedures outlined in this section shall be provided, to the extent feasible, an educational opportunity which takes into account each student's unique needs and capabilities and the limits of the resources and program options available to the district, including those options which can be developed or provided by using funds allocated by the superintendent of public instruction for that purpose. [1984 c 278 § 13. Formerly RCW 28A.16.060.]

Severability—1984 c 278: See note following RCW 28A.185.010.

28A.185.040 Contracts with University of Washington for education of highly capable students at early entrance program or transition school—Allocation of funds—Rules. (1) The superintendent of public instruction shall contract with the University of Washington for the education of highly capable students below eighteen years of age who are admitted or enrolled at such early entrance program or transition school as are now or hereafter established and maintained by the University of Washington.

(2) The superintendent of public instruction shall allocate directly to the University of Washington all of the state basic education allocation moneys, state categorical moneys excepting categorical moneys provided for the highly capable students program under RCW 28A.185.010 through 28A.185.030, and federal moneys generated by a student while attending an early entrance program or transition school at the University of Washington. The allocations shall be according to each student's school district of residence. The expenditure of such moneys shall

be limited to selection of students, precollege instruction, special advising, and related activities necessary for the support of students while attending a transition school or early entrance program at the University of Washington. Such allocations may be supplemented with such additional payments by other parties as necessary to cover the actual and full costs of such instruction and other activities.

(3) The provisions of subsections (1) and (2) of this section shall apply during the first three years a student is attending a transition school or early entrance program at the University of Washington or through the academic school year in which the student turns eighteen, whichever occurs first. No more than thirty students shall be admitted and enrolled in the transition school at the University of Washington in any one year.

(4) The superintendent of public instruction shall adopt or amend rules pursuant to chapter 34.05 RCW implementing subsection (2) of this section before August 31, 1989. [1990 c 33 § 169; 1989 c 233 § 9; 1987 c 518 § 222. Formerly RCW 28A.58.217.]

Intent—1994 c 166; 1987 c 518: See note following RCW 28A.215.150.

Severability—1987 c 518: See note following RCW 28A.215.150.

Chapter 28A.190

RESIDENTIAL EDUCATION PROGRAMS

Sections

28A.190.010	Educational program for juveniles in detention facilities.
28A.190.020	Educational programs for residential school residents—"Residential school" defined.
28A.190.030	Educational programs for residential school residents—School district to conduct—Scope of duties and authority.
28A.190.040	Educational programs for residential school residents—Duties and authority of DSHS and residential school superintendent.
28A.190.050	Educational programs for residential school residents—Contracts between school district and DSHS—Scope.
28A.190.060	Educational programs for residential school residents—DSHS to give notice when need for reduction of staff—Liability upon failure.

28A.190.010 Educational program for juveniles in detention facilities. A program of education shall be provided for by the department of social and health services and the several school districts of the state for common school age persons who have been admitted to facilities staffed and maintained or contracted pursuant to RCW 13.40.320 by the department of social and health services for the education and treatment of juveniles who have been diverted or who have been found to have committed a juvenile offense. The division of duties, authority, and liabilities of the department of social and health services and the several school districts of the state respecting the educational programs shall be the same in all respects as set forth in RCW 28A.190.030 through 28A.190.060 respecting programs of education for state residential school residents. For the purposes of this section, the term "residential school" or "schools" as used in RCW 28A.190.030 through 28A.190.060 shall be construed to mean a facility staffed and maintained by the department of social and health

services or a program established under RCW 13.40.320, for the education and treatment of juvenile offenders on probation or parole. Nothing in this section shall prohibit a school district from utilizing the services of an educational service district subject to RCW 28A.310.180. [1996 c 84 § 1; 1990 c 33 § 170; 1983 c 98 § 3. Formerly RCW 28A.58.765.]

Juvenile facilities, educational programs: RCW 13.04.145.

28A.190.020 Educational programs for residential school residents—"Residential school" defined. The term "residential school" as used in RCW 28A.190.020 through 28A.190.060, 72.01.200, 72.05.010 and 72.05.130, each as now or hereafter amended, shall mean Green Hill school, Maple Lane school, Naselle Youth Camp, Cedar Creek Youth Camp, Mission Creek Youth Camp, Echo Glen, Lakeland Village, Rainier school, Yakima Valley school, Interlake school, Fircrest school, Francis Haddon Morgan Center, the Child Study and Treatment Center and Secondary School of Western State Hospital, and such other schools, camps, and centers as are now or hereafter established by the department of social and health services for the diagnosis, confinement and rehabilitation of juveniles committed by the courts or for the care and treatment of persons who are exceptional in their needs by reason of mental and/or physical deficiency: **PROVIDED,** That the term shall not include the state schools for the deaf and blind or adult correctional institutions. [1990 c 33 § 171; 1979 ex.s. c 217 § 1. Formerly RCW 28A.58.770.]

Effective date—1979 ex.s. c 217: "This act shall take effect on September 1, 1979." [1979 ex.s. c 217 § 16.]

Severability—1979 ex.s. c 217: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 217 § 17.]

28A.190.030 Educational programs for residential school residents—School district to conduct—Scope of duties and authority. Each school district within which there is located a residential school shall, singly or in concert with another school district pursuant to RCW 28A.335.160 and 28A.225.250 or pursuant to chapter 39.34 RCW, conduct a program of education, including related student activities, for residents of the residential school. Except as otherwise provided for by contract pursuant to RCW 28A.190.050, the duties and authority of a school district and its employees to conduct such a program shall be limited to the following:

- (1) The employment, supervision and control of administrators, teachers, specialized personnel and other persons, deemed necessary by the school district for the conduct of the program of education;
- (2) The purchase, lease or rental and provision of textbooks, maps, audio-visual equipment, paper, writing instruments, physical education equipment and other instructional equipment, materials and supplies, deemed necessary by the school district for the conduct of the program of education;
- (3) The development and implementation, in consultation with the superintendent or chief administrator of the residential school or his or her designee, of the curriculum;
- (4) The conduct of a program of education, including related student activities, for residents who are three years of age and less than twenty-one years of age, and have not met

high school graduation requirements as now or hereafter established by the state board of education and the school district which includes:

(a) Not less than one hundred and eighty school days each school year;

(b) Special education pursuant to RCW 28A.155.010 through 28A.155.100, and vocational education, as necessary to address the unique needs and limitations of residents; and

(c) Such courses of instruction and school related student activities as are provided by the school district for nonresidential school students to the extent it is practical and judged appropriate for the residents by the school district after consultation with the superintendent or chief administrator of the residential school: PROVIDED, That a preschool special education program may be provided for residential school students with disabilities;

(5) The control of students while participating in a program of education conducted pursuant to this section and the discipline, suspension or expulsion of students for violation of reasonable rules of conduct adopted by the school district; and

(6) The expenditure of funds for the direct and indirect costs of maintaining and operating the program of education that are appropriated by the legislature and allocated by the superintendent of public instruction for the exclusive purpose of maintaining and operating residential school programs of education, and funds from federal and private grants, bequests and gifts made for the purpose of maintaining and operating the program of education. [1995 c 77 § 19; 1990 c 33 § 172; 1985 c 341 § 13; 1984 c 160 § 3; 1979 ex.s. c 217 § 2. Formerly RCW 28A.58.772.]

Effective date—1985 c 341 §§ 4, 13: See note following RCW 28A.155.020.

Severability—1984 c 160: See note following RCW 28A.155.020.

Effective date—Severability—1979 ex.s. c 217: See notes following RCW 28A.190.020.

28A.190.040 Educational programs for residential school residents—Duties and authority of DSHS and residential school superintendent. The duties and authority of the department of social and health services and of each superintendent or chief administrator of a residential school to support each program of education conducted by a school district pursuant to RCW 28A.190.030, shall include the following:

(1) The provision of transportation for residential school students to and from the sites of the program of education through the purchase, lease or rental of school buses and other vehicles as necessary;

(2) The provision of safe and healthy building and playground space for the conduct of the program of education through the construction, purchase, lease or rental of such space as necessary;

(3) The provision of furniture, vocational instruction machines and tools, building and playground fixtures, and other equipment and fixtures for the conduct of the program of education through construction, purchase, lease or rental as necessary;

(4) The provision of heat, lights, telephones, janitorial services, repair services, and other support services for the vehicles, building and playground spaces, equipment and fixtures provided for in this section;

(5) The employment, supervision and control of persons to transport students and to maintain the vehicles, building and playground spaces, equipment and fixtures, provided for in this section;

(6) Clinical and medical evaluation services necessary to a determination by the school district of the educational needs of residential school students; and

(7) Such other support services and facilities as are reasonably necessary for the conduct of the program of education. [1990 c 33 § 173; 1979 ex.s. c 217 § 3. Formerly RCW 28A.58.774.]

Effective date—Severability—1979 ex.s. c 217: See notes following RCW 28A.190.020.

28A.190.050 Educational programs for residential school residents—Contracts between school district and DSHS—Scope. Each school district required to conduct a program of education pursuant to RCW 28A.190.030, and the department of social and health services shall hereafter negotiate and execute a written contract for each school year or such longer period as may be agreed to which delineates the manner in which their respective duties and authority will be cooperatively performed and exercised, and any disputes and grievances resolved. Any such contract may provide for the performance of duties by a school district in addition to those set forth in RCW 28A.190.030 (1) through (5), including duties imposed upon the department of social and health services and its agents pursuant to RCW 28A.190.040: PROVIDED, That funds identified in RCW 28A.190.030(6) and/or funds provided by the department of social and health services are available to fully pay the direct and indirect costs of such additional duties and the district is otherwise authorized by law to perform such duties in connection with the maintenance and operation of a school district. [1990 c 33 § 174; 1979 ex.s. c 217 § 4. Formerly RCW 28A.58.776.]

Effective date—Severability—1979 ex.s. c 217: See notes following RCW 28A.190.020.

28A.190.060 Educational programs for residential school residents—DSHS to give notice when need for reduction of staff—Liability upon failure. The department of social and health services shall provide written notice on or before April 15th of each school year to the superintendent of each school district conducting a program of education pursuant to RCW 28A.190.030 through 28A.190.050 of any foreseeable residential school closure, reduction in the number of residents, or any other cause for a reduction in the school district's staff for the next school year. In the event the department of social and health services fails to provide notice as prescribed by this section, the department shall be liable and responsible for the payment of the salary and employment related costs for the next school year of each school district employee whose contract the school district would have nonrenewed but for the failure of the department to provide notice. [1990 c 33 § 175; 1979 ex.s. c 217 § 5. Formerly RCW 28A.58.778.]

Effective date—Severability—1979 ex.s. c 217: See notes following RCW 28A.190.020.

Chapter 28A.195
PRIVATE SCHOOLS

Sections

28A.195.010	Private schools—Extension programs for parents to teach children in their custody—Scope of state control.
28A.195.020	Private schools—Rights recognized.
28A.195.030	Private schools—Actions appealable under Administrative Procedure Act.
28A.195.040	Private schools—Board rules for enforcement—Racial segregation or discrimination prohibited.
28A.195.050	Private school advisory committee.
28A.195.060	Private schools must report attendance.

28A.195.010 Private schools—Extension programs for parents to teach children in their custody—Scope of state control. The legislature hereby recognizes that private schools should be subject only to those minimum state controls necessary to insure the health and safety of all the students in the state and to insure a sufficient basic education to meet usual graduation requirements. The state, any agency or official thereof, shall not restrict or dictate any specific educational or other programs for private schools except as hereinafter in this section provided.

Principals of private schools or superintendents of private school districts shall file each year with the state superintendent of public instruction a statement certifying that the minimum requirements hereinafter set forth are being met, noting any deviations. After review of the statement, the state superintendent will notify schools or school districts of those deviations which must be corrected. In case of major deviations, the school or school district may request and the state board of education may grant provisional status for one year in order that the school or school district may take action to meet the requirements. Minimum requirements shall be as follows:

(1) The minimum school year for instructional purposes shall consist of no less than one hundred eighty school days or the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220.

(2) The school day shall be the same as that required in RCW 28A.150.030 and 28A.150.220, except that the percentages of total program hour offerings as prescribed in RCW 28A.150.220 for basic skills, work skills, and optional subjects and activities shall not apply to private schools or private sectarian schools.

(3) All classroom teachers shall hold appropriate Washington state certification except as follows:

(a) Teachers for religious courses or courses for which no counterpart exists in public schools shall not be required to obtain a state certificate to teach those courses.

(b) In exceptional cases, people of unusual competence but without certification may teach students so long as a certified person exercises general supervision. Annual written statements shall be submitted to the office of the superintendent of public instruction reporting and explaining such circumstances.

(4) An approved private school may operate an extension program for parents, guardians, or persons having legal custody of a child to teach children in their custody. The extension program shall require at a minimum that:

(a) The parent, guardian, or custodian be under the supervision of an employee of the approved private school who is certified under chapter 28A.410 RCW;

(b) The planning by the certified person and the parent, guardian, or person having legal custody include objectives consistent with this subsection and subsections (1), (2), (5), (6), and (7) of this section;

(c) The certified person spend a minimum average each month of one contact hour per week with each student under his or her supervision who is enrolled in the approved private school extension program;

(d) Each student's progress be evaluated by the certified person; and

(e) The certified employee shall not supervise more than thirty students enrolled in the approved private school's extension program.

(5) Appropriate measures shall be taken to safeguard all permanent records against loss or damage.

(6) The physical facilities of the school or district shall be adequate to meet the program offered by the school or district: PROVIDED, That each school building shall meet reasonable health and fire safety requirements. However, the state board shall not require private school students to meet the student learning goals, obtain a certificate of mastery to graduate from high school, to master the essential academic learning requirements, or to be assessed pursuant to RCW 28A.630.885. However, private schools may choose, on a voluntary basis, to have their students master these essential academic learning requirements, take these assessments, and obtain certificates of mastery. A residential dwelling of the parent, guardian, or custodian shall be deemed to be an adequate physical facility when a parent, guardian, or person having legal custody is instructing his or her child under subsection (4) of this section.

(7) Private school curriculum shall include instruction of the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of appreciation of art and music, all in sufficient units for meeting state board of education graduation requirements.

(8) Each school or school district shall be required to maintain up-to-date policy statements related to the administration and operation of the school or school district.

All decisions of policy, philosophy, selection of books, teaching material, curriculum, except as in subsection (7) above provided, school rules and administration, or other matters not specifically referred to in this section, shall be the responsibility of the administration and administrators of the particular private school involved. [1993 c 336 § 1101; (1992 c 141 § 505 repealed by 1993 c 336 § 1102); 1990 c 33 § 176. Prior: 1985 c 441 § 4; 1985 c 16 § 1; 1983 c 56 § 1; 1977 ex.s. c 359 § 9; 1975 1st ex.s. c 275 § 71; 1974 ex.s. c 92 § 2. Formerly RCW 28A.02.201.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Severability—1985 c 441: See note following RCW 28A.225.010.

Severability—1983 c 56: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of

the act or the application of the provision to other persons or circumstances is not affected." [1983 c 56 § 18.]

Effective date—Severability—1977 ex.s. c 359: See notes following RCW 28A.150.200.

Authorization for private school students to ride buses—Conditions: RCW 28A.160.020.

Basic Education Act, RCW 28A.195.010 as part of: RCW 28A.150.200.

Commencement exercises—Lip reading instruction—Joint purchasing, including issuing interest bearing warrants—Budgets: RCW 28A.320.080.

Home-based instruction: RCW 28A.200.010.

Immunization program, private schools as affecting: RCW 28A.210.060 through 28A.210.170.

Part-time students—Defined—Enrollment in public schools authorized: RCW 28A.150.350.

Real property—Sale—Notice of and hearing on—Appraisal required—Broker or real estate appraiser services—Real estate sales contracts, limitation: RCW 28A.335.120.

Surplus school property, rental, lease or use of—Authorized—Limitations: RCW 28A.335.040.

Surplus texts and other educational aids, notice of availability—Student priority as to texts: RCW 28A.335.180.

28A.195.020 Private schools—Rights recognized.

The state recognizes the following rights of every private school:

(1) To teach their religious beliefs and doctrines, if any; to pray in class and in assemblies; to teach patriotism including requiring students to salute the flag of the United States if that be the custom of the particular private school.

(2) To require that there shall be on file the written consent of parents or guardians of students prior to the administration of any psychological test or the conduct of any type of group therapy. [1974 ex.s. c 92 § 3; 1971 ex.s. c 215 § 5. Formerly RCW 28A.02.220.]

Severability—1971 ex.s. c 215: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 215 § 8.]

28A.195.030 Private schools—Actions appealable under Administrative Procedure Act. Any private school may appeal the actions of the state superintendent of public instruction or state board of education as provided in chapter 34.05 RCW. [1974 ex.s. c 92 § 4; 1971 ex.s. c 215 § 6. Formerly RCW 28A.02.230.]

28A.195.040 Private schools—Board rules for enforcement—Racial segregation or discrimination prohibited. The state board of education shall promulgate rules and regulations for the enforcement of RCW 28A.195.010 through 28A.195.040, 28A.225.010, and 28A.305.130, including a provision which denies approval to any school engaging in a policy of racial segregation or discrimination. [1990 c 33 § 177; 1983 c 3 § 29; 1974 ex.s. c 92 § 5; 1971 ex.s. c 215 § 7. Formerly RCW 28A.02.240.]

28A.195.050 Private school advisory committee. The superintendent of public instruction is hereby directed to appoint a private school advisory committee that is broadly representative of educators, legislators, and various private school groups in the state of Washington. [1984 c 40 § 1; 1974 ex.s. c 92 § 6. Formerly RCW 28A.02.250.]

Severability—1984 c 40: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 40 § 17.]

28A.195.060 Private schools must report attendance. It shall be the duty of the administrative or executive authority of every private school in this state to report to the educational service district superintendent on or before the thirtieth day of June in each year, on a form to be furnished, such information as may be required by the superintendent of public instruction, to make complete the records of education work pertaining to all children residing within the state. [1975 1st ex.s. c 275 § 70; 1969 ex.s. c 176 § 111; 1969 ex.s. c 223 § 28A.48.055. Prior: 1933 c 28 § 14; 1913 c 158 § 1; 1909 c 97 p 313 § 6; RRS § 4876. Formerly RCW 28A.48.055, 28.48.055, 28.27.020.]

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

Chapter 28A.200

HOME-BASED INSTRUCTION

Sections

28A.200.010	Home-based instruction—Duties of parents.
28A.200.020	Home-based instruction—Certain decisions responsibility of parent unless otherwise specified.

28A.200.010 Home-based instruction—Duties of parents. Each parent whose child is receiving home-based instruction under RCW 28A.225.010(4) shall have the duty to:

(1) File annually a signed declaration of intent that he or she is planning to cause his or her child to receive home-based instruction. The statement shall include the name and age of the child, shall specify whether a certificated person will be supervising the instruction, and shall be written in a format prescribed by the superintendent of public instruction. Each parent shall file the statement by September 15 of the school year or within two weeks of the beginning of any public school quarter, trimester, or semester with the superintendent of the public school district within which the parent resides or the district that accepts the transfer, and the student shall be deemed a transfer student of the nonresident district. Parents may apply for transfer under RCW 28A.225.220;

(2) Ensure that test scores or annual academic progress assessments and immunization records, together with any other records that are kept relating to the instructional and educational activities provided, are forwarded to any other public or private school to which the child transfers. At the time of a transfer to a public school, the superintendent of the local school district in which the child enrolls may require a standardized achievement test to be administered and shall have the authority to determine the appropriate grade and course level placement of the child after consultation with parents and review of the child's records; and

(3) Ensure that a standardized achievement test approved by the state board of education is administered annually to the child by a qualified individual or that an annual assessment of the student's academic progress is written by a certificated person who is currently working in

the field of education. The state board of education shall not require these children to meet the student learning goals, master the essential academic learning requirements, to take the assessments, or to obtain a certificate of mastery pursuant to RCW 28A.630.885. The standardized test administered or the annual academic progress assessment written shall be made a part of the child's permanent records. If, as a result of the annual test or assessment, it is determined that the child is not making reasonable progress consistent with his or her age or stage of development, the parent shall make a good faith effort to remedy any deficiency.

Failure of a parent to comply with the duties in this section shall be deemed a failure of such parent's child to attend school without valid justification under RCW 28A.225.020. Parents who do comply with the duties set forth in this section shall be presumed to be providing home-based instruction as set forth in RCW 28A.225.010(4). [1995 c 52 § 1; 1993 c 336 § 1103; 1990 c 33 § 178; 1985 c 441 § 2. Formerly RCW 28A.27.310.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

Severability—1985 c 441: See note following RCW 28A.225.010.

Part-time students—Defined—Enrollment in public schools authorized: RCW 28A.150.350.

Private schools—Extension programs for parents to teach children in their custody: RCW 28A.195.010.

28A.200.020 Home-based instruction—Certain decisions responsibility of parent unless otherwise specified. The state hereby recognizes that parents who are causing their children to receive home-based instruction under RCW 28A.225.010(4) shall be subject only to those minimum state laws and regulations which are necessary to insure that a sufficient basic educational opportunity is provided to the children receiving such instruction. Therefore, all decisions relating to philosophy or doctrine, selection of books, teaching materials and curriculum, and methods, timing, and place in the provision or evaluation of home-based instruction shall be the responsibility of the parent except for matters specifically referred to in this chapter. [1990 c 33 § 179; 1985 c 441 § 3. Formerly RCW 28A.27.320.]

Severability—1985 c 441: See note following RCW 28A.225.010.

Chapter 28A.205

EDUCATION CENTERS

(Formerly: Educational clinics)

Sections

28A.205.010	"Education center," "basic academic skills," defined— Certification as education center and withdrawal thereof.
28A.205.020	Reimbursement only for eligible common school dropouts.
28A.205.030	Reentry of prior dropouts into common schools, rules—Eligibility for GED test.
28A.205.040	Reimbursement procedure—Schedule of fees, revision—Priority for payment—Review of clinic's records.
28A.205.050	Rules.
28A.205.070	Allocation of funds—Criteria—Duties of superintendent.

28A.205.080	Legislative findings—Distribution of funds— Cooperation with school districts.
28A.205.090	Inclusion of education centers program in biennial budget request—Quarterly plans—Funds— Payment.

28A.205.010 "Education center," "basic academic skills," defined—Certification as education center and withdrawal thereof. (1) As used in this chapter, unless the context thereof shall clearly indicate to the contrary:

"Education center" means any private school operated on a profit or nonprofit basis which does the following:

(a) Is devoted to the teaching of basic academic skills, including specific attention to improvement of student motivation for achieving, and employment orientation.

(b) Operates on a clinical, client centered basis. This shall include, but not be limited to, performing diagnosis of individual educational abilities, determination and setting of individual goals, prescribing and providing individual courses of instruction therefor, and evaluation of each individual client's progress in his or her educational program.

(c) Conducts courses of instruction by professionally trained personnel certificated by the state board of education according to rules and regulations promulgated for the purposes of this chapter and providing, for certification purposes, that a year's teaching experience in an education center shall be deemed equal to a year's teaching experience in a common or private school.

(2) For purposes of this chapter, basic academic skills shall include the study of mathematics, speech, language, reading and composition, science, history, literature and political science or civics; it shall not include courses of a vocational training nature and shall not include courses deemed nonessential to the accrediting of the common schools or the approval of private schools under RCW 28A.305.130.

(3) The state board of education shall certify an education center only upon application and (a) determination that such school comes within the definition thereof as set forth in subsection (1) above and (b) demonstration on the basis of actual educational performance of such applicants' students which shows after consideration of their students' backgrounds, educational gains that are a direct result of the applicants' educational program. Such certification may be withdrawn if the board finds that a center fails to provide adequate instruction in basic academic skills. No education center certified by the state board of education pursuant to this section shall be deemed a common school under RCW 28A.150.020 or a private school for the purposes of RCW 28A.195.010 through 28A.195.050. [1993 c 211 § 1; 1990 c 33 § 180; 1983 c 3 § 38; 1977 ex.s. c 341 § 1. Formerly RCW 28A.97.010.]

Severability—1977 ex.s. c 341: "If any provision of this 1977 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 341 § 7.]

28A.205.020 Reimbursement only for eligible common school dropouts. Only eligible common school dropouts shall be enrolled in a certified education center for reimbursement by the superintendent of public instruction as provided in RCW 28A.205.040. No person shall be considered an eligible common school dropout who (1) has

completed high school; (2) who has not reached his or her thirteenth birthday or has passed his or her twentieth birthday, or (3) shows proficiency beyond the high school level in a test approved by the superintendent of public instruction to be given as part of the initial diagnostic procedure, or (4) until one month has passed after he or she has dropped out of any common school and the education center has received written verification from a school official of the common school last attended in this state that such person is no longer in attendance at such school, unless such center has been requested to admit such person by written communication of the board of directors or its designee, of that common school, or unless such person is unable to attend a particular common school because of disciplinary reasons, including suspension and/or expulsion therefrom. The fact that any person may be subject to RCW 28A.225.010 through *28A.225.150, 28A.200.010, and 28A.200.020 shall not affect his or her qualifications as an eligible common school dropout under this chapter. [1993 c 211 § 2; 1990 c 33 § 181; 1979 ex.s. c 174 § 1; 1977 ex.s. c 341 § 2. Formerly RCW 28A.97.020.]

*Reviser's note: RCW 28A.225.150 was repealed by 1995 c 312 § 86.

Severability—1979 ex.s. c 174: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 174 § 4.]

Severability—1977 ex.s. c 341: See note following RCW 28A.205.010.

28A.205.030 Reentry of prior dropouts into common schools, rules—Eligibility for GED test. The superintendent of public instruction shall adopt, by rules, policies and procedures to permit a prior common school dropout to reenter at the grade level appropriate to such individual's ability: PROVIDED, That such individual shall be placed with the class he or she would be in had he or she not dropped out and graduate with that class, if the student's ability so permits notwithstanding any loss of credits prior to reentry and if such student earns credits at the normal rate subsequent to reentry.

Notwithstanding any other provision of law, any certified education center student sixteen years of age or older, upon completion of an individual student program, shall be eligible to take the general educational development test as given throughout the state. [1993 c 218 § 2; 1993 c 211 § 3; 1990 c 33 § 182; 1977 ex.s. c 341 § 3. Formerly RCW 28A.97.030.]

Reviser's note: This section was amended by 1993 c 211 § 3 and by 1993 c 218 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1977 ex.s. c 341: See note following RCW 28A.205.010.

28A.205.040 Reimbursement procedure—Schedule of fees, revision—Priority for payment—Review of clinic's records. From funds appropriated for that purpose, the superintendent of public instruction shall pay to a certified clinic on a monthly basis for each student enrolled in compliance with RCW 28A.205.020, fees in accordance with the following conditions:

(1)(a) The fee for the initial diagnostic procedure shall be not more than fifty dollars per student, and hourly fees for each student shall be sixteen dollars if the class size is no greater than one, ten dollars if the class size is at least two and no greater than five, and five dollars if the class size is at least six: PROVIDED, That revisions in such fees proposed by an education clinic shall become effective after thirty days notice unless the superintendent finds such a revision is unreasonable in which case the revision shall not take effect: PROVIDED FURTHER, That an education clinic may, within fifteen days after such a finding by the superintendent, file notification of appeal with the state board of education which shall, no later than its second regularly scheduled meeting following notification of such appeal, either grant or deny the proposed revision: AND PROVIDED FURTHER, That the administration of any general education development test shall not be a part of such initial diagnostic procedure.

(b) Reimbursements shall not be made for students who are absent.

(c) No clinic shall make any charge to any student, or the student's parent, guardian or custodian, for whom a fee is being received under the provisions of this section.

(2) Payments shall be made from available funds first to those clinic(s) which have in the judgment of the superintendent demonstrated superior performance based upon consideration of students' educational gains taking into account such students' backgrounds, and upon consideration of cost effectiveness. In considering the cost effectiveness of nonprofit clinics the superintendent shall take into account not only payments made under this section but also factors such as tax exemptions, direct and indirect subsidies or any other cost to taxpayers at any level of government which result from such nonprofit status.

(3) To be eligible for such payment, every such clinic, without prior notice, shall permit a review of its accounting records by personnel of the state auditor during normal business hours.

(4) If total funds for this purpose approach depletion, the superintendent shall notify the clinics of the date after which further funds for reimbursement of the clinics' services will be exhausted. [1990 c 33 § 183; 1979 ex.s. c 174 § 2; 1977 ex.s. c 341 § 4. Formerly RCW 28A.97.040.]

Severability—1979 ex.s. c 174: See note following RCW 28A.205.020.

Severability—1977 ex.s. c 341: See note following RCW 28A.205.010.

28A.205.050 Rules. In accordance with chapter 34.05 RCW, the administrative procedure act, the state board of education with respect to the matter of certification, and the superintendent of public instruction with respect to all other matters, shall have the power and duty to make the necessary rules to carry out the purpose and intent of this chapter. [1995 c 335 § 201; 1993 c 211 § 4; 1990 c 33 § 184; 1977 ex.s. c 341 § 5. Formerly RCW 28A.97.050.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Severability—1977 ex.s. c 341: See note following RCW 28A.205.010.

28A.205.070 Allocation of funds—Criteria—Duties of superintendent. In allocating funds appropriated for education centers, the superintendent of public instruction shall:

(1) Place priority upon stability and adequacy of funding for education centers that have demonstrated superior performance as defined in RCW 28A.205.040(2).

(2) Initiate and maintain a competitive review process to select new or expanded center programs in unserved or underserved areas. The criteria for review of competitive proposals for new or expanded education center services shall include but not be limited to:

(a) The proposing organization shall have obtained certification from the state board of education as provided in RCW 28A.205.010;

(b) The cost-effectiveness of the proposal; and

(c) The availability of committed nonstate funds to support, enrich, or otherwise enhance the basic program.

(3) In selecting areas for new or expanded education center programs, the superintendent of public instruction shall consider factors including but not limited to:

(a) The proportion and total number of dropouts unserved by existing center programs, if any;

(b) The availability within the geographic area of programs other than education centers which address the basic educational needs of dropouts; and

(c) Waiting lists or other evidence of demand for expanded education center programs.

(4) In the event of any curtailment of services resulting from lowered legislative appropriations, the superintendent of public instruction shall issue pro rata reductions to all centers funded at the time of the lowered appropriation. Individual centers may be exempted from such pro rata reductions if the superintendent finds that such reductions would impair the center's ability to operate at minimally acceptable levels of service. In the event of such exceptions, the superintendent shall determine an appropriate rate for reduction to permit the center to continue operation.

(5) In the event that an additional center or centers become certified and apply to the superintendent for funds to be allocated from a legislative appropriation which does not increase from the immediately preceding biennium, or does not increase sufficiently to allow such additional center or centers to operate at minimally acceptable levels of service without reducing the funds available to previously funded centers, the superintendent shall not provide funding for such additional center or centers from such appropriation. [1993 c 211 § 6; 1990 c 33 § 185; 1985 c 434 § 3. Formerly RCW 28A.97.120.]

Intent—1985 c 434: "It is the intent of this act to provide for an equitable distribution of funds appropriated for educational clinics, to stabilize existing programs, and to provide a system for orderly expansion or retrenchment in the event of future increases or reductions in program appropriations." [1985 c 434 § 1.]

28A.205.080 Legislative findings—Distribution of funds—Cooperation with school districts. The legislature recognizes that education centers provide a necessary and effective service for students who have dropped out of common school programs. Education centers have demonstrated success in preparing such youth for productive roles in society and are an integral part of the state's program to

address the needs of students who have dropped out of school. The superintendent of public instruction shall distribute funds, consistent with legislative appropriations, allocated specifically for education centers in accord with chapter 28A.205 RCW. The legislature encourages school districts to explore cooperation with education centers. [1993 c 211 § 7; 1990 c 33 § 186; 1987 c 518 § 220. Formerly RCW 28A.97.125.]

Intent—1994 c 166; 1987 c 518: See note following RCW 28A.215.150.

Severability—1987 c 518: See note following RCW 28A.215.150.

28A.205.090 Inclusion of education centers program in biennial budget request—Quarterly plans—Funds—Payment. The superintendent shall include the education centers program in the biennial budget request. Contracts between the superintendent of public instruction and the education centers shall include quarterly plans which provide for relatively stable student enrollment but take into consideration anticipated seasonal variations in enrollment in the individual centers. Funds which are not expended by a center during the quarter for which they were planned may be carried forward to subsequent quarters of the fiscal year. The superintendent shall make payments to the centers on a monthly basis pursuant to RCW 28A.205.040. [1993 c 211 § 8; 1990 c 33 § 187; 1985 c 434 § 4. Formerly RCW 28A.97.130.]

Intent—1985 c 434: See note following RCW 28A.205.070.

Chapter 28A.210

HEALTH—SCREENING AND REQUIREMENTS

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State board of health: Chapter 43.20 RCW.

28A.210.010 Contagious diseases, limiting contact—Rules and regulations. The state board of health, after consultation with the superintendent of public instruction, shall adopt reasonable rules and regulations regarding the presence of persons on or about any school premises who have, or who have been exposed to, contagious diseases deemed by the state board of health as dangerous to the public health. Such rules and regulations shall specify reasonable and precautionary procedures as to such presence and/or readmission of such persons and may include the requirement for a certificate from a licensed physician that there is no danger of contagion. The superintendent of public instruction shall print and distribute the rules and regulations of the state board of health above provided to appropriate school officials and personnel. [1971 c 32 § 1; 1969 ex.s. c 223 § 28A.31.010. Prior: 1909 c 97 p 262 § 5; RRS § 4689; prior: 1897 c 118 § 68; 1890 p 372 § 47. Formerly RCW 28A.31.010, 28.31.010.]

28A.210.020 Visual and auditory screening of pupils—Rules and regulations. Every board of school directors shall have the power, and it shall be its duty to provide for and require screening for the visual and auditory acuity of all children attending schools in their districts to ascertain which if any of such children have defects sufficient to retard them in their studies. Auditory and visual screening shall be made in accordance with procedures and standards adopted by rule or regulation of the state board of health. Prior to the adoption or revision of such rules or regulations the state board of health shall seek the recommendations of the superintendent of public instruction regarding the administration of visual and auditory screening and the qualifications of persons competent to administer such screening. [1971 c 32 § 2; 1969 ex.s. c 223 § 28A.31.030. Prior: 1941 c 202 § 1; Rem. Supp. 1941 § 4689-1. Formerly RCW 28A.31.030, 28.31.030.]

28A.210.030 Visual and auditory screening of pupils—Record of screening—Forwarding of records,

recommendations and data. The person or persons completing the screening prescribed in RCW 28A.210.020 shall promptly prepare a record of the screening of each child found to have, or suspected of having, reduced visual and/or auditory acuity in need of attention, including the special education services provided by RCW 28A.155.010 through 28A.155.100, and send copies of such records and recommendations to the parents or guardians of such children and shall deliver the original records to the appropriate school official who shall preserve such records and forward to the superintendent of public instruction and the secretary of health visual and auditory data as requested by such officials. [1991 c 3 § 289; 1990 c 33 § 188; 1971 c 32 § 3; 1969 ex.s. c 223 § 28A.31.040. Prior: 1941 c 202 § 2; Rem. Supp. 1941 § 4689-2. Formerly RCW 28A.31.040, 28.31.040.]

28A.210.040 Visual and auditory screening of pupils—Rules and regulations, forms used in screenings, distribution. The superintendent of public instruction shall print and distribute to appropriate school officials the rules and regulations adopted by the state board of health pursuant to RCW 28A.210.020 and the recommended records and forms to be used in making and reporting such screenings. [1990 c 33 § 189; 1973 c 46 § 1. Prior: 1971 c 48 § 12; 1971 c 32 § 4; 1969 ex.s. c 223 § 28A.31.050; prior: 1941 c 202 § 3; RRS § 4689-3. Formerly RCW 28A.31.050, 28.31.050.]

Severability—1973 c 46: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 46 § 5.]

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.210.060 Immunization program—Purpose. In enacting RCW 28A.210.060 through 28A.210.170, it is the judgment of the legislature that it is necessary to protect the health of the public and individuals by providing a means for the eventual achievement of full immunization of school-age children against certain vaccine-preventable diseases. [1990 c 33 § 190; 1984 c 40 § 3; 1979 ex.s. c 118 § 1. Formerly RCW 28A.31.100.]

Severability—1984 c 40: See note following RCW 28A.195.050.

Effective date—1979 ex.s. c 118: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on September 1, 1979." [1979 ex.s. c 118 § 13.]

Severability—1979 ex.s. c 118: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 118 § 16.]

Immunization plan: RCW 43.70.525.

28A.210.070 Immunization program—Definitions. As used in RCW 28A.210.060 through 28A.210.170:

(1) "Chief administrator" shall mean the person with the authority and responsibility for the immediate supervision of the operation of a school or day care center as defined in this section or, in the alternative, such other person as may hereafter be designated in writing for the purposes of RCW 28A.210.060 through 28A.210.170 by the statutory or corporate board of directors of the school district, school, or

day care center or, if none, such other persons or person with the authority and responsibility for the general supervision of the operation of the school district, school or day care center.

(2) "Full immunization" shall mean immunization against certain vaccine-preventable diseases in accordance with schedules and with immunizing agents approved by the state board of health.

(3) "Local health department" shall mean the city, town, county, district or combined city-county health department, board of health, or health officer which provides public health services.

(4) "School" shall mean and include each building, facility, and location at or within which any or all portions of a preschool, kindergarten and grades one through twelve program of education and related activities are conducted for two or more children by or in behalf of any public school district and by or in behalf of any private school or private institution subject to approval by the state board of education pursuant to RCW 28A.305.130(6), 28A.195.010 through 28A.195.050, and 28A.410.120.

(5) "Day care center" shall mean an agency which regularly provides care for a group of thirteen or more children for periods of less than twenty-four hours and is licensed pursuant to chapter 74.15 RCW.

(6) "Child" shall mean any person, regardless of age, in attendance at a public or private school or a licensed day care center. [1990 c 33 § 191; 1985 c 49 § 2; 1984 c 40 § 4; 1979 ex.s. c 118 § 2. Formerly RCW 28A.31.102.]

Severability—1984 c 40: See note following RCW 28A.195.050.

Effective date—Severability—1979 ex.s. c 118: See notes following RCW 28A.210.060.

28A.210.080 Immunization program—Attendance of child conditioned upon presentation of alternative proofs. The attendance of every child at every public and private school in the state and licensed day care center shall be conditioned upon the presentation before or on each child's first day of attendance at a particular school or center, of proof of either (1) full immunization, (2) the initiation of and compliance with a schedule of immunization, as required by rules of the state board of health, or (3) a certificate of exemption as provided for in RCW 28A.210.090. The attendance at the school or the day care center during any subsequent school year of a child who has initiated a schedule of immunization shall be conditioned upon the presentation of proof of compliance with the schedule on the child's first day of attendance during the subsequent school year. Once proof of full immunization or proof of completion of an approved schedule has been presented, no further proof shall be required as a condition to attendance at the particular school or center. [1990 c 33 § 192; 1985 c 49 § 1; 1979 ex.s. c 118 § 3. Formerly RCW 28A.31.104.]

Effective date—Severability—1979 ex.s. c 118: See notes following RCW 28A.210.060.

28A.210.090 Immunization program—Exemptions from on presentation of alternative certifications. Any child shall be exempt in whole or in part from the immunization measures required by RCW 28A.210.060 through

28A.210.170 upon the presentation of any one or more of the following, on a form prescribed by the department of health:

(1) A written certification signed by any physician licensed to practice medicine pursuant to chapter 18.71 or 18.57 RCW that a particular vaccine required by rule of the state board of health is, in his or her judgment, not advisable for the child: PROVIDED, That when it is determined that this particular vaccine is no longer contraindicated, the child will be required to have the vaccine;

(2) A written certification signed by any parent or legal guardian of the child or any adult in loco parentis to the child that the religious beliefs of the signator are contrary to the required immunization measures; and

(3) A written certification signed by any parent or legal guardian of the child or any adult in loco parentis to the child that the signator has either a philosophical or personal objection to the immunization of the child. [1991 c 3 § 290; 1990 c 33 § 193; 1984 c 40 § 5; 1979 ex.s. c 118 § 4. Formerly RCW 28A.31.106.]

Severability—1984 c 40: See note following RCW 28A.195.050.

Effective date—Severability—1979 ex.s. c 118: See notes following RCW 28A.210.060.

28A.210.100 Immunization program—Source of immunizations—Written records. The immunizations required by RCW 28A.210.060 through 28A.210.170 may be obtained from any private or public source desired: PROVIDED, That the immunization is administered and records are made in accordance with the regulations of the state board of health. Any person or organization administering immunizations shall furnish each person immunized, or his or her parent or legal guardian, or any adult in loco parentis to the child, with a written record of immunization given in a form prescribed by the state board of health. [1990 c 33 § 194; 1984 c 40 § 7; 1979 ex.s. c 118 § 6. Formerly RCW 28A.31.110.]

Severability—1984 c 40: See note following RCW 28A.195.050.

Effective date—Severability—1979 ex.s. c 118: See notes following RCW 28A.210.060.

28A.210.110 Immunization program—Administrator's duties upon receipt of proof of immunization or certification of exemption. A child's proof of immunization or certification of exemption shall be presented to the chief administrator of the public or private school or day care center or to his or her designee for that purpose. The chief administrator shall:

(1) Retain such records pertaining to each child at the school or day care center for at least the period the child is enrolled in the school or attends such center;

(2) Retain a record at the school or day care center of the name, address, and date of exclusion of each child excluded from school or the center pursuant to RCW 28A.210.120 for not less than three years following the date of a child's exclusion;

(3) File a written annual report with the department of health on the immunization status of students or children attending the day care center at a time and on forms prescribed by the department of health; and

(4) Allow agents of state and local health departments access to the records retained in accordance with this section during business hours for the purposes of inspection and copying. [1991 c 3 § 291; 1990 c 33 § 195; 1979 ex.s. c 118 § 7. Formerly RCW 28A.31.112.]

Effective date—Severability—1979 ex.s. c 118: See notes following RCW 28A.210.060.

28A.210.120 Immunization program—Prohibiting child's presence, when—Notice to parent, guardian or adult in loco parentis, contents. It shall be the duty of the chief administrator of every public and private school and day care center to prohibit the further presence at the school or day care center for any and all purposes of each child for whom proof of immunization, certification of exemption, or proof of compliance with an approved schedule of immunization has not been provided in accordance with RCW 28A.210.080 and to continue to prohibit the child's presence until such proof of immunization, certification of exemption, or approved schedule has been provided. The exclusion of a child from a school shall be accomplished in accordance with rules of the state board of education. The exclusion of a child from a day care center shall be accomplished in accordance with rules of the department of social and health services. Prior to the exclusion of a child, each school or day care center shall provide written notice to the parent(s) or legal guardian(s) of each child or to the adult(s) in loco parentis to each child, who is not in compliance with the requirements of RCW 28A.210.080. The notice shall fully inform such person(s) of the following: (1) The requirements established by and pursuant to RCW 28A.210.060 through 28A.210.170; (2) the fact that the child will be prohibited from further attendance at the school unless RCW 28A.210.080 is complied with; (3) such procedural due process rights as are hereafter established pursuant to RCW 28A.210.160 and/or 28A.210.170, as appropriate; and (4) the immunization services that are available from or through the local health department and other public agencies. [1990 c 33 § 196; 1985 c 49 § 3; 1984 c 40 § 8; 1979 ex.s. c 118 § 8. Formerly RCW 28A.31.114.]

Severability—1984 c 40: See note following RCW 28A.195.050.

Effective date—Severability—1979 ex.s. c 118: See notes following RCW 28A.210.060.

28A.210.130 Immunization program—Superintendent of public instruction to provide information. The superintendent of public instruction shall provide for information about the immunization program and requirements under RCW 28A.210.060 through 28A.210.170 to be widely available throughout the state in order to promote full use of the program. [1990 c 33 § 197; 1985 c 49 § 4. Formerly RCW 28A.31.115.]

28A.210.140 Immunization program—State board of health rules, contents. The state board of health shall adopt and is hereby empowered to adopt rules pursuant to chapter 34.05 RCW which establish the procedural and substantive requirements for full immunization and the form and substance of the proof thereof, to be required pursuant to RCW 28A.210.060 through 28A.210.170. [1990 c 33 §

198; 1984 c 40 § 9; 1979 ex.s. c 118 § 9. Formerly RCW 28A.31.116.]

Severability—1984 c 40: See note following RCW 28A.195.050.

Effective date—Severability—1979 ex.s. c 118: See notes following RCW 28A.210.060.

28A.210.150 Immunization program—Superintendent of public instruction by rule to adopt procedures for verifying records. The superintendent of public instruction by rule shall provide procedures for schools to quickly verify the immunization records of students transferring from one school to another before the immunization records are received. [1985 c 49 § 5. Formerly RCW 28A.31.117.]

28A.210.160 Immunization program—State board of education rules, contents. The state board of education shall and is hereby empowered to adopt rules pursuant to chapter 34.05 RCW which establish the procedural and substantive due process requirements governing the exclusion of children from public and private schools pursuant to RCW 28A.210.120. [1990 c 33 § 199; 1979 ex.s. c 118 § 10. Formerly RCW 28A.31.118.]

Effective date—Severability—1979 ex.s. c 118: See notes following RCW 28A.210.060.

28A.210.170 Immunization program—Department of social and health services' rules, contents. The department of social and health services shall and is hereby empowered to adopt rules pursuant to chapter 34.05 RCW which establish the procedural and substantive due process requirements governing the exclusion of children from day care centers pursuant to RCW 28A.210.120. [1990 c 33 § 200; 1979 ex.s. c 118 § 11. Formerly RCW 28A.31.120.]

Effective date—Severability—1979 ex.s. c 118: See notes following RCW 28A.210.060.

28A.210.180 Screening program for scoliosis—Purpose. The legislature recognizes that the condition known as scoliosis, a lateral curvature of the spine commonly appearing in adolescents, can develop into a permanent, crippling disability if left untreated. Early diagnosis and referral can often result in the successful treatment of this condition and greatly reduce the need for major surgery. Therefore, the purpose of RCW 28A.210.180 through 28A.210.250 is to recognize that a school screening program is an invaluable tool for detecting the number of adolescents with scoliosis. It is the intent of the legislature to insure that the superintendent of public instruction provide and require screening of children for the condition known as scoliosis, to ascertain which, if any, of these children have defects requiring corrective treatment. [1991 c 86 § 1; 1990 c 33 § 201; 1985 c 216 § 1; 1979 c 47 § 1. Formerly RCW 28A.31.130.]

Severability—1979 c 47: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 47 § 8.]

28A.210.190 Screening program for scoliosis—Definitions. As used in RCW 28A.210.180 through

28A.210.250, the following terms have the meanings indicated.

(1) "Superintendent" means the superintendent of public instruction of public schools in the state, or the superintendent's designee.

(2) "Pupil" means a student enrolled in the public school system in the state.

(3) "Scoliosis" includes idiopathic scoliosis and kyphosis.

(4) "Screening" means an examination to be performed for the purpose of detecting the condition known as scoliosis.

(5) "Public schools" means the common schools referred to in Article IX of the state Constitution and those schools and institutions of learning having a curriculum below the college or university level as now or may be established by law and maintained at public expense. [1991 c 86 § 2; 1990 c 33 § 202; 1985 c 216 § 2; 1979 c 47 § 2. Formerly RCW 28A.31.132.]

Severability—1979 c 47: See note following RCW 28A.210.180.

28A.210.200 Screening program for scoliosis—Examination of children—Personnel making examinations, training for. The superintendent shall provide for and require the examination of children attending public schools at least three times between grades four and eleven in accordance with procedures and standards adopted by rule of the state board of health in cooperation with the superintendent of public instruction and the department of health. The examination shall be made by a school physician, school nurse, qualified licensed health practitioner, or physical education instructor or by other school personnel. Proper training of the personnel in the screening process for scoliosis shall be provided by the superintendent. [1991 c 86 § 3; 1990 c 33 § 203; 1985 c 216 § 3; 1979 c 47 § 3. Formerly RCW 28A.31.134.]

Severability—1979 c 47: See note following RCW 28A.210.180.

28A.210.210 Screening program for scoliosis—Records—Parents or guardians notification, contents. Every person performing the screening under RCW 28A.210.200 shall promptly prepare a record of the screening of each child found to have or suspected of having scoliosis and shall send copies of the records to the parents or guardians of the children. The notification shall include an explanation of scoliosis, the significance of treating it at an early stage, and the services generally available from a qualified licensed health practitioner for the treatment after diagnosis. [1990 c 33 § 204; 1985 c 216 § 4; 1979 c 47 § 4. Formerly RCW 28A.31.136.]

Severability—1979 c 47: See note following RCW 28A.210.180.

28A.210.220 Screening program for scoliosis—Distribution of rules, records and forms. The superintendent shall print and distribute to appropriate school officials the rules adopted by the state board of health in cooperation with the superintendent of public instruction under RCW 28A.210.200 and the recommended records and forms to be used in making and reporting the screenings. [1990 c 33 § 205; 1979 c 47 § 5. Formerly RCW 28A.31.138.]

Severability—1979 c 47: See note following RCW 28A.210.180.

28A.210.240 Screening program for scoliosis—Pupils exempt, when. Any pupil shall be exempt from the examination upon written request of his or her parent or guardian if the parent or guardian certifies that:

(1) The screening conflicts with the philosophical or religious beliefs; or

(2) The student is presently under the care of a health care provider for spinal curvature or a related medical condition. [1985 c 216 § 5; 1979 c 47 § 6. Formerly RCW 28A.31.140.]

Severability—1979 c 47: See note following RCW 28A.210.180.

28A.210.250 Screening program for scoliosis—Sanctions against school officials failing to comply. The superintendent may establish appropriate sanctions to be applied to any school officials of the state failing to comply with RCW 28A.210.200 through 28A.210.240 which sanctions may include withholding of any portion of state aid to the district until such time as compliance is assured. [1990 c 33 § 207; 1979 c 47 § 7. Formerly RCW 28A.31.142.]

Severability—1979 c 47: See note following RCW 28A.210.180.

28A.210.260 Public and private schools—Administration of oral medication by—Conditions. Public school districts and private schools which conduct any of grades kindergarten through the twelfth grade may provide for the administration of oral medication of any nature to students who are in the custody of the school district or school at the time of administration, but are not required to do so by this section, subject to the following conditions:

(1) The board of directors of the public school district or the governing board of the private school or, if none, the chief administrator of the private school shall adopt policies which address the designation of employees who may administer oral medications to students, the acquisition of parent requests and instructions, and the acquisition of dentist and physician requests and instructions regarding students who require medication for more than fifteen consecutive school days, the identification of the medication to be administered, the means of safekeeping medications with special attention given to the safeguarding of legend drugs as defined in chapter 69.41 RCW, and the means of maintaining a record of the administration of such medication;

(2) The board of directors shall seek advice from one or more licensed physicians or nurses in the course of developing the foregoing policies;

(3) The public school district or private school is in receipt of a written, current and unexpired request from a parent, or a legal guardian, or other person having legal control over the student to administer the medication to the student;

(4) The public school district or the private school is in receipt of (a) a written, current and unexpired request from a licensed physician or dentist for administration of the medication, as there exists a valid health reason which makes administration of such medication advisable during the hours when school is in session or the hours in which the student is under the supervision of school officials, and (b)

written, current and unexpired instructions from such physician or dentist regarding the administration of prescribed medication to students who require medication for more than fifteen consecutive work days;

(5) The medication is administered by an employee designated by or pursuant to the policies adopted pursuant to subsection (1) of this section and in substantial compliance with the prescription of a physician or dentist or the written instructions provided pursuant to subsection (4) of this section;

(6) The medication is first examined by the employee administering the same to determine in his or her judgment that it appears to be in the original container and to be properly labeled; and

(7) The board of directors shall designate a professional person licensed pursuant to chapter 18.71 RCW or chapter 18.79 RCW as it applies to registered nurses and advanced registered nurse practitioners, to train and supervise the designated school district personnel in proper medication procedures. [1994 sp.s. c 9 § 720; 1982 c 195 § 1. Formerly RCW 28A.31.150.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1982 c 195: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 195 § 4.]

28A.210.270 Public and private schools—Administration of oral medication by—Immunity from liability—Discontinuance, procedure. (1) In the event a school employee administers oral medication to a student pursuant to RCW 28A.210.260 in substantial compliance with the prescription of the student's physician or dentist or the written instructions provided pursuant to RCW 28A.210.260(4), and the other conditions set forth in RCW 28A.210.260 have been substantially complied with, then the employee, the employee's school district or school of employment, and the members of the governing board and chief administrator thereof shall not be liable in any criminal action or for civil damages in their individual or marital or governmental or corporate or other capacities as a result of the administration of the medication.

(2) The administration of oral medication to any student pursuant to RCW 28A.210.260 may be discontinued by a public school district or private school and the school district or school, its employees, its chief administrator, and members of its governing board shall not be liable in any criminal action or for civil damages in their governmental or corporate or individual or marital or other capacities as a result of the discontinuance of such administration: **PROVIDED**, That the chief administrator of the public school district or private school, or his or her designee, has first provided actual notice orally or in writing in advance of the date of discontinuance to a parent or legal guardian of the student or other person having legal control over the student. [1990 c 33 § 208; 1982 c 195 § 2. Formerly RCW 28A.31.155.]

Severability—1982 c 195: See note following RCW 28A.210.260.

28A.210.280 Catheterization of public and private school students. (1) Public school districts and private

schools that offer classes for any of grades kindergarten through twelve may provide for clean, intermittent bladder catheterization of students, or assisted self-catheterization of students pursuant to RCW 18.79.290, if the catheterization is provided for in substantial compliance with:

(a) Rules adopted by the state nursing care quality assurance commission and the instructions of a registered nurse or advanced registered nurse practitioner issued under such rules; and

(b) Written policies of the school district or private school which shall be adopted in order to implement this section and shall be developed in accordance with such requirements of chapters 41.56 and 41.59 RCW as may be applicable.

(2) This section does not require school districts to provide intermittent bladder catheterization of students. [1994 sp.s. c 9 § 721; 1988 c 48 § 2. Formerly RCW 28A.31.160.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

28A.210.290 Catheterization of public and private school students—Immunity from liability. (1) In the event a school employee provides for the catheterization of a student pursuant to RCW 18.79.290 and 28A.210.280 in substantial compliance with (a) rules adopted by the state nursing care quality assurance commission and the instructions of a registered nurse or advanced registered nurse practitioner issued under such rules, and (b) written policies of the school district or private school, then the employee, the employee's school district or school of employment, and the members of the governing board and chief administrator thereof shall not be liable in any criminal action or for civil damages in their individual, marital, governmental, corporate, or other capacity as a result of providing for the catheterization.

(2) Providing for the catheterization of any student pursuant to RCW 18.79.290 and 28A.210.280 may be discontinued by a public school district or private school and the school district or school, its employees, its chief administrator, and members of its governing board shall not be liable in any criminal action or for civil damages in their individual, marital, governmental, corporate, or other capacity as a result of the discontinuance: **PROVIDED**, That the chief administrator of the public school district or private school, or his or her designee, has first provided actual notice orally or in writing in advance of the date of discontinuance to a parent or legal guardian of the student or other person having legal control over the student: **PROVIDED FURTHER**, That the public school district otherwise provides for the catheterization of the student to the extent required by federal or state law. [1994 sp.s. c 9 § 722; 1990 c 33 § 209; 1988 c 48 § 3. Formerly RCW 28A.31.165.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

28A.210.300 School physician or school nurse may be employed. The board of directors of any school district of the second class may employ a regularly licensed physician or a licensed public health nurse for the purpose of protecting the health of the children in said district. [1975

c 43 § 20; 1969 ex.s. c 223 § 28A.60.320. Prior: 1937 c 60 § 1; RRS § 4776-4. Formerly RCW 28A.60.320, 28.31.080.]

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

28A.210.310 Prohibition on use of tobacco products on school property. To protect children in the public schools of this state from exposure to the addictive substance of nicotine, each school district board of directors shall adopt a written policy mandating a prohibition on the use of all tobacco products on public school property. A total ban on the use of all tobacco products shall be enforced by September 1, 1991. The policy may allow for exemptions from this prohibition with regard to alternative educational programs. [1989 c 233 § 6. Formerly RCW 28A.31.170.]

Chapter 28A.215

EARLY CHILDHOOD, PRESCHOOLS, AND BEFORE-AND-AFTER SCHOOL CARE

Sections

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Department of community, trade, and economic development: Chapter 43.330 RCW.

NURSERY SCHOOLS, PRESCHOOLS, AND BEFORE-AND-AFTER SCHOOL CARE

28A.215.010 Authority of school boards. The board of directors of any school district shall have the power to establish and maintain preschools and to provide before-and-after-school and vacation care in connection with the common schools of said district located at such points as the board shall deem most suitable for the convenience of the public, for the care and instruction of infants and children

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residing in said district. The board shall establish such courses, activities, rules, and regulations governing preschools and before-and-after-school care as it may deem best: PROVIDED, That these courses and activities shall meet the minimum standard for such preschools as established by the United States Department of Health, Education and Welfare, or its successor agency, and the state board of education. Except as otherwise provided by state or federal law, the board of directors may fix a reasonable charge for the care and instruction of children attending such schools. The board may, if necessary, supplement such funds as are received for the superintendent of public instruction or any agency of the federal government, by an appropriation from the general school fund of the district. [1995 c 335 § 104; 1969 ex.s. c 223 § 28A.34.010. Prior: 1945 c 247 § 1; 1943 c 220 § 1; Rem. Supp. 1945 § 5109-1. Formerly RCW 28A.34.010, 28.34.010.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

28A.215.020 Allocations of state or federal funds—Regulations by state board. Expenditures under federal funds and/or state appropriations made to carry out the purposes of RCW 28A.215.010 through 28A.215.050 shall be made by warrants issued by the state treasurer upon order of the superintendent of public instruction. The state board of education shall make necessary rules and regulations to carry out the purpose of RCW 28A.215.010. [1995 c 335 § 308; 1990 c 33 § 210; 1969 ex.s. c 223 § 28A.34.020. Prior: 1943 c 220 § 2; Rem. Supp. 1943 § 5109-2. Formerly RCW 28A.34.020, 28.34.020, 28.34.030.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

28A.215.030 Allocations pending receipt of federal funds. In the event the legislature appropriates any moneys to carry out the purposes of RCW 28A.215.010 through 28A.215.050, allocations therefrom may be made to school districts for the purpose of underwriting allocations made or requested from federal funds until such federal funds are available. Any school district may allocate a portion of its funds for the purpose of carrying out the provisions of RCW 28A.215.010 through 28A.215.050 pending the receipt of reimbursement from funds made available by acts of congress. [1995 c 335 § 309; 1990 c 33 § 211; 1969 ex.s. c 223 § 28A.34.040. Prior: 1943 c 220 § 3; Rem. Supp. 1943 § 5109-3. Formerly RCW 28A.34.040, 28.34.040.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

28A.215.040 Establishment and maintenance discretionary. Every board of directors shall have power to establish, equip and maintain preschools and/or provide before-and-after-school care for children of working parents, in cooperation with the federal government or any of its agencies, when in their judgment the best interests of their district will be subserved thereby. [1995 c 335 § 105; 1973 1st ex.s. c 154 § 45; 1969 ex.s. c 223 § 28A.34.050. Prior: 1943 c 220 § 5; Rem. Supp. 1943 § 5109-5. Formerly RCW 28A.34.050, 28.34.050.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

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

28A.215.050 Additional authority—Contracts with private and public entities—Charges—Transportation services. As a supplement to the authority otherwise granted by RCW 28A.215.010 through 28A.215.050 respecting the care or instruction, or both, of children in general, the board of directors of any school district may only utilize funds outside the state basic education appropriation and the state school transportation appropriation to:

(1) Contract with public and private entities to conduct all or any portion of the management and operation of a child care program at a school district site or elsewhere;

(2) Establish charges based upon costs incurred under this section and provide for the reduction or waiver of charges in individual cases based upon the financial ability of the parents or legal guardians of enrolled children to pay the charges, or upon their provision of other valuable consideration to the school district; and

(3) Transport children enrolled in a child care program to the program and to related sites using district-owned school buses and other motor vehicles, or by contracting for such transportation and related services: PROVIDED, That no child three years of age or younger shall be transported under the provisions of this section unless accompanied by a parent or guardian. [1995 c 335 § 310; 1990 c 33 § 212; 1987 c 487 § 1. Formerly RCW 28A.34.150.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

EARLY CHILDHOOD ASSISTANCE PROGRAM

28A.215.100 Intent. It is the intent of the legislature to establish an early childhood state education and assistance program. This special assistance program is a voluntary enrichment program to help prepare some children to enter the common school system and shall be offered only as funds are available. This program is not a part of the basic program of education which must be fully funded by the legislature under Article IX, section 1 of the state Constitution. [1994 c 166 § 1; 1985 c 418 § 1. Formerly RCW 28A.34A.010.]

Effective date—1994 c 166: "This act shall take effect July 1, 1994." [1994 c 166 § 12.]

28A.215.110 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28A.215.100 through 28A.215.200 and 28A.215.900 through 28A.215.908.

(1) "Advisory committee" means the advisory committee under RCW 28A.215.140.

(2) "Department" means the department of community, trade, and economic development.

(3) "Eligible child" means a child not eligible for kindergarten whose family income is at or below one hundred percent of the federal poverty level, as published annually by the federal department of health and human services, and includes a child whose family is eligible for public assistance, and who is not a participant in a federal or state program providing comprehensive services and may

include children who are eligible under rules adopted by the department if the number of such children equals not more than ten percent of the total enrollment in the early childhood program. Priority for enrollment shall be given to children from families with the lowest income or to eligible children from families with multiple needs.

(4) "Approved programs" means those state-supported education and special assistance programs which are recognized by the department of community, trade, and economic development as meeting the minimum program rules adopted by the department to qualify under RCW 28A.215.100 through 28A.215.200 and 28A.215.900 through 28A.215.908 and are designated as eligible for funding by the department under RCW 28A.215.160 and 28A.215.180.

(5) "Comprehensive" means an assistance program that focuses on the needs of the child and includes education, health, and family support services.

(6) "Family support services" means providing opportunities for parents to:

(a) Actively participate in their child's early childhood program;

(b) Increase their knowledge of child development and parenting skills;

(c) Further their education and training;

(d) Increase their ability to use needed services in the community;

(e) Increase their self-reliance. [1994 c 166 § 2; 1990 c 33 § 213; 1988 c 174 § 2; 1985 c 418 § 2. Formerly RCW 28A.34A.020.]

Effective date—1994 c 166: See note following RCW 28A.215.100.

Findings—1994 c 166; 1988 c 174: "The legislature finds that the early childhood education and assistance program provides for the educational, social, health, nutritional, and cultural development of children at risk of failure when they reach school age. The long-term benefits to society in the form of greater educational attainment, employment, and projected lifetime earnings as well as the savings to be realized, from lower crime rates, welfare support, and reduced teenage pregnancy, have been demonstrated through lifelong research of at-risk children and early childhood programs.

The legislature intends to encourage development of community partnerships for children at risk by authorizing a program of voluntary grants and contributions from business and community organizations to increase opportunities for children to participate in early childhood education." [1994 c 166 § 3; 1988 c 174 § 1.]

28A.215.120 Department of community, trade, and economic development to administer program—Admission and funding. The department of community, trade, and economic development shall administer a state-supported early childhood education and assistance program to assist eligible children with educational, social, health, nutritional, and cultural development to enhance their opportunity for success in the common school system. Eligible children shall be admitted to approved early childhood programs to the extent that the legislature provides funds, and additional eligible children may be admitted to the extent that grants and contributions from community sources provide sufficient funds for a program equivalent to that supported by state funds. [1994 c 166 § 4; 1988 c 174 § 3; 1985 c 418 § 3. Formerly RCW 28A.34A.030.]

Effective date—1994 c 166: See note following RCW 28A.215.100.

Findings—1994 c 166; 1988 c 174: See note following RCW 28A.215.110.

28A.215.130 Approved early childhood programs—Entities eligible to conduct—Use of funds—Requirements for applicants. Approved early childhood programs shall receive state-funded support through the department. Public or private nonsectarian organizations, including, but not limited to school districts, educational service districts, community and technical colleges, local governments, or nonprofit organizations, are eligible to participate as providers of the state early childhood program. Funds appropriated for the state program shall be used to continue to operate existing programs or to establish new or expanded early childhood programs, and shall not be used to supplant federally supported head start programs. Funds obtained by providers through voluntary grants or contributions from individuals, agencies, corporations, or organizations may be used to expand or enhance preschool programs so long as program standards established by the department are maintained, but shall not be used to supplant federally supported head start programs or state-supported early childhood programs. Persons applying to conduct the early childhood program shall identify targeted groups and the number of children to be served, program components, the qualifications of instructional and special staff, the source and amount of grants or contributions from sources other than state funds, facilities and equipment support, and transportation and personal care arrangements. [1994 c 166 § 5; 1988 c 174 § 4; 1985 c 418 § 4. Formerly RCW 28A.34A.040.]

Effective date—1994 c 166: See note following RCW 28A.215.100.

Findings—1994 c 166; 1988 c 174: See note following RCW 28A.215.110.

28A.215.140 Advisory committee—Composition. The department shall establish an advisory committee composed of interested parents and representatives from the state board of education, the office of the superintendent of public instruction, the division of children and family services within the department of social and health services, early childhood education and development staff preparation programs, the head start programs, school districts, and such other community and business organizations as deemed necessary by the department to assist with the establishment of the preschool program and advise the department on matters regarding the on-going promotion and operation of the program. [1988 c 174 § 5; 1985 c 418 § 5. Formerly RCW 28A.34A.050.]

Findings—1994 c 166; 1988 c 174: See note following RCW 28A.215.110.

28A.215.150 Rules. The department shall adopt rules under chapter 34.05 RCW for the administration of the early childhood program. Approved early childhood programs shall conduct needs assessments of their service area, identify any targeted groups of children, to include but not be limited to children of seasonal and migrant farmworkers and native American populations living either on or off reservation, and provide to the department a service delivery plan, to the extent practicable, that addresses these targeted populations.

The department in developing rules for the early childhood program shall consult with the advisory committee, and shall consider such factors as coordination with

existing head start and other early childhood programs, the preparation necessary for instructors, qualifications of instructors, adequate space and equipment, and special transportation needs. The rules shall specifically require the early childhood programs to provide for parental involvement in participation with their child's program, in local program policy decisions, in development and revision of service delivery systems, and in parent education and training. [1994 c 166 § 6; 1988 c 174 § 6; 1987 c 518 § 101; 1985 c 418 § 6. Formerly RCW 28A.34A.060.]

Effective date—1994 c 166: See note following RCW 28A.215.100.

Findings—1994 c 166; 1988 c 174: See note following RCW 28A.215.110.

Intent—1994 c 166; 1987 c 518: "The long-term social, community welfare, and economic interests of the state will be served by an investment in our children. Conclusive studies and experiences show that providing children with developmental experiences and providing parents with effective parental partnership, empowerment, opportunities for involvement with their child's developmental learning, and expanding parenting skills, learning, and training can greatly improve children's performance in school as well as increase the likelihood of children's success as adults. National studies have also confirmed that special attention to, and educational assistance for, children, their school environment, and their families are the most effective ways in which to meet the state's social and economic goals.

The legislature intends to enhance the readiness to learn of certain children and students by: Providing for an expansion of the state early childhood education and assistance program for children from low-income families and establishing an adult literacy program for certain parents; assisting school districts to establish elementary counseling programs; instituting a program to address learning problems due to drug and alcohol use and abuse; and establishing a program directed at students who leave school before graduation.

The legislature intends further to establish programs that will allow for parental, business, and community involvement in assisting the school systems throughout the state to enhance the ability of children to learn." [1994 c 166 § 7; 1987 c 518 § 1.]

Severability—1987 c 518: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 518 § 411.]

28A.215.160 Review of applications—Award of funds. The department shall review applications from public or private nonsectarian organizations for state funding of early childhood education and assistance programs and award funds as determined by department rules and based on local community needs and demonstrated capacity to provide services. [1994 c 166 § 8; 1988 c 174 § 7; 1985 c 418 § 7. Formerly RCW 28A.34A.070.]

Effective date—1994 c 166: See note following RCW 28A.215.100.

Findings—1994 c 166; 1988 c 174: See note following RCW 28A.215.110.

28A.215.170 Early childhood educational and assistance services—Report to governor. The department shall annually report to the governor and the legislature on the findings of the longitudinal study undertaken to examine and monitor the effectiveness of early childhood educational and assistance services for eligible children to measure, among other elements, if possible, how the average level of performance of children completing this program compare to the average level of performance of all state students in their grade level, and to the average level of performance of those eligible students who did not have access to this program. The evaluation system shall examine how the percentage of these children needing access to special education or

remedial programs compares to the overall percentage of children needing such services and compares to the percentage of eligible students who did not have access to this program needing such services. [1995 c 335 § 501; 1994 c 166 § 9; 1988 c 174 § 8; 1985 c 418 § 8. Formerly RCW 28A.34A.080.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Effective date—1994 c 166: See note following RCW 28A.215.100.

Findings—1994 c 166; 1988 c 174: See note following RCW 28A.215.110.

28A.215.180 State support—Priorities—Program funding levels. For the purposes of RCW 28A.215.100 through 28A.215.200 and 28A.215.900 through 28A.215.908, the department may award state support under RCW 28A.215.100 through 28A.215.160 to increase the numbers of eligible children assisted by the federal or state-supported early childhood programs in this state. Priority shall be given to those geographical areas which include a high percentage of families qualifying under the "eligible child" criteria. The overall program funding level shall be based on an average grant per child consistent with state appropriations made for program costs: PROVIDED, That programs addressing special needs of selected groups or communities shall be recognized in the department's rules. [1994 c 166 § 10; 1990 c 33 § 214; 1987 c 518 § 102; 1985 c 418 § 9. Formerly RCW 28A.34A.090.]

Effective date—1994 c 166: See note following RCW 28A.215.100.

Intent—1994 c 166; 1987 c 518: See note following RCW 28A.215.150.

Severability—1987 c 518: See note following RCW 28A.215.150.

28A.215.190 Expenses of advisory committee—Reimbursement. The department from funds appropriated for the administration of the program under *this act shall reimburse the expenses of the advisory committee. [1985 c 418 § 10. Formerly RCW 28A.34A.100.]

***Reviser's note:** For codification of "this act" [1985 c 418], see Codification Tables, Volume 0.

28A.215.200 Authority to solicit gifts, grants, and support. The department may solicit gifts, grants, conveyances, bequests and devises for the use or benefit of the early childhood state education and assistance program established by RCW 28A.215.100 through 28A.215.200 and 28A.215.900 through 28A.215.908. The department shall actively solicit support from business and industry and from the federal government for the state early childhood education and assistance program and shall assist local programs in developing partnerships with the community for eligible children. [1994 c 166 § 11; 1990 c 33 § 215; 1988 c 174 § 9; 1985 c 418 § 11. Formerly RCW 28A.34A.110.]

Effective date—1994 c 166: See note following RCW 28A.215.100.

Findings—1994 c 166; 1988 c 174: See note following RCW 28A.215.110.

28A.215.900 Short title—1985 c 418. This act shall be known as the early childhood assistance act of 1985. [1985 c 418 § 13. Formerly RCW 28A.34A.904.]

28A.215.904 Contingency—Effective date—1985 c 418. If specific funding for the purposes of this act, referencing this act by bill number, is not provided by the legislature by July 1, 1987, this act shall be null and void. This act shall be of no effect until such specific funding is provided. If such funding is so provided, this act shall take effect when the legislation providing the funding takes effect. [1985 c 418 § 12. Formerly RCW 28A.34A.900.]

Reviser's note: (1) 1986 c 312 § 211 provides specific funding for the purposes of this act.

(2) 1986 c 312 took effect April 4, 1986.

28A.215.906 Severability—1985 c 418. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 418 § 14. Formerly RCW 28A.34A.906.]

28A.215.908 Severability—1988 c 174. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 174 § 11. Formerly RCW 28A.34A.908.]

Chapter 28A.220 TRAFFIC SAFETY

Sections

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28A.220.030	Administration of program—Powers and duties of school officials.
28A.220.040	Fiscal support—Reimbursement to school districts—Enrollment fees—Deposit.
28A.220.050	Information on proper use of left-hand lane.
28A.220.060	Information on effects of alcohol and drug use.
28A.220.900	Purpose.

28A.220.010 Legislative declaration. It is the purpose of *this 1977 amendatory act to provide the students of the state with an improved quality traffic safety education program and to develop in the youth of this state a knowledge of the motor vehicle laws, an acceptance of personal responsibility on the public highways, an understanding of the causes and consequences of traffic accidents, and to provide training in the skills necessary for the safe operation of motor vehicles; to provide financial assistance to the various school districts while permitting them to achieve economies through options in the choice of course content and methods of instructions by adopting in whole or with modifications, a program prepared by the office of the superintendent of public instruction, and keeping to a minimum the amount of estimating, bookkeeping and reporting required of said school districts for financial reimbursement for such traffic safety education programs. [1977 c 76 § 1. Formerly RCW 28A.08.005, 46.81.005.]

***Reviser's note:** This 1977 amendatory act consists of RCW 46.81.005 and the 1977 amendments to RCW 46.81.010, 46.81.020, and 46.81.070. Chapter 46.81 RCW has been recodified as chapter 28A.08 RCW pursuant to RCW 1.08.015 and subsequently recodified as chapter 28A.220 RCW pursuant to 1990 c 33 § 4.

Severability—1977 c 76: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 c 76 § 5.]

28A.220.020 Definitions. The following words and phrases whenever used in chapter 28A.220 RCW shall have the following meaning:

(1) "Superintendent" or "state superintendent" shall mean the superintendent of public instruction.

(2) "Traffic safety education course" shall mean an accredited course of instruction in traffic safety education which shall consist of two phases, classroom instruction, and laboratory experience. "Laboratory experience" shall include on-street, driving range, or simulator experience or some combination thereof. Each phase shall meet basic course requirements which shall be established by the superintendent of public instruction and each part of said course shall be taught by a qualified teacher of traffic safety education. Any portions of the course may be taught after regular school hours or on Saturdays as well as on regular school days or as a summer school course, at the option of the local school districts.

(3) "Qualified teacher of traffic safety education" shall mean an instructor certificated under the provisions of chapter 28A.410 RCW and certificated by the superintendent of public instruction to teach either the classroom phase or the laboratory phase of the traffic safety education course, or both, under regulations promulgated by the superintendent: PROVIDED, That the laboratory experience phase of the traffic safety education course may be taught by instructors certificated under rules promulgated by the superintendent of public instruction, exclusive of any requirement that the instructor be certificated under the provisions of chapter 28A.410 RCW. Professional instructors certificated under the provisions of chapter 46.82 RCW, and participating in this program, shall be subject to reasonable qualification requirements jointly adopted by the superintendent of public instruction and the director of licensing.

(4) "Realistic level of effort" means the classroom and laboratory student learning experiences considered acceptable to the superintendent of public instruction that must be satisfactorily accomplished by the student in order to successfully complete the traffic safety education course. [1990 c 33 § 218; 1979 c 158 § 195; 1977 c 76 § 2; 1969 ex.s. c 218 § 1; 1963 c 39 § 2. Formerly RCW 28A.08.010, 46.81.010.]

Severability—1977 c 76: See note following RCW 28A.220.010.

28A.220.030 Administration of program—Powers and duties of school officials. (1) The superintendent of public instruction is authorized to establish a section of traffic safety education, and through such section shall: Define a "realistic level of effort" required to provide an effective traffic safety education course, establish a level of driving competency required of each student to successfully complete the course, and ensure that an effective state-wide program is implemented and sustained, administer, supervise, and develop the traffic safety education program and shall assist local school districts in the conduct of their traffic safety education programs. The superintendent shall adopt necessary rules and regulations governing the operation and

scope of the traffic safety education program; and each school district shall submit a report to the superintendent on the condition of its traffic safety education program: PROVIDED, That the superintendent shall monitor the quality of the program and carry out the purposes of this chapter.

(2) The board of directors of any school district maintaining a secondary school which includes any of the grades 10 to 12, inclusive, may establish and maintain a traffic safety education course. If a school district elects to offer a traffic safety education course and has within its boundaries a private accredited secondary school which includes any of the grades 10 to 12, inclusive, at least one class in traffic safety education shall be given at times other than regular school hours if there is sufficient demand therefor.

(3) The board of directors of a school district, or combination of school districts, may contract with any drivers' school licensed under the provisions of chapter 46.82 RCW to teach the laboratory phase of the traffic safety education course. Instructors provided by any such contracting drivers' school must be properly qualified teachers of traffic safety education under the joint qualification requirements adopted by the superintendent of public instruction and the director of licensing. [1979 c 158 § 196; 1977 c 76 § 3; 1969 ex.s. c 218 § 2; 1963 c 39 § 3. Formerly RCW 28A.08.020, 46.81.020.]

Severability—1977 c 76: See note following RCW 28A.220.010.

28A.220.040 Fiscal support—Reimbursement to school districts—Enrollment fees—Deposit. (1) Each school district shall be reimbursed from funds appropriated for traffic safety education: PROVIDED, That the state superintendent shall determine the per pupil reimbursement amount for the traffic safety education course to be funded by the state. Each school district offering an approved standard traffic safety education course shall be reimbursed or granted an amount up to the level established by the superintendent of public instruction as may be appropriated.

(2) The board of directors of any school district or combination of school districts may establish a traffic safety education fee, which fee when imposed shall be required to be paid by any duly enrolled student in any such school district prior to or while enrolled in a traffic safety education course. Traffic safety education fees collected by a school district shall be deposited with the county treasurer to the credit of such school district, to be used to pay costs of the traffic safety education course. [1984 c 258 § 331; 1977 c 76 § 4; 1969 ex.s. c 218 § 6; 1967 ex.s. c 147 § 5; 1963 c 39 § 8. Formerly RCW 28A.08.070, 46.81.070.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Severability—1977 c 76: See note following RCW 28A.220.010.

Traffic safety commission: Chapter 43.59 RCW.

28A.220.050 Information on proper use of left-hand lane. The superintendent of public instruction shall include information on the proper use of the left-hand lane on multilane highways in instructional material used in traffic

safety education courses. [1986 c 93 § 4. Formerly RCW 28A.08.080.]

Keep right except when passing, etc.: RCW 46.61.100.

28A.220.060 Information on effects of alcohol and drug use. The superintendent of public instruction shall include information on the effects of alcohol and drug use on motor vehicle operators, including information on drug and alcohol related traffic injury and mortality rates in the state of Washington, and current penalties for driving under the influence of drugs or alcohol in instructional material used in traffic safety education courses. [1991 c 217 § 2.]

28A.220.900 Purpose. It is the purpose of this act to provide the financial assistance necessary to enable each high school district to offer a course in traffic safety education and by that means to develop in the youth of this state a knowledge of the motor vehicle laws, an acceptance of personal responsibility on the public highways, and an understanding of the causes and consequences of traffic accidents, with an emphasis on the consequences, both physical and legal, of the use of drugs or alcohol in relation to operating a motor vehicle. The course in traffic safety education shall further provide to the youthful drivers of this state training in the skills necessary for the safe operation of motor vehicles. [1991 c 217 § 1; 1969 ex.s. c 218 § 7; 1963 c 39 § 1. Formerly RCW 28A.08.900, 46.81.900.]

Chapter 28A.225

COMPULSORY SCHOOL ATTENDANCE AND ADMISSION

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28A.225.270	Intradistrict enrollment options policies.
28A.225.280	Transfer students' eligibility for extracurricular activities.
28A.225.290	Enrollment options information booklet.
28A.225.300	Enrollment options information to parents.
28A.225.310	Attendance in school district of choice—Impact on existing cooperative arrangements.
28A.225.330	Enrolling students from other districts—Requests for information and permanent records—Withheld transcripts, effect—Immunity from liability—Rules.

28A.225.005 Compulsory education, requirements—Informing students and parents annually. Each school within a school district shall inform the students and the parents of the students enrolled in the school about the compulsory education requirements under this chapter. The school shall distribute the information at least annually. [1992 c 205 § 201.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

28A.225.010 Attendance mandatory—Age—Persons having custody shall cause child to attend public school—Child responsible for attending school—Exceptions—Excused temporary absences. (1) All parents in this state of any child eight years of age and under eighteen years of age shall cause such child to attend the public school of the district in which the child resides and such child shall have the responsibility to and therefore shall attend for the full time when such school may be in session unless:

(a) The child is attending an approved private school for the same time or is enrolled in an extension program as provided in RCW 28A.195.010(4);

(b) The child is receiving home-based instruction as provided in subsection (4) of this section;

(c) The child is attending an education center as provided in chapter 28A.205 RCW;

(d) The school district superintendent of the district in which the child resides shall have excused such child from attendance because the child is physically or mentally unable to attend school, is attending a residential school operated by the department of social and health services, or has been temporarily excused upon the request of his or her parents for purposes agreed upon by the school authorities and the parent: PROVIDED, That such excused absences shall not be permitted if deemed to cause a serious adverse effect upon the student's educational progress: PROVIDED FURTHER, That students excused for such temporary absences may be claimed as full time equivalent students to the extent they would otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260 and shall not affect school district compliance with the provisions of RCW 28A.150.220; or

(e) The child is sixteen years of age or older and:

(i) The child is regularly and lawfully employed and either the parent agrees that the child should not be required

to attend school or the child is emancipated in accordance with chapter 13.64 RCW;

(ii) The child has already met graduation requirements in accordance with state board of education rules and regulations; or

(iii) The child has received a certificate of educational competence under rules and regulations established by the state board of education under RCW 28A.305.190.

(2) A parent for the purpose of this chapter means a parent, guardian, or person having legal custody of a child.

(3) An approved private school for the purposes of this chapter and chapter 28A.200 RCW shall be one approved under regulations established by the state board of education pursuant to RCW 28A.305.130.

(4) For the purposes of this chapter and chapter 28A.200 RCW, instruction shall be home-based if it consists of planned and supervised instructional and related educational activities, including a curriculum and instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of an appreciation of art and music, provided for a number of hours equivalent to the total annual program hours per grade level established for approved private schools under RCW 28A.195.010 and 28A.195.040 and if such activities are:

(a) Provided by a parent who is instructing his or her child only and are supervised by a certificated person. A certificated person for purposes of this chapter and chapter 28A.200 RCW shall be a person certified under chapter 28A.410 RCW. For purposes of this section, "supervised by a certificated person" means: The planning by the certificated person and the parent of objectives consistent with this subsection; a minimum each month of an average of one contact hour per week with the child being supervised by the certificated person; and evaluation of such child's progress by the certificated person. The number of children supervised by the certificated person shall not exceed thirty for purposes of this subsection; or

(b) Provided by a parent who is instructing his or her child only and who has either earned forty-five college level quarter credit hours or its equivalent in semester hours or has completed a course in home-based instruction at a postsecondary institution or a vocational-technical institute; or

(c) Provided by a parent who is deemed sufficiently qualified to provide home-based instruction by the superintendent of the local school district in which the child resides.

(5) The legislature recognizes that home-based instruction is less structured and more experiential than the instruction normally provided in a classroom setting. Therefore, the provisions of subsection (4) of this section relating to the nature and quantity of instructional and related educational activities shall be liberally construed. [1996 c 134 § 1; 1990 c 33 § 219; 1986 c 132 § 1; 1985 c 441 § 1; 1980 c 59 § 1; 1979 ex.s. c 201 § 4; 1973 c 51 § 1; 1972 ex.s. c 10 § 2. Prior: 1971 ex.s. c 215 § 2; 1971 ex.s. c 51 § 1; 1969 ex.s. c 109 § 2; 1969 ex.s. c 223 § 28A.27.010; prior: 1909 p 364 § 1; RRS § 5072; prior: 1907 c 240 § 7; 1907 c 231 § 1; 1905 c 162 § 1; 1903 c 48 § 1; 1901 c 177 § 11; 1899 c 140 § 1; 1897 c 118 § 71. Formerly RCW 28A.27.010, 28.27.010.]

Severability—1985 c 441: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 441 § 6.]

Severability—1973 c 51: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 51 § 5.]

Private schools: RCW 28A.305.130(6), 28A.195.010 through 28A.195.050. Work permits for minors required: RCW 49.12.123.

28A.225.020 School's duties upon child's failure to attend school—Generally. (1) If a child required to attend school under RCW 28A.225.010 fails to attend school without valid justification, the public school in which the child is enrolled shall:

(a) Inform the child's custodial parent, parents, or guardian by a notice in writing or by telephone whenever the child has failed to attend school after one unexcused absence within any month during the current school year. School officials shall inform the parent of the potential consequences of additional unexcused absences;

(b) Schedule a conference or conferences with the custodial parent, parents, or guardian and child at a time reasonably convenient for all persons included for the purpose of analyzing the causes of the child's absences after two unexcused absences within any month during the current school year. If a regularly scheduled parent-teacher conference day is to take place within thirty days of the second unexcused absence, then the school district may schedule this conference on that day; and

(c) Take steps to eliminate or reduce the child's absences. These steps shall include, where appropriate, adjusting the child's school program or school or course assignment, providing more individualized or remedial instruction, providing appropriate vocational courses or work experience, referring the child to a community truancy board, requiring the child to attend an alternative school or program, or assisting the parent or child to obtain supplementary services that might eliminate or ameliorate the cause or causes for the absence from school. If the child's parent does not attend the scheduled conference, the conference may be conducted with the student and school official. However, the parent shall be notified of the steps to be taken to eliminate or reduce the child's absence.

(2) For purposes of this chapter, an "unexcused absence" means that a child:

(a) Has failed to attend the majority of hours or periods in an average school day or has failed to comply with a more restrictive school district policy; and

(b) Has failed to meet the school district's policy for excused absences. [1996 c 134 § 2; 1995 c 312 § 67; 1992 c 205 § 202; 1986 c 132 § 2; 1979 ex.s. c 201 § 1. Formerly RCW 28A.27.020.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

28A.225.025 Community truancy boards. For purposes of this chapter, "community truancy board" means a board composed of members of the local community in which the child attends school. The local school district

boards of directors may create a community truancy board or may use other boards that exist or are created, such as diversion boards. However, a diversion or other existing board must agree before it is used as a truancy board. Members of the board shall be selected from representatives of the community. Duties of a community truancy board shall include, but not be limited to, recommending methods for improving school attendance such as assisting the parent or the child to obtain supplementary services that might eliminate or ameliorate the causes for the absences or suggesting to the school district that the child enroll in another school, an alternative education program, an education center, a skill center, a dropout prevention program, or another public or private educational program. [1996 c 134 § 9; 1995 c 312 § 66.]

Short title—1995 c 312: See note following RCW 13.32A.010.

28A.225.030 Petition to juvenile court for violations by a parent or child—School district responsibilities. (1) If a child is required to attend school under RCW 28A.225.010 and if the actions taken by a school district under RCW 28A.225.020 are not successful in substantially reducing an enrolled student's absences from public school, not later than the seventh unexcused absence by a child within any month during the current school year or not later than the tenth unexcused absence during the current school year the school district shall file a petition and supporting affidavit for a civil action with the juvenile court alleging a violation of RCW 28A.225.010: (a) By the parent; (b) by the child; or (c) by the parent and the child. Except as provided in this subsection, no additional documents need be filed with the petition.

(2) The district shall not later than the fifth unexcused absence in a month:

(a) Enter into an agreement with a student and parent that establishes school attendance requirements;

(b) Refer a student to a community truancy board as defined in RCW 28A.225.025. The community truancy board shall enter into an agreement with the student and parent that establishes school attendance requirements and take other appropriate actions to reduce the child's absences; or

(c) File a petition under subsection (1) of this section.

(3) The petition may be filed by a school district employee who is not an attorney.

(4) If the school district fails to file a petition under this section, the parent of a child with five or more unexcused absences in any month during the current school year or upon the tenth unexcused absence during the current school year may file a petition with the juvenile court alleging a violation of RCW 28A.225.010. [1996 c 134 § 3; 1995 c 312 § 68; 1992 c 205 § 203; 1990 c 33 § 220; 1986 c 132 § 3; 1979 ex.s. c 201 § 2. Formerly RCW 28A.27.022.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

28A.225.035 Petition to juvenile court—Contents—Court action. (1) A petition for a civil action under RCW 28A.225.030 shall consist of a written notification to the court alleging that:

(a) The child has unexcused absences during the current school year;

(b) Actions taken by the school district have not been successful in substantially reducing the child's absences from school; and

(c) Court intervention and supervision are necessary to assist the school district or parent to reduce the child's absences from school.

(2) The petition shall set forth the name, age, school, and residence of the child and the names and residence of the child's parents.

(3) The petition shall set forth facts that support the allegations in this section and shall generally request relief available under this chapter.

(4) When a petition is filed under RCW 28A.225.030, the juvenile court shall schedule a hearing at which the court shall consider the petition. However, a hearing shall not be required if other actions by the court would substantially reduce the child's unexcused absences. When a hearing is held, the court shall:

(a) Separately notify the child, the parent of the child, and the school district of the hearing;

(b) Notify the parent and the child of their rights to present evidence at the hearing; and

(c) Notify the parent and the child of the options and rights available under chapter 13.32A RCW.

(5) The court may require the attendance of both the child and the parents at any hearing on a petition filed under RCW 28A.225.030.

(6) The court may permit the first hearing to be held without requiring that either party be represented by legal counsel, and to be held without a guardian ad litem for the child under RCW 4.08.050. At the request of the school district, the court may permit a school district representative who is not an attorney to represent the school district at any future hearings.

(7) The court shall grant the petition and enter an order assuming jurisdiction to intervene for the remainder of the school year, if the allegations in the petition are established by a preponderance of the evidence.

(8) If the court assumes jurisdiction, the school district shall regularly report to the court any additional unexcused absences by the child.

(9) Community truancy boards and the courts shall coordinate, to the extent possible, proceedings and actions pertaining to children who are subject to truancy petitions and at-risk youth petitions in RCW 13.32A.191 or child in need of services petitions in RCW 13.32A.140. [1996 c 134 § 4; 1996 c 133 § 31; 1995 c 312 § 69.]

Reviser's note: This section was amended by 1996 c 133 § 31 and by 1996 c 134 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

28A.225.060 Custody and disposition of child absent from school without excuse. Any school district official, sheriff, deputy sheriff, marshal, police officer, or any other officer authorized to make arrests, may take into custody without a warrant a child who is required under the provi-

sions of RCW 28A.225.010 through 28A.225.140 to attend school and is absent from school without an approved excuse, and shall deliver the child to: (1) The custody of a person in parental relation to the child; (2) the school from which the child is absent; or (3) a program designated by the school district. [1995 c 312 § 73; 1990 c 33 s 223; 1979 ex.s. c 201 s 5; 1977 ex.s. c 291 s 52; 1969 ex.s. c 223 s 28A.27.070. Prior: 1909 c 97 p 366 s 5; RRS s 5076; prior: 1907 c 231 s 5; 1905 c 162 s 5. Formerly RCW 28A.27.070, 28.27.070.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

28A.225.080 Employment permits. Except as otherwise provided in this code, no child under the age of fifteen years shall be employed for any purpose by any person, company or corporation, in this state during the hours which the public schools of the district in which such child resides are in session, unless the said child shall present a certificate from a school superintendent as provided for in RCW 28A.225.010, excusing the said child from attendance in the public schools and setting forth the reason for such excuse, the residence and age of the child, and the time for which such excuse is given. Every owner, superintendent, or overseer of any establishment, company or corporation shall keep such certificate on file so long as such child is employed by him or her. The form of said certificate shall be furnished by the superintendent of public instruction. Proof that any child under fifteen years of age is employed during any part of the period in which public schools of the district are in session, shall be deemed prima facie evidence of a violation of this section. [1990 c 33 § 225; 1969 ex.s. c 223 § 28A.27.090. Prior: 1909 c 97 p 365 § 2; RRS § 5073; prior: 1907 c 231 § 2; 1905 c 162 § 2; 1903 c 48 § 2. Formerly RCW 28A.27.090, 28.27.090.]

28A.225.090 Court orders—Penalties—Parents' defense. (1) A court may order a child subject to a petition under RCW 28A.225.035 to:

- (a) Attend the child's current school;
- (b) If there is space available and the program can provide educational services appropriate for the child, order the child to attend another public school, an alternative education program, center, a skill center, dropout prevention program, or another public educational program;
- (c) Attend a private nonsectarian school or program including an education center. Before ordering a child to attend an approved or certified private nonsectarian school or program, the court shall: (i) Consider the public and private programs available; (ii) find that placement is in the best interest of the child; and (iii) find that the private school or program is willing to accept the child and will not charge any fees in addition to those established by contract with the student's school district. If the court orders the child to enroll in a private school or program, the child's school district shall contract with the school or program to provide educational services for the child. The school district shall not be required to contract for a weekly rate that exceeds the state general apportionment dollars calculated on a weekly basis generated by the child and received by the district. A

school district shall not be required to enter into a contract that is longer than the remainder of the school year. A school district shall not be required to enter into or continue a contract if the child is no longer enrolled in the district; or

(d) Be referred to a community truancy board, if available.

(2) If the child fails to comply with the court order, the court may order the child to be punished by detention or may impose alternatives to detention such as community service. Failure by a child to comply with an order issued under this subsection shall not be punishable by detention for a period greater than that permitted pursuant to a civil contempt proceeding against a child under chapter 13.32A RCW.

(3) Any parent violating any of the provisions of either RCW 28A.225.010 or 28A.225.080 shall be fined not more than twenty-five dollars for each day of unexcused absence from school. It shall be a defense for a parent charged with violating RCW 28A.225.010 to show that he or she exercised reasonable diligence in attempting to cause a child in his or her custody to attend school or that the child's school did not perform its duties as required in RCW 28A.225.020. The court may order the parent to provide community service instead of imposing a fine. Any fine imposed pursuant to this section may be suspended upon the condition that a parent charged with violating RCW 28A.225.010 shall participate with the school and the child in a supervised plan for the child's attendance at school or upon condition that the parent attend a conference or conferences scheduled by a school for the purpose of analyzing the causes of a child's absence. [1996 c 134 § 6; 1996 c 133 § 32; 1995 c 312 § 74; 1992 c 205 § 204; 1990 c 33 § 226; 1987 c 202 § 189; 1986 c 132 § 5; 1979 ex.s. c 201 § 6; 1969 ex.s. c 223 § 28A.27.100. Prior: 1909 c 97 p 365 § 3; RRS § 5074; prior: 1907 c 231 § 3; 1905 c 162 § 3. Formerly RCW 28A.27.100, 28.27.100.]

Reviser's note: This section was amended by 1996 c 133 § 32 and by 1996 c 134 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Intent—1987 c 202: See note following RCW 2.04.190.

28A.225.095 Authority of court commissioners and family law commissioners to hear cases under this chapter. In any judicial district having a court commissioner, the court commissioner shall have the power, authority, and jurisdiction, concurrent with a juvenile court judge, to hear all cases under RCW 28A.225.030, 28A.225.090, and 28A.225.035 and to enter judgment and make orders with the same power, force, and effect as any judge of the juvenile court, subject to motion or demand by any party within ten days from the entry of the order or judgment by the court commissioner as provided in RCW 2.24.050. In any judicial district having a family law commissioner appointed pursuant to chapter 26.12 RCW, the family law commissioner shall have the power, authority, and jurisdiction, concurrent with a juvenile court judge, to hear cases

under RCW 28A.225.030, 28A.225.090, and 28A.225.035 and to enter judgment and make orders with the same power, force, and effect as any judge of the juvenile court, subject to motion or demand by any party within ten days from the entry of the order or judgment by the court commissioner as provided in RCW 2.24.050. [1995 c 312 § 71.]

Effective dates—1995 c 312 §§ 71, 82: "(1) Section 71 of this act shall take effect September 1, 1995.

(2) Section 82 of this act shall take effect September 1, 1996." [1995 c 312 § 85.]

Short title—1995 c 312: See note following RCW 13.32A.010.

28A.225.110 Fines applied to support of schools.

Notwithstanding the provisions of RCW 10.82.070, fifty percent of all fines except as otherwise provided in RCW 28A.225.010 through 28A.225.140 shall be applied to the support of the public schools in the school district where such offense was committed: PROVIDED, That all fees, fines, forfeitures, and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW, and fifty percent shall be paid to the county treasurer who shall deposit such amount to the credit of the courts in the county for the exclusive purpose of enforcing the provisions of RCW 28A.225.010 through 28A.225.140. [1995 c 312 § 75; 1990 c 33 § 228; 1987 c 202 § 191; 1969 ex.s. c 199 § 54; 1969 ex.s. c 223 § 28A.27.104. Prior: 1909 c 97 p 368 § 11; RRS § 5082; prior: 1907 c 231 § 12; 1905 c 162 § 11. Formerly RCW 28A.27.104, 28.27.104, 28.27.100, part.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Intent—1987 c 202: See note following RCW 2.04.190.

28A.225.115 Educational services—Funding for children referred to community truancy board.

The superintendent of public instruction, subject to available funding, shall allocate funds to provide educational services for children who have been referred to a community truancy board or to the courts under RCW 28A.225.030. The funds shall be used on behalf of such children for enrollment in skill centers, education centers, alternative programs, and in other public or private educational programs. Decisions regarding the expenditure of the funds shall be made by the community truancy board or the courts, whichever is applicable. The amount of the assistance for each child shall be determined in accordance with the omnibus appropriations act. These funds shall be in excess of any other funds provided through RCW 28A.150.260 as basic education and other state, federal, or local sources. [1996 c 134 § 11.]

28A.225.140 Enforcing officers not personally liable for costs. No officer performing any duty under any of the provisions of RCW 28A.225.010 through 28A.225.140, or under the provisions of any rules that may be passed in pursuance hereof, shall in any wise become liable for any costs that may accrue in the performance of any duty prescribed by RCW 28A.225.010 through 28A.225.140. [1990 c 33 § 231; 1969 ex.s. c 223 § 28A.27.130. Prior: 1909 c 97 p 368 § 12; RRS § 5083; prior: 1907 c 231 § 13; 1905 c 162 § 12. Formerly RCW 28A.27.130, 28.27.130.]

28A.225.151 Reports. (1) As required under subsection (2) of this section, each school shall document the actions taken under RCW 28A.225.030 and report this information to the school district superintendent who shall compile the data for all the schools in the district and prepare an annual school district report for each school year and submit the report to the superintendent of public instruction. The reports shall be made upon forms furnished by the superintendent of public instruction and shall be transmitted as determined by the superintendent of public instruction.

(2) The reports under subsection (1) of this section shall include:

(a) The number of enrolled students and the number of unexcused absences;

(b) Documentation of the steps taken by the school district under each subsection of RCW 28A.225.020 at the request of the superintendent of public instruction. Each year, by May 1st, the superintendent of public instruction shall select ten school districts to submit the report at the end of the following school year. The ten districts shall represent different areas of the state and be of varied sizes. In addition, the superintendent of public instruction shall require any district that fails to keep appropriate records to submit a full report to the superintendent of public instruction under this subsection. All school districts shall document steps taken under RCW 28A.225.020 in each student's record, and make those records available upon request consistent with the laws governing student records;

(c) The number of enrolled students with ten or more unexcused absences in a school year or five or more unexcused absences in a month during a school year;

(d) A description of any programs or schools developed to serve students who have had five or more unexcused absences in a month or ten in a year including information about the number of students in the program or school and the number of unexcused absences of students during and after participation in the program. The school district shall also describe any placements in an approved private nonsectarian school or program or certified program under a court order under RCW 28A.225.090; and

(e) The number of petitions filed by a school district with the juvenile court.

(3) A report required under this section shall not disclose the name or other identification of a child or parent.

(4) The superintendent of public instruction shall collect these reports from all school districts and prepare an annual report for each school year to be submitted to the legislature no later than December 15th of each year. [1996 c 134 § 5; 1995 c 312 § 72.]

Short title—1995 c 312: See note following RCW 13.32A.010.

28A.225.160 Qualification for admission to district's schools—Fees for preadmission screening. Except as otherwise provided by law, it is the general policy of the state that the common schools shall be open to the admission of all persons who are five years of age and less than twenty-one years residing in that school district. Except as otherwise provided by law, the state board of education is hereby authorized to adopt rules in accordance with chapter 34.05 RCW which establish uniform entry qualifications, in-

cluding but not limited to birth date requirements, for admission to kindergarten and first grade programs of the common schools. Such rules may provide for exceptions based upon the ability, or the need, or both, of an individual student. For the purpose of complying with any rule adopted by the state board of education which authorizes a preadmission screening process as a prerequisite to granting exceptions to the uniform entry qualifications, a school district may collect fees not to exceed seventy-five dollars per preadmission student to cover expenses incurred in the administration of such a screening process: PROVIDED, That in so establishing such fee or fees, the district shall adopt regulations for waiving and reducing such fees in the cases of those persons whose families, by reason of their low income, would have difficulty in paying the entire amount of such fees. [1986 c 166 § 1; 1979 ex.s. c 250 § 4; 1977 ex.s. c 359 § 14; 1969 ex.s. c 223 § 28A.58.190. Prior: 1909 c 97 p 261 § 1, part; RRS § 4680, part; prior: 1897 c 118 § 64, part; 1890 p 371 § 44, part. Formerly RCW 28A.58.190, 28.58.190 part, 28.01.060.]

Effective date—Severability—1979 ex.s. c 250: See notes following RCW 28A.150.220.

Effective date—Severability—1977 ex.s. c 359: See notes following RCW 28A.150.200.

Basic Education Act, RCW 28A.225.160 as part of: RCW 28A.150.200.

28A.225.170 Children on United States reservations, admission to schools—United States authorities to cooperate. Any child who is of school age and otherwise eligible residing within the boundaries of any military, naval, lighthouse, or other United States reservation, national park or national forest or residing upon rented or leased undeeded lands within any Indian reservation within the state of Washington, shall be admitted to the public school, or schools, of any contiguous district without payment of tuition: PROVIDED, That the United States authorities in charge of such reservation or park shall cooperate fully with state, county, and school district authorities in the enforcement of the laws of this state relating to the compulsory attendance of children of school age, and all laws relating to and regulating school attendance. [1969 ex.s. c 223 § 28A.58.210. Prior: 1945 c 141 § 10; 1933 c 28 § 10; 1925 ex.s. c 93 § 1; Rem. Supp. 1945 § 4680-1. Formerly RCW 28A.58.210, 28.58.210, 28.27.140.]

28A.225.200 Education of pupils in another district—Limitation as to state apportionment—Exemption. (1) A local district may be authorized by the educational service district superintendent to transport and educate its pupils in other districts for one year, either by payment of a compensation agreed upon by such school districts, or under other terms mutually satisfactory to the districts concerned when this will afford better educational facilities for the pupils and when a saving may be effected in the cost of education: PROVIDED, That notwithstanding any other provision of law, the amount to be paid by the state to the resident school district for apportionment purposes and otherwise payable pursuant to RCW 28A.150.100, 28A.150.250 through 28A.150.290, 28A.150.350 through 28A.150.410, 28A.160.150 through 28A.160.200, *28A.160.220, 28A.300.170, and 28A.500.010 shall not be

greater than the regular apportionment for each high school student of the receiving district. Such authorization may be extended for an additional year at the discretion of the educational service district superintendent.

(2) Subsection (1) of this section shall not apply to districts participating in a cooperative project established under RCW 28A.340.030 which exceeds two years in duration. [1990 c 33 § 234; 1988 c 268 § 6; 1979 ex.s. c 140 § 1; 1975 1st ex.s. c 275 § 111; 1969 ex.s. c 176 § 141; 1969 ex.s. c 223 § 28A.58.225. Prior: 1965 ex.s. c 154 § 10. Formerly RCW 28A.58.225, 28.24.110.]

***Reviser's note:** RCW 28A.160.220 was recodified as RCW 28A.300.035 pursuant to 1994 c 113 § 2.

Findings—Severability—1988 c 268: See notes following RCW 28A.340.010.

Severability—1979 ex.s. c 140: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 140 § 4.]

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.225.210 Admission of district pupils tuition free. Every school district shall admit on a tuition free basis all persons of school age who reside within this state, and do not reside within another school district carrying the grades for which they are eligible to enroll: PROVIDED, That nothing in this section shall be construed as affecting RCW 28A.225.220 or 28A.225.250. [1990 c 33 § 235; 1983 c 3 § 37; 1969 c 130 § 9; 1969 ex.s. c 223 § 28A.58.230. Prior: 1917 c 21 § 9; RRS § 4718. Formerly RCW 28A.58.230, 28.58.230.]

Designation of high school district nonhigh district students shall attend—Effect when attendance otherwise: RCW 28A.540.110.

Education of children with disabilities: RCW 28A.155.050.

28A.225.215 Enrollment of children without legal residences. (1) A school district shall not require proof of residency or any other information regarding an address for any child who is eligible by reason of age for the services of the school district if the child does not have a legal residence.

(2) A school district shall enroll a child without a legal residence under subsection (1) of this section at the request of the child or parent or guardian of the child. [1989 c 118 § 1. Formerly RCW 28A.58.235.]

28A.225.220 Adults, children from other districts, agreements for attending school—Tuition. (1) Any board of directors may make agreements with adults choosing to attend school, and may charge the adults reasonable tuition.

(2) A district is strongly encouraged to honor the request of a parent or guardian for his or her child to attend a school in another district or the request of a parent or guardian for his or her child to transfer as a student receiving home-based instruction.

(3) A district shall release a student to a nonresident district that agrees to accept the student if:

(a) A financial, educational, safety, or health condition affecting the student would likely be reasonably improved as a result of the transfer; or

(b) Attendance at the school in the nonresident district is more accessible to the parent's place of work or to the location of child care; or

(c) There is a special hardship or detrimental condition.

(4) A district may deny the request of a resident student to transfer to a nonresident district if the release of the student would adversely affect the district's existing desegregation plan.

(5) For the purpose of helping a district assess the quality of its education program, a resident school district may request an optional exit interview or questionnaire with the parents or guardians of a child transferring to another district. No parent or guardian may be forced to attend such an interview or complete the questionnaire.

(6) Beginning with the 1993-94 school year, school districts may not charge transfer fees or tuition for nonresident students enrolled under subsection (3) of this section and RCW 28A.225.225. Reimbursement of a high school district for cost of educating high school pupils of a nonhigh school district shall not be deemed a transfer fee as affecting the apportionment of current state school funds. [1995 c 335 § 602; 1995 c 52 § 2; 1993 c 336 § 1008; 1990 1st ex.s. c 9 § 201; 1969 c 130 § 10; 1969 ex.s. c 223 § 28A.58.240. Prior: 1963 c 47 § 2; prior: 1921 c 44 § 1, part; 1899 c 142 § 8, part; RRS § 4780, part. Formerly RCW 28A.58.240, 28.58.240.]

Reviser's note: This section was amended by 1995 c 52 § 2 and by 1995 c 335 § 602, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

Finding—1990 1st ex.s. c 9: "The legislature finds that academic achievement of Washington students can and should be improved. The legislature further finds that student success depends, in large part, on increased parental involvement in their children's education.

In order to take another step toward improving education in Washington, it is the purpose of this act to enhance the ability of parents to exercise choice in where they prefer their children attend school; inform parents of their options under local policies and state law for the intradistrict and interdistrict enrollment of their children; and provide additional program opportunities for secondary students." [1990 1st ex.s. c 9 § 101.]

Severability—1990 1st ex.s. c 9: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 1st ex.s. c 9 § 502.]

Education of children with disabilities: RCW 28A.155.040, 28A.155.050.

28A.225.225 Applications from nonresident students or students receiving home-based instruction to attend district school—Acceptance and rejection—Notification.

(1) All districts accepting applications from nonresident students or from students receiving home-based instruction for admission to the district's schools shall consider equally all applications received. Each school district shall adopt a policy establishing rational, fair, and equitable standards for acceptance and rejection of applications by June 30, 1990. The policy may include rejection of nonresident students if acceptance of these students would result in the district experiencing a financial hardship.

(2) The district shall provide to applicants written notification of the approval or denial of the application in a timely manner. If the application is rejected, the notification shall include the reason or reasons for denial and the right to appeal under RCW 28A.225.230(3). [1995 c 52 § 3; 1994 c 293 § 1; 1990 1st ex.s. c 9 § 203.]

Captions, headings not law—1990 1st ex.s. c 9: "Part headings and section headings do not constitute any part of the law." [1990 1st ex.s. c 9 § 501.]

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.225.230 Appeal from certain decisions to deny student's request to attend nonresident district—Procedure.

(1) The decision of a school district within which a student under the age of twenty-one years resides or of a school district within which such a student under the age of twenty-one years was last enrolled and is considered to be a resident for attendance purposes by operation of law, to deny such student's request for release to a nonresident school district pursuant to RCW 28A.225.220 may be appealed to the superintendent of public instruction or his or her designee: PROVIDED, That the school district of proposed transfer is willing to accept the student.

(2) The superintendent of public instruction or his or her designee shall hear the appeal and examine the evidence. The superintendent of public instruction may order the resident district to release such a student who is under the age of twenty-one years if the requirements of RCW 28A.225.220 have been met. The decision of the superintendent of public instruction may be appealed to superior court pursuant to chapter 34.05 RCW, the administrative procedure act, as now or hereafter amended.

(3) The decision of a school district to deny the request for accepting the transfer of a nonresident student under RCW 28A.225.225 may be appealed to the superintendent of public instruction or his or her designee. The superintendent or his or her designee shall hear the appeal and examine the evidence. The superintendent of public instruction may order the district to accept the nonresident student if the district did not comply with the standards and procedures adopted under RCW 28A.225.225. The decision of the superintendent of public instruction may be appealed to the superior court under chapter 34.05 RCW. [1990 1st ex.s. c 9 § 204; 1990 c 33 § 236; 1977 c 50 § 1; 1975 1st ex.s. c 66 § 1. Formerly RCW 28A.58.242.]

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

Severability—1975 1st ex.s. c 66: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 66 § 4.]

Designation of high school district nonhigh district students shall attend—Effect when attendance otherwise: RCW 28A.540.110.

28A.225.240 Apportionment credit. If a student under the age of twenty-one years is allowed to enroll in any common school outside the school district within which the student resides or a school district of which the student is considered to be a resident for attendance purposes by operation of law, the student's attendance shall be credited to the nonresident school district of enrollment for state

apportionment and all other purposes. [1975 1st ex.s. c 66 § 2. Formerly RCW 28A.58.243.]

Severability—1975 1st ex.s. c 66: See note following RCW 28A.225.230.

28A.225.250 Cooperative programs among school districts—Rules. (1) The state superintendent of public instruction is directed and authorized to develop and adopt rules governing cooperative programs between and among school districts and educational service districts that the superintendent deems necessary to assure:

(a) Correct calculation of state apportionment payments;
(b) Proper budgeting and accounting for interdistrict cooperative program revenues and expenditures;

(c) Reporting of student, personnel, and fiscal data to meet state needs; and

(d) Protection of the right of residents of Washington under twenty-one years of age to a tuition-free program of basic education.

(2) Unless specifically authorized in law, interdistrict cooperative programs shall not be designed to systematically increase state allocation above amounts required if services were provided by the resident school district. [1995 c 335 § 603; 1969 c 130 § 11. Formerly RCW 28A.58.243.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Education of children with disabilities: RCW 28A.155.040, 28A.155.050.

28A.225.260 Reciprocity exchanges with other states. If the laws of another state permit its school districts to extend similar privileges to pupils resident in this state, the board of directors of any school district contiguous to a school district in such other state may make agreements with the officers of the school district of that state for the attendance of any pupils resident therein upon the payment of tuition.

If a district accepts out-of-state pupils whose resident district is contiguous to a Washington school district, such district shall charge and collect the cost for educating such pupils and shall not include such out-of-state pupils in the computation of the district's share of state and/or county funds.

The board of directors of any school district which is contiguous to a school district in another state may make agreements for and pay tuition for any children of their district desiring to attend school in the contiguous district of the other state. The tuition to be paid for the attendance of resident pupils in an out-of-state school as provided in this section shall be no greater than the cost of educating such elementary or secondary pupils, as the case may be, in the out-of-state educating district. [1969 ex.s. c 223 § 28A.58.250. Prior: 1963 c 47 § 3; prior: 1921 c 44 § 1, part; 1899 c 142 § 8, part; RRS § 4780, part. Formerly RCW 28A.58.250, 28.58.250.]

Education of children with disabilities: RCW 28A.155.040.

28A.225.270 Intradistrict enrollment options policies. Each school district in the state shall adopt and implement a policy allowing intradistrict enrollment options no later than June 30, 1990. Each district shall establish its own policy establishing standards on how the intradistrict

enrollment options will be implemented. [1990 1st ex.s. c 9 § 205.]

Captions, headings not law—1990 1st ex.s. c 9: See note following RCW 28A.225.225.

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.225.280 Transfer students' eligibility for extracurricular activities. Eligibility of transfer students under RCW 28A.225.220 and 28A.225.225 for participation in extracurricular activities shall be subject to rules adopted by the Washington interscholastic activities association as authorized by the state board of education. [1990 1st ex.s. c 9 § 206.]

Captions, headings not law—1990 1st ex.s. c 9: See note following RCW 28A.225.225.

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.225.290 Enrollment options information booklet. (1) The superintendent of public instruction shall prepare and annually distribute an information booklet outlining parents' and guardians' enrollment options for their children.

(2) Before the 1991-92 school year, the booklet shall be distributed to all school districts by the office of the superintendent of public instruction. School districts shall have a copy of the information booklet available for public inspection at each school in the district, at the district office, and in public libraries.

(3) The booklet shall include:

(a) Information about enrollment options and program opportunities, including but not limited to programs in RCW 28A.225.220, 28A.185.040, 28A.225.200 through 28A.225.215, 28A.225.230 through 28A.225.250, *28A.175.090, 28A.340.010 through 28A.340.070 (small high school cooperative projects), and 28A.335.160.

(b) Information about the running start - community college or vocational-technical institute choice program under RCW 28A.600.300 through **28A.600.395; and

(c) Information about the seventh and eighth grade choice program under RCW 28A.230.090. [1990 1st ex.s. c 9 § 207.]

Reviser's note: *(1) RCW 28A.175.090 expired December 31, 1994.

***(2) RCW 28A.600.395 was repealed by 1994 c 205 § 12.

Captions, headings not law—1990 1st ex.s. c 9: See note following RCW 28A.225.225.

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.225.300 Enrollment options information to parents. Each school district board of directors annually shall inform parents of the district's intradistrict and interdistrict enrollment options and parental involvement opportunities. Information on intradistrict enrollment options and interdistrict acceptance policies shall be provided to nonresidents on request. [1990 1st ex.s. c 9 § 208.]

Captions, headings not law—1990 1st ex.s. c 9: See note following RCW 28A.225.225.

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.225.310 Attendance in school district of choice—Impact on existing cooperative arrangements.

Any school district board of directors may make arrangements with the board of directors of other districts for children to attend the school district of choice. Nothing under RCW 28A.225.220 and 28A.225.225 is intended to adversely affect agreements between school districts in effect on April 11, 1990. [1990 1st ex.s. c 9 § 209.]

Captions, headings not law—1990 1st ex.s. c 9: See note following RCW 28A.225.225.

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.225.330 Enrolling students from other districts—Requests for information and permanent records—Withheld transcripts, effect—Immunity from liability—Rules.

(1) When enrolling a student who has attended school in another school district, the school enrolling the student may request the parent and the student to briefly indicate in writing whether or not the student has:

(a) Any history of placement in special educational programs;

(b) Any past, current, or pending disciplinary action;

(c) Any history of violent behavior;

(d) Any unpaid fines or fees imposed by other schools; and

(e) Any health conditions affecting the student's educational needs.

(2) The school enrolling the student shall request the school the student previously attended to send the student's permanent record including records of disciplinary action. If the student has not paid a fine or fee under RCW 28A.635.060, the school may withhold the student's official transcript, but shall transmit information about the student's academic performance, special placement, and records of disciplinary action. If the official transcript is not sent due to unpaid fees or fines, the enrolling school shall notify both the student and parent or guardian that the official transcript will not be sent until the obligation is met, and failure to have an official transcript may result in exclusion from extracurricular activities or failure to graduate.

(3) If information is requested under subsection (2) of this section, the information shall be transmitted within two school days after receiving the request and the records shall be sent as soon as possible. Any school district or district employee who releases the information in compliance with this section is immune from civil liability for damages unless it is shown that the school district employee acted with gross negligence or in bad faith. The state board of education shall provide by rule for the discipline under chapter 28A.410 RCW of a school principal or other chief administrator of a public school building who fails to make a good faith effort to assure compliance with this subsection.

(4) Any school district or district employee who releases the information in compliance with federal and state law is immune from civil liability for damages unless it is shown that the school district or district employee acted with gross negligence or in bad faith. [1995 c 324 § 2; 1995 c 311 § 25; 1994 c 304 § 2.]

Reviser's note: This section was amended by 1995 c 311 § 25 and by 1995 c 324 § 2, each without reference to the other. Both amendments

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

Effective date—1994 c 304: See note following RCW 28A.635.060.

Chapter 28A.230**COMPULSORY COURSE WORK AND ACTIVITIES**

Sections

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28A.230.260	Annual report to the legislature.

AIDS prevention education: Chapter 70.24 RCW.

28A.230.010 Course content requirements—Duties of school district boards of directors. School district boards of directors shall identify and offer courses with content that meet or exceed: (1) The basic education skills identified in RCW 28A.150.210; (2) the graduation requirements under RCW 28A.230.090; and (3) the courses required to meet the minimum college entrance requirements under RCW 28A.230.130. Such courses may be applied or theoretical, academic or vocational. [1990 c 33 § 237; 1984 c 278 § 2. Formerly RCW 28A.05.005.]

Severability—1984 c 278: See note following RCW 28A.185.010.

28A.230.020 Common school curriculum—Fundamentals in conduct. All common schools shall give instruction in reading, penmanship, orthography, written and mental arithmetic, geography, the history of the United States, English grammar, physiology and hygiene with special reference to the effects of alcohol and drug abuse on the human system, science with special reference to the environment, and such other studies as may be prescribed by rule or regulation of the state board of education. All teachers shall stress the importance of the cultivation of manners, the fundamental principles of honesty, honor, industry and economy, the minimum requisites for good health including the beneficial effect of physical exercise and methods to prevent exposure to and transmission of sexually transmitted diseases, and the worth of kindness to all living creatures and the land. The prevention of child abuse may be offered as part of the curriculum in the common schools. [1991 c 116 § 6; 1988 c 206 § 403; 1987 c 232 § 1; 1986 c 149 § 4; 1969 c 71 § 3; 1969 ex.s. c 223 § 28A.05.010. Prior: 1909 p 262 § 2; RRS § 4681; prior: 1897 c 118 § 65; 1895 c 5 § 1; 1890 p 372 § 45; 1886 p 19 § 52. Formerly RCW 28A.05.010, 28.05.010, and 28.05.020.]

Effective date—1988 c 206 §§ 402, 403: See note following RCW 28A.230.070.

Severability—1988 c 206: See RCW 70.24.900.

Child abuse and neglect—Development of primary prevention program: RCW 28A.300.160.

Districts to develop programs and establish programs regarding child abuse and neglect prevention: RCW 28A.230.080.

28A.230.030 Students taught in English language—Exception. All students in the common schools of the state of Washington shall be taught in the English language: PROVIDED, That nothing in this section shall preclude the teaching of students in a language other than English when such instruction will aid the educational advancement of the student. [1969 c 71 § 4. Formerly RCW 28A.05.015.]

28A.230.040 Physical education in grades one through eight. Every pupil attending grades one through eight of the public schools shall receive instruction in physical education as prescribed by rule or regulation of the state board of education: PROVIDED, That individual pupils or students may be excused on account of physical disability, religious belief or participation in directed athletics. [1984 c 52 § 1; 1969 ex.s. c 223 § 28A.05.030. Prior: 1919 c 89 § 1; RRS § 4682. Formerly RCW 28A.05.030, 28.05.030.]

28A.230.050 Physical education in high schools. All high schools of the state shall emphasize the work of physical education, and carry into effect all physical education requirements established by rule or regulation of the state board of education: PROVIDED, That individual students may be excused from participating in physical education otherwise required under this section on account of physical disability, employment or religious belief, or because of participation in directed athletics or military science and tactics or for other good cause. [1985 c 384 § 3; 1984 c 52 § 2; 1969 ex.s. c 223 § 28A.05.040. Prior: 1963 c 235 § 1, part; prior: (i) 1923 c 78 § 1, part; 1919 c 89 § 2, part; RRS § 4683, part. (ii) 1919 c 89 § 5, part;

RRS § 4686, part. Formerly RCW 28A.05.040, 28.05.040, part.]

28A.230.060 Waiver of course of study in Washington's history and government. Students in the twelfth grade who have not completed a course of study in Washington's history and state government because of previous residence outside the state may have the requirement in RCW 28A.230.090 waived by their principal. [1991 c 116 § 7; 1969 ex.s. c 57 § 2; 1969 ex.s. c 223 § 28A.05.050. Prior: 1967 c 64 § 1, part; 1963 c 31 § 1, part; 1961 c 47 § 2, part; 1941 c 203 § 1, part; Rem. Supp. 1941 § 4898-3, part. Formerly RCW 28A.05.050, 28.05.050.]

28A.230.070 AIDS education in public schools—Limitations—Program adoption—Model curricula—Student's exclusion from participation. (1) The life-threatening dangers of acquired immunodeficiency syndrome (AIDS) and its prevention shall be taught in the public schools of this state. AIDS prevention education shall be limited to the discussion of the life-threatening dangers of the disease, its spread, and prevention. Students shall receive such education at least once each school year beginning no later than the fifth grade.

(2) Each district board of directors shall adopt an AIDS prevention education program which is developed in consultation with teachers, administrators, parents, and other community members including, but not limited to, persons from medical, public health, and mental health organizations and agencies so long as the curricula and materials developed for use in the AIDS education program either (a) are the model curricula and resources under subsection (3) of this section, or (b) are developed by the school district and approved for medical accuracy by the office on AIDS established in RCW 70.24.250. If a district elects to use curricula developed by the school district, the district shall submit to the office on AIDS a copy of its curricula and an affidavit of medical accuracy stating that the material in the district-developed curricula has been compared to the model curricula for medical accuracy and that in the opinion of the district the district-developed materials are medically accurate. Upon submission of the affidavit and curricula, the district may use these materials until the approval procedure to be conducted by the office of AIDS has been completed.

(3) Model curricula and other resources available from the superintendent of public instruction may be reviewed by the school district board of directors, in addition to materials designed locally, in developing the district's AIDS education program. The model curricula shall be reviewed for medical accuracy by the office on AIDS established in RCW 70.24.250 within the department of social and health services.

(4) Each school district shall, at least one month before teaching AIDS prevention education in any classroom, conduct at least one presentation during weekend and evening hours for the parents and guardians of students concerning the curricula and materials that will be used for such education. The parents and guardians shall be notified by the school district of the presentation and that the curricula and materials are available for inspection. No student

may be required to participate in AIDS prevention education if the student's parent or guardian, having attended one of the district presentations, objects in writing to the participation.

(5) The office of the superintendent of public instruction with the assistance of the office on AIDS shall update AIDS education curriculum material as newly discovered medical facts make it necessary.

(6) The curriculum for AIDS prevention education shall be designed to teach students which behaviors place a person dangerously at risk of infection with the human immunodeficiency virus (HIV) and methods to avoid such risk including, at least:

(a) The dangers of drug abuse, especially that involving the use of hypodermic needles; and

(b) The dangers of sexual intercourse, with or without condoms.

(7) The program of AIDS prevention education shall stress the life-threatening dangers of contracting AIDS and shall stress that abstinence from sexual activity is the only certain means for the prevention of the spread or contraction of the AIDS virus through sexual contact. It shall also teach that condoms and other artificial means of birth control are not a certain means of preventing the spread of the AIDS virus and reliance on condoms puts a person at risk for exposure to the disease. [1994 c 245 § 7; 1988 c 206 § 402. Formerly RCW 28A.05.055.]

Effective date—1988 c 206 §§ 402, 403: "Sections 402 and 403 of this act shall take effect July 1, 1988." [1988 c 206 § 404.]

Severability—1988 c 206: See RCW 70.24.900.

28A.230.080 Prevention of child abuse and neglect—Written policy—Participation in and establishment of programs. (1) Every school district board of directors shall develop a written policy regarding the district's role and responsibility relating to the prevention of child abuse and neglect.

(2) Every school district shall, within the resources available to it: (a) Participate in the primary prevention program established under RCW 28A.300.160; (b) develop and implement its own child abuse and neglect education and prevention program; or (c) continue with an existing local child abuse and neglect education and prevention program. [1990 c 33 § 238; 1987 c 489 § 6. Formerly RCW 28A.58.255.]

Intent—1987 c 489: See note following RCW 28A.300.150.

28A.230.090 High school graduation requirements or equivalencies—Reevaluation and report by state board of education—Credit for courses taken before attending high school. (1) The state board of education shall establish high school graduation requirements or equivalencies for students. Any course in Washington state history and government used to fulfill high school graduation requirements is encouraged to include information on the culture, history, and government of the American Indian peoples who were the first inhabitants of the state.

(2) In recognition of the statutory authority of the state board of education to establish and enforce minimum high school graduation requirements, the state board shall periodically reevaluate the graduation requirements and shall report

such findings to the legislature in a timely manner as determined by the state board.

(3) Pursuant to any requirement for instruction in languages other than English established by the state board of education or a local school district, or both, for purposes of high school graduation, students who receive instruction in American sign language or one or more American Indian languages shall be considered to have satisfied the state or local school district graduation requirement for instruction in one or more languages other than English.

(4) If requested by the student and his or her family, a student who has completed high school courses before attending high school shall be given high school credit which shall be applied to fulfilling high school graduation requirements if:

(a) The course was taken with high school students, if the academic level of the course exceeds the requirements for seventh and eighth grade classes, and the student has successfully passed by completing the same course requirements and examinations as the high school students enrolled in the class; or

(b) The academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors.

(5) Students who have taken and successfully completed high school courses under the circumstances in subsection (4) of this section shall not be required to take an additional competency examination or perform any other additional assignment to receive credit. Subsection (4) of this section shall also apply to students enrolled in high school on April 11, 1990, who took the courses before attending high school. [1993 c 371 § 3. Prior: 1992 c 141 § 402; 1992 c 60 § 1; 1990 1st ex.s. c 9 § 301; 1988 c 172 § 1; 1985 c 384 § 2; 1984 c 278 § 6. Formerly RCW 28A.05.060.]

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

Severability—1984 c 278: See note following RCW 28A.320.220.

28A.230.100 Rules implementing RCW 28A.230.090 to be adopted—Temporary exemptions—Special alterations—Competency testing. The state board of education shall adopt rules pursuant to chapter 34.05 RCW, to implement the course requirements set forth in RCW 28A.230.090. The rules shall include, as the state board deems necessary, granting equivalencies for and temporary exemptions from the course requirements in RCW 28A.230.090 and special alterations of the course requirements in RCW 28A.230.090. In developing such rules the state board shall recognize the relevance of vocational and applied courses and allow such courses to fulfill in whole or in part the courses required for graduation in RCW 28A.230.090. The rules may include provisions for competency testing in lieu of such courses required for graduation in RCW 28A.230.090 or demonstration of specific skill proficiency or understanding of concepts through work or experience. [1991 c 116 § 8; 1990 c 33 § 239; 1985 c 384 § 1. Formerly RCW 28A.05.062.]

28A.230.120 High school diplomas—Issuance—Option to receive final transcripts—Notice. (1) School districts shall issue diplomas to students signifying graduation from high school upon the students' satisfactory completion of all local and state graduation requirements. Districts shall grant students the option of receiving a final transcript in addition to the regular diploma.

(2) School districts or schools of attendance shall establish policies and procedures to notify senior students of the transcript option and shall direct students to indicate their decisions in a timely manner. School districts shall make appropriate provisions to assure that students who choose to receive a copy of their final transcript shall receive such transcript after graduation. [1984 c 178 § 2. Formerly RCW 28A.58.108.]

High school transcripts: RCW 28A.305.220.

28A.230.130 Program to help students meet minimum entrance requirements at baccalaureate-granting institutions—Exceptions. (1) All public high schools of the state shall provide a program, directly or in cooperation with a community college or another school district, for students whose educational plans include application for entrance to a baccalaureate-granting institution after being granted a high school diploma. The program shall help these students to meet at least the minimum entrance requirements under RCW 28B.10.050.

(2) The state board of education, upon request from local school districts, may grant temporary exemptions from the requirements to provide the program described in subsection (1) of this section for reasons relating to school district size and the availability of staff authorized to teach subjects which must be provided. [1991 c 116 § 9; 1988 c 172 § 2; 1984 c 278 § 16. Formerly RCW 28A.05.070.]

Effective date—1984 c 278: "Sections 16, 18, and 19 of this act shall take effect July 1, 1986." [1984 c 278 § 23.] For codification of 1984 c 278, see Codification Tables, Volume 0.

Severability—1984 c 278: See note following RCW 28A.185.010.

28A.230.140 United States flag—Procurement, display, exercises—National anthem. The board of directors of every school district shall cause a United States flag being in good condition to be displayed during school hours upon or near every public school plant, except during inclement weather. They shall cause appropriate flag exercises to be held in each classroom at the beginning of the school day, and in every school at the opening of all school assemblies, at which exercises those pupils so desiring shall recite the following salute to the flag: "I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all". Students not reciting the pledge shall maintain a respectful silence. The salute to the flag or the national anthem shall be rendered immediately preceding interschool events when feasible. [1981 c 130 § 1; 1969 ex.s. c 223 § 28A.02.030. Prior: (i) 1961 c 238 § 1; 1955 c 8 § 1; 1919 c 90 § 4; 1915 c 71 § 1; 1909 c 97 p 286 § 3; 1897 c 118 § 180; RRS § 4777. Formerly RCW 28.02.030. (ii) 1955 c 8 § 2; 1919 c 90 § 5; RRS § 4778. Formerly RCW 28A.02.030, 28.87.180.]

Display of national and state flags: RCW 1.20.015.

28A.230.150 Temperance and Good Citizenship Day—Aids in programming. On January 16th of each year or the preceding Friday when January 16th falls on a nonschool day, there shall be observed within each public school "Temperance and Good Citizenship Day". Annually the state superintendent of public instruction shall duly prepare and publish for circulation among the teachers of the state a program for use on such day embodying topics pertinent thereto and may from year to year designate particular laws for special observance. [1969 ex.s. c 223 § 28A.02.090. Prior: (i) 1923 c 76 § 1; RRS § 4901-1. (ii) 1923 c 76 § 2; RRS § 4901-2. Formerly RCW 28A.02.090, 28.02.090, and 28.02.095.]

28A.230.160 Educational activities in observance of Veterans' Day. During the school week preceding the eleventh day of November of each year, there shall be presented in each common school as defined in RCW 28A.150.020 educational activities suitable to the observance of Veterans' Day.

The responsibility for the preparation and presentation of the activities approximating at least sixty minutes total throughout the week shall be with the principal or head teacher of each school building and such program shall embrace topics tending to instill a loyalty and devotion to the institutions and laws of this state and nation.

The superintendent of public instruction and each educational service district superintendent, by advice and suggestion, shall aid in the preparation of these activities if such aid be solicited. [1990 c 33 § 241; 1985 c 60 § 1; 1977 ex.s. c 120 § 2; 1975 1st ex.s. c 275 § 45; 1970 ex.s. c 15 § 12. Prior: 1969 ex.s. c 283 § 24; 1969 ex.s. c 176 § 101; 1969 ex.s. c 223 § 28A.02.070; prior: 1955 c 20 § 3; prior: (i) 1939 c 21 § 1; 1921 c 56 § 1; RRS § 4899. (ii) 1921 c 56 § 2; RRS § 4900. (iii) 1921 c 56 § 3; RRS § 4901. Formerly RCW 28A.02.070, 28.02.070.]

Severability—1977 ex.s. c 120: See note following RCW 4.28.080.

Severability—1970 ex.s. c 15: "If any provision of this 1970 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 15 § 32.]

Effective date—1970 ex.s. c 15 § 12: "Notwithstanding any other provision of this 1970 amendatory act, the provisions of section 12 hereof shall not take effect until January 1, 1971 and only if at such time or thereafter chapter 223, Laws of 1969 ex. sess. is effective." [1970 ex.s. c 15 § 13.]

The above two annotations apply to 1970 ex.s. c 15. For codification of that act, see Codification Tables, Volume 0.

Severability—1969 ex.s. c 283: See note following RCW 28A.150.050.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.230.170 Study of Constitutions compulsory—Rules to implement. The study of the Constitution of the United States and the Constitution of the state of Washington shall be a condition prerequisite to graduation from the public and private high schools of this state. The state board of education acting upon the advice of the superintendent of public instruction shall provide by rule or regulation for the implementation of this section. [1985 c 341 § 1; 1969 ex.s.

c 223 § 28A.02.080. Prior: (i) 1925 ex.s. c 134 § 1; RRS § 4898-1. (ii) 1925 ex.s. c 134 § 2; RRS § 4898-2. Formerly RCW 28A.02.080, 28.02.080, and 28.02.081.]

28A.230.180 Educational and career opportunities in the military, student access to information on, when. If the board of directors of a school district provides access to the campus and the student information directory to persons or groups which make students aware of occupational or educational options, the board shall provide access on the same basis to official recruiting representatives of the military forces of the state and the United States for the purpose of informing students of educational and career opportunities available in the military. [1980 c 96 § 1. Formerly RCW 28A.58.535.]

28A.230.190 Assessment—Achievement tests. (1) Every school district is encouraged to test pupils in grade two by an assessment device designed or selected by the school district. This test shall be used to help teachers in identifying those pupils in need of assistance in the skills of reading, writing, mathematics, and language arts. The test results are not to be compiled by the superintendent of public instruction, but are only to be used by the local school district.

(2) The superintendent of public instruction shall prepare and conduct, with the assistance of school districts, a standardized achievement test to be given annually to all pupils in grade four. The test shall assess students' skill in reading, mathematics, and language arts and shall focus upon appropriate input variables. Results of such tests shall be compiled by the superintendent of public instruction, who shall make those results available annually to the legislature, to all local school districts and subsequently to parents of those children tested. The results shall allow parents to ascertain the achievement levels and input variables of their children as compared with the other students within the district, the state and, if applicable, the nation.

(3) The superintendent of public instruction shall report annually to the legislature on the achievement levels of students in grade four. [1990 c 101 § 6; 1985 c 403 § 1; 1984 c 278 § 8; 1975-'76 2nd ex.s. c 98 § 1. Formerly RCW 28A.03.360.]

Contingency—Effective date—1985 c 403: "If specific funding for the purposes of this act, referencing this act by bill number, is not provided by the legislature by July 1, 1987, the amendment to RCW 28A.03.360 by section 1 of this act shall be null and void. This act shall be of no effect until such specific funding is provided. If such funding is so provided, this act shall take effect when the legislation providing the funding takes effect." [1985 c 403 § 2.]

Reviser's note: (1) 1985 ex.s. c 6 § 501 provides specific funding for the purposes of this act.

(2) 1985 ex.s. c 6 took effect June 27, 1985.

Severability—1984 c 278: See note following RCW 28A.185.010.

Implementation—Funding required—1984 c 278: See note following RCW 28A.230.210.

Effective date—1975-'76 2nd ex.s. c 98: "This 1976 amendatory act shall take effect on July 1, 1976." [1975-'76 2nd ex.s. c 98 § 3.]

28A.230.195 Test or assessment scores—Curriculum adjustments—Notification to parents. (1) If students' scores on the test or assessments under RCW 28A.230.190, 28A.230.230, and 28A.230.240 indicate that students need

help in identified areas, the school district shall adjust the curriculum in the identified areas.

(2) Each school district shall notify the parents of each student of their child's performance on the test and assessments conducted under this chapter. [1992 c 141 § 401.]

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

28A.230.210 Washington life skills test—Development and review—Use by school districts. (1) The superintendent of public instruction shall prepare, in consultation with and with the assistance of school districts, a model test to assess students' ability to perform various functions common to everyday life. This model test shall be called the "Washington life skills test" and shall be made available to school districts for use at the district's option. The test shall include questions designed to determine students' academic growth and proficiency in skills generally thought to be useful in adult life, including but not limited to English, vocabulary, communications, and mathematical skills as such skills relate to career, consumer, economic, health, and other issues important to individuals becoming productive citizens. The superintendent of public instruction shall develop and implement a process to review periodically the contents of the test and make changes as may be appropriate or necessary.

(2) School districts may establish their own policies and procedures governing the use of the test. Districts may use the test as a requirement for graduation in conjunction with other state and local graduation requirements or for other purposes as districts may determine. [1984 c 278 § 11. Formerly RCW 28A.03.370.]

Severability—1984 c 278: See note following RCW 28A.185.010.

Implementation—Funding required—1984 c 278: "Implementation of sections 5, 11, and 21 of this act and the amendment to RCW 28A.03.360 by section 8 of this act are each subject to funds being appropriated or available for such purpose or purposes." [1984 c 278 § 22.]

28A.230.220 High school and beyond assessment program. The Washington state high school and beyond assessment program is hereby established to (1) provide information to guide students toward improved self-understanding, maximize use of their talents, and increase their awareness of the options available to them, all of which are essential to making informed decisions about choices in high school and beyond; and (2) provide information that will assist education policy makers, at all levels, determine the achievement levels of students, evaluate existing programs and services for students, identify appropriate new programs or services, and assess the effects of educational policies over time. [1990 c 101 § 1.]

28A.230.230 Annual assessment of eighth grade students. The superintendent of public instruction shall prepare and conduct, with the assistance of school districts, an annual assessment of all students in the eighth grade. The purposes of the assessment are to assist students, parents, and teachers in the planning and selection of appropriate high school courses for students and to provide information about students' current academic proficiencies both in the basic skills of reading, mathematics, and language, and in the reasoning and thinking skills essential for

successful entry into those courses required for high school graduation. The assessment shall also include the collection of information about students' interests and plans for high school and beyond and may include the collection of other related student and school information. The superintendent of public instruction shall make the results of the assessment available to all school districts which shall in turn make them available to students, parents, and teachers in a timely fashion and in a manner consistent with the purposes of RCW 28A.230.220 through 28A.230.260. [1990 c 101 § 2.]

28A.230.240 Annual assessment of eleventh grade students. The superintendent of public instruction shall prepare and conduct, with the assistance of local school districts, an annual assessment of all students in the eleventh grade beginning with the 1991-92 school year. The purposes of the assessment are to provide achievement and guidance information to students, parents, and teachers that will assist in reviewing students' current performance and planning effectively for their initial years beyond high school. The achievement measures shall assess students' strengths and deficiencies in the broad content areas common to the high school curriculum and those thinking and reasoning skills essential for completing high school graduation requirements and for success beyond high school. The assessment shall also collect information about students' career interests and plans and other related student and school information including students' high school course selection patterns, course credits, and grades. The superintendent of public instruction shall make the results of the assessment available to all local school districts which shall in turn make them available to students, parents, and teachers in a timely fashion and in a manner consistent with the purposes of RCW 28A.230.220 through 28A.230.260. No grade ten students shall be tested in the fall of 1990 and the funds already appropriated for such testing shall be used for the planning and preliminary development work necessary to implement RCW 28A.230.220 through 28A.230.260. [1990 c 101 § 3.]

28A.230.250 Coordination of procedures and content of assessments. The superintendent of public instruction shall coordinate both the procedures and the content of the eighth and eleventh grade assessments to maximize the value of the information provided to students as they progress from eighth grade through high school and to teachers and parents about students' talents, interests, and academic needs or deficiencies so that appropriate programs can be provided to enhance the likelihood of students' success both in terms of high school graduation and beyond high school. [1990 c 101 § 4.]

28A.230.260 Annual report to the legislature. The superintendent of public instruction shall report annually to the legislature on the results of the achievement levels of students in grades eight and eleven. [1990 c 101 § 5.]

Chapter 28A.235 FOOD SERVICES

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28A.235.155	Federal summer food service program—Administration of funds—Grants.

Food donation and distribution—Liability: Chapter 69.80 RCW.

28A.235.010 Superintendent of public instruction authorized to receive and disburse federal funds. The superintendent of public instruction is hereby authorized to receive and disburse federal funds made available by acts of congress for the assistance of private nonprofit organizations in providing food services to children and adults according to the provisions of 20 U.S.C. Sec. 1751 et seq., the national school lunch act as amended, and 20 U.S.C. Sec. 1771, et seq., the child nutrition act of 1966, as amended. [1987 c 193 § 1. Formerly RCW 28A.29.010.]

28A.235.020 Payment of costs—Federal food services revolving fund—Disbursements. All reasonably ascertainable costs of performing the duties assumed and performed under RCW 28A.235.010 through 28A.235.030 and 28A.235.140 by either the superintendent of public instruction or another state or local governmental entity in support of the superintendent of public instruction's duties under RCW 28A.235.010 through 28A.235.030 and 28A.235.140 shall be paid exclusively with federal funds and, if any, private gifts and grants. The federal food services revolving fund is hereby established in the custody of the state treasurer. The office of the superintendent of public instruction shall deposit in the fund federal funds received under RCW 28A.235.010, recoveries of such funds, and gifts or grants made to the revolving fund. Disbursements from the fund shall be on authorization of the superintendent of public instruction or the superintendent's designee. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements. The superintendent of public instruction is authorized to expend from the federal food services revolving fund such funds as are necessary to implement

RCW 28A.235.010 through 28A.235.030 and 28A.235.140. [1990 c 33 § 242; 1987 c 193 § 2. Formerly RCW 28A.29.020.]

28A.235.030 Rules. The superintendent shall have the power to promulgate such rules in accordance with chapter 34.05 RCW as are necessary to implement this chapter. [1987 c 193 § 3. Formerly RCW 28A.29.030.]

28A.235.040 Acquisition authorized. Notwithstanding any other provision of law or chapter 39.32 RCW, the state superintendent of public instruction is hereby authorized to purchase, or otherwise acquire from the government of the United States or any property or commodity disposal agency thereof, surplus or donated food commodities for the use by any school district for their hot lunch program. [1969 ex.s. c 223 § 28A.30.010. Prior: 1967 ex.s. c 92 § 1. Formerly RCW 28A.30.010, 28.30.010.]

28A.235.050 Contracts for—Other law applicable to. The state superintendent of public instruction is hereby authorized to enter into any contract with the United States of America, or any agency thereof, for the purchase of any surplus or donated food commodities, without regard to the provisions of any other law requiring the advertising, giving notice, inviting or receiving bids, or which may require the delivery of purchases before payment. [1969 ex.s. c 223 § 28A.30.020. Prior: 1967 ex.s. c 92 § 7. Formerly RCW 28A.30.020, 28.30.020.]

28A.235.060 Advancement of costs from revolving fund moneys—Reimbursement by school district to include transaction expense. In purchasing or otherwise acquiring surplus or donated commodities on the requisition of a school district the superintendent may advance the purchase price and other cost of acquisition thereof from the surplus and donated food commodities revolving fund and the superintendent shall in due course bill the proper school district for the amount paid by him or her for the commodities plus a reasonable amount to cover the expenses incurred by the superintendent's office in connection with the transaction. All payments received for surplus or donated commodities from school districts shall be deposited by the superintendent in the surplus and donated food commodities revolving fund. [1990 c 33 § 243; 1969 ex.s. c 223 § 28A.30.030. Prior: 1967 ex.s. c 92 § 4. Formerly RCW 28A.30.030, 28.30.030.]

28A.235.070 Revolving fund created. There is created in the office of the state superintendent of public instruction a revolving fund to be designated the surplus and donated food commodities revolving fund. [1985 c 341 § 10; 1979 ex.s. c 20 § 1; 1969 ex.s. c 223 § 28A.30.040. Prior: 1967 ex.s. c 92 § 2. Formerly RCW 28A.30.040, 28.30.040.]

28A.235.080 Revolving fund—Administration of fund—Use—School district requisition as prerequisite. The surplus and donated food commodities revolving fund shall be administered by the state superintendent of public

instruction and be used solely for the purchase or other acquisition, including transportation, storage and other cost, of surplus or donable food commodities from the federal government. The superintendent may purchase or otherwise acquire such commodities only after requisition by a school district requesting such commodities. [1969 ex.s. c 223 § 28A.30.050. Prior: 1967 ex.s. c 92 § 3. Formerly RCW 28A.30.050, 28.30.050.]

28A.235.090 Revolving fund—Depositories for fund, bond or security for—Manner of payments from fund. The surplus and donated food commodities revolving fund shall be deposited by the superintendent in such banks as he or she may select, but any such depository shall furnish a surety bond executed by a surety company or companies authorized to do business in the state of Washington, or collateral eligible as security for deposit of state funds, in at least the full amount of the deposit in each depository bank. Moneys shall be paid from the surplus and donated food commodities revolving fund by voucher and check in such form and in such manner as shall be prescribed by the superintendent. [1990 c 33 § 244; 1969 ex.s. c 223 § 28A.30.060. Prior: 1967 ex.s. c 92 § 5. Formerly RCW 28A.30.060, 28.30.060.]

28A.235.100 Rules. The superintendent of public instruction shall have power to adopt rules as may be necessary to effectuate the purposes of this chapter. [1993 c 333 § 5; 1990 c 33 § 245; 1969 ex.s. c 223 § 28A.30.070. Prior: 1967 ex.s. c 92 § 6. Formerly RCW 28A.30.070, 28.30.070.]

28A.235.110 Suspension of laws, rules, inconsistent herewith. Any provision of law, or any resolution, rule or regulation which is inconsistent with the provisions of RCW 28A.235.040 through 28A.235.110 is suspended to the extent such provision is inconsistent herewith. [1990 c 33 § 246; 1969 ex.s. c 223 § 28A.30.080. Prior: 1967 ex.s. c 92 § 8. Formerly RCW 28A.30.080, 28.30.080.]

28A.235.120 Lunchrooms—Establishment and operation—Personnel for—Agreements for. The directors of any school district may establish, equip and operate lunchrooms in school buildings for pupils, certificated and noncertificated employees, and for school or employee functions: PROVIDED, That the expenditures for food supplies shall not exceed the estimated revenues from the sale of lunches, federal lunch aid, Indian education fund lunch aid, or other anticipated revenue, including donations, to be received for that purpose: PROVIDED FURTHER, That the directors of any school district may provide for the use of kitchens and lunchrooms or other facilities in school buildings to furnish meals to elderly persons at cost as provided in RCW 28A.623.020: PROVIDED, FURTHER, That the directors of any school district may provide for the use of kitchens and lunchrooms or other facilities in school buildings to furnish meals at cost as provided in RCW 28A.623.030 to children who are participating in educational or training or care programs or activities conducted by private, nonprofit organizations and entities and to students who are attending private elementary and secondary schools.

Operation for the purposes of this section shall include the employment and discharge for sufficient cause of personnel necessary for preparation of food or supervision of students during lunch periods and fixing their compensation, payable from the district general fund, or entering into agreement with a private agency for the establishment, management and/or operation of a food service program or any part thereof. [1990 c 33 § 247; 1979 ex.s. c 140 § 3; 1979 c 58 § 1; 1973 c 107 § 2; 1969 ex.s. c 223 § 28A.58.136. Prior: (i) 1947 c 31 § 1; 1943 c 51 § 1; 1939 c 160 § 1; Rem. Supp. 1947 § 4706-1. Formerly RCW 28A.58.136, 28.58.260. (ii) 1943 c 51 § 2; Rem. Supp. 1943 § 4706-2. Formerly RCW 28.58.270.]

Severability—1979 ex.s. c 140: See note following RCW 28A.225.200.

Severability—1979 c 58: See note following RCW 28A.623.030.

Nonprofit meal program for elderly—Purpose: RCW 28A.623.010.

28A.235.130 Milk for children at school expense.

The board of directors of any school district may cause to be furnished free of charge, in a suitable receptacle on each and every school day to such children in attendance desiring or in need of the same, not less than one-half pint of milk. The cost of supplying such milk shall be paid for in the same manner as other items of expense incurred in the conduct and operation of said school, except that available federal or state funds may be used therefor. [1969 ex.s. c 223 § 28A.31.020. Prior: 1935 c 15 § 1; 1923 c 152 § 1; 1921 c 190 § 1; RRS § 4806. Formerly RCW 28A.31.020, 28.31.020.]

Food services—Use of federal funds: Chapter 28A.235 RCW.

28A.235.140 School breakfast programs. (1) For the purposes of this section:

(a) "Free or reduced-price lunches" means lunches served by a school district that qualify for federal reimbursement as free or reduced-price lunches under the national school lunch program.

(b) "School breakfast program" means a program meeting federal requirements defined in 42 U.S.C. Sec. 1773.

(c) "Severe-need school" means a school that qualifies for a severe-need school reimbursement rate from federal funds for school breakfasts served to children from low-income families.

(2) School districts shall be required to develop and implement plans for a school breakfast program in severe-need schools, pursuant to the schedule in this section. For the second year prior to the implementation of the district's school breakfast program, and for each subsequent school year, each school district shall submit data enabling the superintendent of public instruction to determine which schools within the district will qualify as severe-need schools. In developing its plan, each school district shall consult with an advisory committee including school staff and community members appointed by the board of directors of the district.

(3) Using district-wide data on school lunch participation during the 1988-89 school year, the superintendent of public instruction shall adopt a schedule for implementation

of school breakfast programs in severe-need schools as follows:

(a) School districts where at least forty percent of lunches served to students are free or reduced-price lunches shall submit a plan for implementation of a school breakfast program in severe-need schools to the superintendent of public instruction no later than July 1, 1990. Each such district shall implement a school breakfast program in all severe-need schools no later than the second day of school in the 1990-91 school year and in each school year thereafter.

(b) School districts where at least twenty-five but less than forty percent of lunches served to students are free or reduced-price lunches shall submit a plan for implementation of a school breakfast program in severe-need schools to the superintendent of public instruction no later than July 1, 1991. Each such district shall implement a school breakfast program in all severe-need schools no later than the second day of school in the 1991-92 school year and in each school year thereafter.

(c) School districts where less than twenty-five percent of lunches served to students are free or reduced-price lunches shall submit a plan for implementation of a school breakfast program in severe-need schools to the superintendent of public instruction no later than July 1, 1992. Each such district shall implement a school breakfast program in all severe-need schools no later than the second day of school in the 1992-93 school year and in each school year thereafter.

(d) School districts that did not offer a school lunch program in the 1988-89 school year are encouraged to implement such a program and to provide a school breakfast program in all severe-need schools when eligible.

(4) The requirements in this section shall lapse if the federal reimbursement rate for breakfasts served in severe-need schools is eliminated.

(5) Students who do not meet family-income criteria for free breakfasts shall be eligible to participate in the school breakfast programs established under this section, and school districts may charge for the breakfasts served to these students. Requirements that school districts have school breakfast programs under this section shall not create or imply any state funding obligation for these costs. The legislature does not intend to include these programs within the state's obligation for basic education funding under Article IX of the Constitution. [1993 c 333 § 1; 1989 c 239 § 2. Formerly RCW 28A.29.040.]

Study—1989 c 239: "The superintendent of public instruction shall conduct a study of the costs and feasibility of expanding the school breakfast program to include schools where more than twenty-five but less than forty percent of lunches served are free or reduced-price lunches. The study shall consider the total cost of the program, including but not limited to food costs, staff salaries and benefits, and additional pupil transportation costs. The superintendent of public instruction shall submit to the legislature prior to January 15, 1992, a report on the results of this study, including recommendations on whether to expand the school breakfast program to include these schools." [1989 c 239 § 3.]

28A.235.145 School breakfast and lunch programs—Use of state funds. State funds received by school districts under this chapter for school breakfast and lunch programs shall be used to support the operating costs of the

program, including labor, unless specific appropriations for nonoperating costs are provided. [1993 c 333 § 2.]

28A.235.150 School breakfast and lunch programs—Grants to increase participation—Increased state support. (1) To the extent funds are appropriated, the superintendent of public instruction may award grants to school districts to increase participation in school breakfast and lunch programs, to improve program quality, and to improve the equipment and facilities used in the programs. School districts shall demonstrate that they have applied for applicable federal funds before applying for funds under this subsection.

(2) To the extent funds are appropriated, the superintendent of public instruction shall increase the state support for school breakfasts and lunches. [1993 c 333 § 3.]

28A.235.155 Federal summer food service program—Administration of funds—Grants. (1) The superintendent of public instruction shall administer funds for the federal summer food service program.

(2) The superintendent of public instruction may award grants, to the extent funds are appropriated, to eligible organizations to help start new summer food service programs for children or to help expand summer food services for children. [1993 c 333 § 4.]

Chapter 28A.300

SUPERINTENDENT OF PUBLIC INSTRUCTION

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Interagency agreement on fetal alcohol exposure programs: RCW 70.96A.510.

State investment board, appointment of member by superintendent: RCW 43.33A.020.

State occupational forecast—Other agencies consulted prior to: RCW 50.38.030.

28A.300.010 Election—Term of office. A superintendent of public instruction shall be elected by the qualified electors of the state, on the first Tuesday after the first Monday in November of the year in which state officers are elected, and shall hold his or her office for the term of four years, and until his or her successor is elected and qualified. [1990 c 33 § 250; 1969 ex.s. c 223 § 28A.03.010. Prior: 1909 c 97 p 231 § 1; RRS § 4521; prior: 1897 c 118 § 20; 1891 c 127 § 1; 1890 p 348 § 3; Code 1881 § 3154; 1873 p 419 § 1; 1861 p 55 § 1. Formerly RCW 28A.03.010, 28.03.010, 43.11.010.]

28A.300.020 Assistant superintendents, deputy superintendent, assistants—Terms for exempt personnel. The superintendent of public instruction may appoint assistant superintendents of public instruction, a deputy superintendent of public instruction, and may employ such other assistants and clerical help as are necessary to carry out the duties of the superintendent and the state board of education. However, the superintendent shall employ without undue delay the executive director of the state board of education and other state board of education office assistants and clerical help, appointed by the state board under RCW 28A.305.110, whose positions are allotted and funded in accordance with moneys appropriated exclusively for the operation of the state board of education. The rate of compensation and termination of any such executive director, state board office assistants, and clerical help shall be subject to the prior consent of the state board of education. The

assistant superintendents, deputy superintendent, and such other officers and employees as are exempted from the provisions of chapter 41.06 RCW, shall serve at the pleasure of the superintendent or at the pleasure of the superintendent and the state board of education as provided in this section. Expenditures by the superintendent of public instruction for direct and indirect support of the state board of education are valid operational expenditures by and in behalf of the office of the superintendent of public instruction. [1996 c 25 § 2; 1969 ex.s. c 223 § 28A.03.020. Prior: 1967 c 158 § 3; 1909 c 97 p 234 § 4; RRS § 4524; prior: 1905 c 56 § 1; 1903 c 104 § 10; 1897 c 118 § 23; 1890 p 351 § 5. Formerly RCW 28A.03.020, 28.03.020, 43.11.020.]

28A.300.030 Assistance of educational service district boards and superintendents—Scope. The superintendent of public instruction, by rule or regulation, may require the assistance of educational service district boards and/or superintendents in the performance of any duty, authority, or power imposed upon or granted to the superintendent of public instruction by law or by the Constitution of the state of Washington, upon such terms and conditions as the superintendent of public instruction shall establish. Such authority to assist the superintendent of public instruction shall be limited to the service function of information collection and dissemination and the attestation to the accuracy and completeness of submitted information. [1975 1st ex.s. c 275 § 46; 1971 ex.s. c 282 § 29. Formerly RCW 28A.03.028.]

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

28A.300.035 Assistance of certificated or classified employee—Reimbursement for substitute. If the superintendent of public instruction or the state board of education, in carrying out their powers and duties under Title 28A RCW, request the service of any certificated or classified employee of a school district upon any committee formed for the purpose of furthering education within the state, or within any school district therein, and such service would result in a need for a school district to employ a substitute for such certificated or classified employee during such service, payment for such a substitute may be made by the superintendent of public instruction from funds appropriated by the legislature for the current use of the common schools and such payments shall be construed as amounts needed for state support to the common schools under RCW 28A.150.380. If such substitute is paid by the superintendent of public instruction, no deduction shall be made from the salary of the certificated or classified employee. In no event shall a school district deduct from the salary of a certificated or classified employee serving on such committee more than the amount paid the substitute employed by the district. [1994 c 113 § 1; 1990 c 33 § 147; 1973 1st ex.s. c 3 § 1. Formerly RCW 28A.160.220, 28A.41.180.]

28A.300.040 Powers and duties generally. In addition to any other powers and duties as provided by law, the powers and duties of the superintendent of public instruction shall be:

(1) To have supervision over all matters pertaining to the public schools of the state.

(2) To report to the governor and the legislature such information and data as may be required for the management and improvement of the schools.

(3) To prepare and have printed such forms, registers, courses of study, rules and regulations for the government of the common schools, questions prepared for the examination of persons as provided for in *RCW 28A.305.130(9), and such other material and books as may be necessary for the discharge of the duties of teachers and officials charged with the administration of the laws relating to the common schools, and to distribute the same to educational service district superintendents.

(4) To travel, without neglecting his or her other official duties as superintendent of public instruction, for the purpose of attending educational meetings or conventions, of visiting schools, of consulting educational service district superintendents or other school officials.

(5) To prepare and from time to time to revise a manual of the Washington state common school code, copies of which shall be provided in such numbers as determined by the superintendent of public instruction at no cost to those public agencies within the common school system and which shall be sold at approximate actual cost of publication and distribution per volume to all other public and nonpublic agencies or individuals, said manual to contain Titles 28A and 28C RCW, rules and regulations related to the common schools, and such other matter as the state superintendent or the state board of education shall determine. Proceeds of the sale of such code shall be transmitted to the public printer who shall credit the state superintendent's account within the state printing plant revolving fund by a like amount.

(6) To act as ex officio member and the chief executive officer of the state board of education.

(7) To file all papers, reports and public documents transmitted to the superintendent by the school officials of the several counties or districts of the state, each year separately. Copies of all papers filed in the superintendent's office, and the superintendent's official acts, may, or upon request, shall be certified by the superintendent and attested by the superintendent's official seal, and when so certified shall be evidence of the papers or acts so certified to.

(8) To require annually, on or before the 15th day of August, of the president, manager, or principal of every educational institution in this state, a report as required by the superintendent of public instruction; and it is the duty of every president, manager or principal, to complete and return such forms within such time as the superintendent of public instruction shall direct.

(9) To keep in the superintendent's office a record of all teachers receiving certificates to teach in the common schools of this state.

(10) To issue certificates as provided by law.

(11) To keep in the superintendent's office at the capital of the state, all books and papers pertaining to the business of the superintendent's office, and to keep and preserve in the superintendent's office a complete record of statistics, as well as a record of the meetings of the state board of education.

(12) With the assistance of the office of the attorney general, to decide all points of law which may be submitted

to the superintendent in writing by any educational service district superintendent, or that may be submitted to the superintendent by any other person, upon appeal from the decision of any educational service district superintendent; and the superintendent shall publish his or her rulings and decisions from time to time for the information of school officials and teachers; and the superintendent's decision shall be final unless set aside by a court of competent jurisdiction.

(13) To administer oaths and affirmations in the discharge of the superintendent's official duties.

(14) To deliver to his or her successor, at the expiration of the superintendent's term of office, all records, books, maps, documents and papers of whatever kind belonging to the superintendent's office or which may have been received by the superintendent's for the use of the superintendent's office.

(15) To administer family services and programs to promote the state's policy as provided in RCW 74.14A.025.

(16) To perform such other duties as may be required by law. [1992 c 198 § 6; 1991 c 116 § 2; 1990 c 33 § 251; 1982 c 160 § 2; 1981 c 249 § 1; 1977 c 75 § 17; 1975 1st ex.s. c 275 § 47; 1971 ex.s. c 100 § 1; 1969 ex.s. c 176 § 102; 1969 ex.s. c 223 § 28A.03.030. Prior: 1967 c 158 § 4; 1909 c 97 p 231 § 3; RRS § 4523; prior: 1907 c 240 § 1; 1903 c 104 § 9; 1901 c 177 § 5; 1901 c 41 § 1; 1899 c 142 § 4; 1897 c 118 § 22; 1891 c 127 §§ 1, 2; 1890 pp 348-351 §§ 3, 4; Code 1881 §§ 3155-3160; 1873 p 419 §§ 2-6; 1861 p 55 §§ 2, 3, 4. Formerly RCW 28A.03.030, 28.03.030, 43.11.030.]

***Reviser's note:** Subsection (9) of RCW 28A.305.130 was deleted by the 1991 c 116 amendments to RCW 28A.305.130.

Severability—Effective date—1992 c 198: See RCW 70.190.910 and 70.190.920.

Severability—1982 c 160: See note following RCW 28A.305.100.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

Studies—1969 ex.s. c 283: "The superintendent of public instruction is directed to develop, prepare and make available information as follows:

(1) A budgetary study of the fiscal impact which would result from payment to substitute teachers, who are on a continuing basis of twelve or more days within any calendar month, at a rate of pay commensurate with their training and experience and at a per diem salary in proportion to the salary for which that teacher would be eligible as a full time teacher;

(2) A study showing the percentage of high school graduates who go on to an institution of higher education, including community colleges, the distribution of such students, and the percentage thereof which continue in higher education through the various grades or years thereof; and

(3) A study of the fiscal impact of establishing one hundred and eighty days as the base salary period for all contracts with certificated employees." [1969 ex.s. c 283 § 8.]

Severability—1969 ex.s. c 283: See note following RCW 28A.150.050.

28A.300.0451 Reimbursement for substitute if employee serves state board or superintendent. See RCW 28A.300.035.

28A.300.050 Assistance to state board for activities involving professional educator excellence. The superintendent of public instruction shall provide technical assistance to the state board of education in the conduct of the activities described in *sections 202 through 232 of this act. [1990 c 33 § 252; 1987 c 525 § 227. Formerly RCW 28A.03.375.]

***Reviser's note:** In addition to vetoed and temporary uncodified sections, "sections 202 through 232 of this act" [1987 c 525] includes the enactment of RCW 28A.04.122, 28A.70.010, 28A.04.167, 28A.70.400 through 28A.70.408, 28A.70.040, 28A.04.170, 28A.04.172, 28A.70.042, 28A.04.174, 28A.04.176, 28A.70.900, 28A.04.178, and 28A.03.375.

Intent—Short title—1987 c 525 §§ 202-233: See notes following RCW 28A.410.020.

Severability—1987 c 525: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 525 § 305.]

28A.300.060 Studies and adoption of classifications for school district budgets—Publication. The superintendent of public instruction and the state auditor jointly, and in cooperation with the senate and house committees on education, shall conduct appropriate studies and adopt classifications or revised classifications under RCW 28A.505.100, defining what expenditures shall be charged to each budget class including administration. The studies and classifications shall be published in the form of a manual or revised manual, suitable for use by the governing bodies of school districts, by the superintendent of public instruction, and by the legislature. [1991 c 116 § 3; 1990 c 33 § 253; 1975-'76 2nd ex.s. c 118 § 23; 1975 1st ex.s. c 5 § 1. Formerly RCW 28A.03.350.]

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.300.070 Receipt of federal funds for school purposes—Superintendent of public instruction to administer. The state of Washington and/or any school district is hereby authorized to receive federal funds made or hereafter made available by acts of congress for the assistance of school districts in providing physical facilities and/or maintenance and operation of schools, or for any other educational purpose, according to provisions of such acts, and the state superintendent of public instruction shall represent the state in the receipt and administration of such funds. [1969 ex.s. c 223 § 28A.02.100. Prior: 1943 c 220 § 4; Rem. Supp. 1943 § 5109-4. Formerly RCW 28A.02.100, 28.02.100.]

28A.300.080 Vocational agriculture education—Intent. The legislature recognizes that agriculture is the most basic and singularly important industry in the state, that agriculture is of central importance to the welfare and economic stability of the state, and that the maintenance of this vital industry requires a continued source of trained and qualified individuals who qualify for employment in agriculture and agribusiness. The legislature declares that it is within the best interests of the people and state of Washington that a comprehensive vocational education program in agriculture be maintained in the state's secondary school system. [1983 1st ex.s. c 34 § 1. Formerly RCW 28A.03.415.]

28A.300.090 Vocational agriculture education—Service area established—Duties. (1) A vocational agriculture education service area within the office of the superintendent of public instruction shall be established. Adequate staffing of individuals trained or experienced in the

field of vocational agriculture shall be provided for the vocational agriculture education service area for coordination of the state program and to provide assistance to local school districts for the coordination of the activities of student agricultural organizations and associations.

(2) The vocational agriculture education service area shall:

(a) Assess needs in vocational agriculture education, assist local school districts in establishing vocational agriculture programs, review local school district applications for approval of vocational agriculture programs, evaluate existing programs, plan research and studies for the improvement of curriculum materials for specialty areas of vocational agriculture. Standards and criteria developed under this subsection shall satisfy the mandates of federally-assisted vocational education;

(b) Develop in-service programs for teachers and administrators of vocational agriculture, review application for vocational agriculture teacher certification, and assist in teacher recruitment and placement in vocational agriculture programs;

(c) Serve as a liaison with the Future Farmers of America, representatives of business, industry, and appropriate public agencies, and institutions of higher education in order to disseminate information, promote improvement of vocational agriculture programs, and assist in the development of adult and continuing education programs in vocational agriculture; and

(d) Establish an advisory task force committee of agriculturists, who represent the diverse areas of the agricultural industry in Washington, which shall make annual recommendations including, but not limited to, the development of curriculum, staffing, strategies for the purpose of establishing a source of trained and qualified individuals in agriculture, and strategies for articulating the state program in vocational agriculture education, including youth leadership throughout the state school system. [1983 1st ex.s. c 34 § 2. Formerly RCW 28A.03.417.]

28A.300.100 Vocational agriculture education—Superintendent to adopt rules. The superintendent of public instruction, pursuant to chapter 34.05 RCW, shall adopt such rules as are necessary to carry out the provisions of RCW 28A.300.090. [1990 c 33 § 254; 1983 1st ex.s. c 34 § 3. Formerly RCW 28A.03.419.]

28A.300.115 Holocaust instruction—Preparation and availability of instructional materials. (1) Every public high school is encouraged to include in its curriculum instruction on the events of the period in modern world history known as the Holocaust, during which six million Jews and millions of non-Jews were exterminated. The instruction may also include other examples from both ancient and modern history where subcultures or large human populations have been eradicated by the acts of humankind. The studying of this material is a reaffirmation of the commitment of free peoples never again to permit such occurrences.

(2) The superintendent of public instruction may prepare and make available to all school districts instructional

materials for use as guidelines for instruction under this section. [1992 c 24 § 1.]

28A.300.120 Administrative hearing—Contract to conduct authorized—Final decision. Whenever a statute or rule provides for a formal administrative hearing before the superintendent of public instruction under chapter 34.05 RCW, the superintendent of public instruction may contract with the office of administrative hearings to conduct the hearing under chapter 34.12 RCW and may delegate to a designee of the superintendent of public instruction the authority to render the final decision. [1985 c 225 § 1. Formerly RCW 28A.03.500.]

28A.300.130 Educational improvement and research—Center for the improvement of student learning—Clearinghouse for commission on student learning and for information regarding educational restructuring and parental involvement programs. (1) Expanding activity in educational research, educational restructuring, and educational improvement initiatives has produced and continues to produce much valuable information. The legislature finds that such information should be shared with the citizens and educational community of the state as widely as possible. To facilitate access to information and materials on educational improvement and research, the superintendent of public instruction, to the extent funds are appropriated, shall establish the center for the improvement of student learning. The primary purpose of the center is to provide assistance and advice to parents, school board members, educators, and the public regarding strategies for assisting students in learning the essential academic learning requirements pursuant to RCW 28A.630.885. The center shall work in conjunction with the commission on student learning, educational service districts, and institutions of higher education.

(2) The center shall:

(a) Serve as a clearinghouse for the completed work and activities of the commission on student learning;

(b) Serve as a clearinghouse for information regarding successful educational restructuring and parental involvement programs in schools and districts, and information about efforts within institutions of higher education in the state to support educational restructuring initiatives in Washington schools and districts;

(c) Provide best practices research and advice that can be used to help schools develop and implement: Programs and practices to improve reading instruction; school improvement plans; school-based shared decision-making models; programs to promote lifelong learning and community involvement in education; school-to-work transition programs; programs to meet the needs of highly capable students; programs to meet the diverse needs of students based on gender, racial, ethnic, economic, and special needs status; and other programs that will assist educators in helping students learn the essential academic learning requirements;

(d) Develop and distribute, in conjunction with the commission on student learning, parental involvement materials, including instructional guides developed to inform parents of the essential academic learning requirements. The instructional guides also shall contain actions parents may

take to assist their children in meeting the requirements, and should focus on reaching parents who have not previously been involved with their children's education;

(e) Identify obstacles to greater parent and community involvement in school shared decision-making processes and recommend strategies for helping parents and community members to participate effectively in school shared decision-making processes, including understanding and respecting the roles of school building administrators and staff;

(f) Take other actions to increase public awareness of the importance of parental and community involvement in education;

(g) Work with appropriate organizations to inform teachers, district and school administrators, and school directors about the waivers available under RCW 28A.305.140 and the broadened school board powers under RCW 28A.320.015;

(h) Provide training and consultation services;

(i) Address methods for improving the success rates of certain ethnic and racial student groups; and

(j) Perform other functions consistent with the purpose of the center as prescribed in subsection (1) of this section.

(3) The superintendent of public instruction, after consultation with the commission on student learning, shall select and employ a director for the center.

(4) The superintendent may enter into contracts with individuals or organizations including but not limited to: School districts; teachers; higher education faculty; institutions of higher education; state agencies; business or community-based organizations; and other individuals and organizations to accomplish the duties and responsibilities of the center. The superintendent shall contract out with community-based organizations to meet the provisions of subsection (2)(d) and (e) of this section. In carrying out the duties and responsibilities of the center, the superintendent, whenever possible, shall use practitioners to assist agency staff as well as assist educators and others in schools and districts.

(5) The superintendent shall report annually to the commission on student learning on the activities of the center. [1996 c 273 § 5; 1993 c 336 § 501; 1986 c 180 § 1. Formerly RCW 28A.03.510.]

Effective date—1996 c 273: See note following RCW 28A.300.290.

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

Definitions: RCW 28A.630.883.

28A.300.135 Center for the improvement of student learning account. (1) The center for the improvement of student learning account is hereby established in the custody of the state treasurer. The superintendent of public instruction shall deposit in the account all moneys received from gifts, grants, or endowments for the center for the improvement of student learning. Moneys in the account may be spent only for activities of the center. Disbursements from the account shall be on authorization of the superintendent of public instruction or the superintendent's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

(2) The superintendent of public instruction may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the center for the improvement of student learning and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments. [1993 c 336 § 502.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

28A.300.138 Student learning improvement grants.

(1)(a) To the extent funds are appropriated, the office of the superintendent of public instruction shall provide student learning improvement grants for the 1994-95 through 1996-97 school years. The purpose of the grants is to provide funds for additional time and resources for site-based planning activities and staff development and planning intended to improve student learning for all students, including students with diverse needs, consistent with the student learning goals in RCW 28A.150.210.

(b) State evaluations and findings on the schools for the twenty-first century program, as well as national research, indicate that extra time for site-based planning activities and staff development and planning for school improvement efforts is critical to the success of such efforts. It is the intent of the legislature that school districts use the funds under this section to provide time and resources for site-based planning activities and staff development and planning that is in addition to locally funded extra time and resources provided for purposes of improving student learning. Districts are strongly encouraged not to supplant local funds with state funds provided under this section.

(2) To be eligible for student learning improvement grants, school district boards of directors shall:

(a) Adopt a policy regarding the involvement of school staff, parents, and community members in instructional decisions;

(b) Submit school-based applications that have been developed by school building personnel, parents, and community members. Each application shall:

(i) Enumerate specific activities to be carried out as part of the grant;

(ii) Identify the technical resources desired and availability of those resources;

(iii) Include a proposed budget; and

(iv) Indicate that the application was approved by the school principal and representatives of teachers, classified employees, parents, and the community.

(3) The school board shall conduct at least one public hearing on schools' plans for using the grants before the board approves the plans. Boards may hear and approve more than one school's plan at a hearing. The board shall only submit applications for grants to the superintendent of public instruction if the board has approved the plans.

(4) If the application is consistent with the purposes of the grant program and the requirements of subsections (2) and (3) of this section are met, the superintendent of public instruction shall approve the grant application.

(5) To the extent funds are appropriated, and for allocation purposes only, the amount of grants for the 1994-

95, 1995-96, and 1996-97 school years shall be based on time equivalent to up to four days depending upon the number of grant applications received and on the number of full-time equivalent certificated staff who work in the school. Funds from the grant may be used to pay for staff development and planning for certificated and classified staff and site-based planning activities. Site-based planning activities and staff development and planning conducted pursuant to this section also may be conducted during the months of July and August preceding each school year for which the school has received a grant. Expenses occurring as a result of these summer site-based planning activities and staff development and planning may be paid from the school year grant. School districts shall use all funds received under this section solely for grants to schools and shall not use any portion of the funds for indirect costs.

(6) The state schools for the deaf and blind may apply for grants under this section.

(7) The superintendent of public instruction shall adopt timelines and rules as necessary under chapter 34.05 RCW to administer the program. The superintendent may modify application requirements for schools that have schools for the twenty-first century projects under *RCW 28A.630.100.

(8) The superintendent of public instruction shall report annually to the legislature by December 1st the following information:

(a) The use of the funds granted under this section;

(b) An estimate of any increase in staff development and planning in the 1994-95, 1995-96, and 1996-97 school years respectively, above that in the 1993-94 school year; and

(c) An estimate of any increase in site-based planning activities in the 1994-95, 1995-96, and 1996-97 school years respectively, above that in the 1993-94 school year.

(9) Funding under this section shall not become a part of the state's basic program of education obligation as set forth under Article IX of the state Constitution. [1994 c 245 § 1; 1993 c 336 § 301.]

*Reviser's note: RCW 28A.630.100 expired June 30, 1994, pursuant to 1987 c 525 § 115.

Effective date—1994 c 245 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 245 § 17.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

28A.300.150 Information on child abuse and neglect prevention curriculum—Superintendent's duties. The superintendent of public instruction shall collect and disseminate to school districts information on child abuse and neglect prevention curriculum. The superintendent of public instruction and the departments of social and health services and community, trade, and economic development shall share relevant information. [1994 c 245 § 8; 1987 c 489 § 2. Formerly RCW 28A.03.512.]

Intent—1987 c 489: "It is the intent of the legislature to make child abuse and neglect primary prevention education and training available to children, including preschool age children, parents, school employees, and licensed day care providers." [1987 c 489 § 1.]

28A.300.160 Development of coordinated primary prevention program for child abuse and neglect—Office as lead agency. (1) The office of the superintendent of public instruction shall be the lead agency and shall assist the department of social and health services, the department of community, trade, and economic development, and school districts in establishing a coordinated primary prevention program for child abuse and neglect.

(2) In developing the program, consideration shall be given to the following:

(a) Parent, teacher, and children's workshops whose information and training is:

(i) Provided in a clear, age-appropriate, nonthreatening manner, delineating the problem and the range of possible solutions;

(ii) Culturally and linguistically appropriate to the population served;

(iii) Appropriate to the geographic area served; and

(iv) Designed to help counteract common stereotypes about child abuse victims and offenders;

(b) Training for school age children's parents and school staff, which includes:

(i) Physical and behavioral indicators of abuse;

(ii) Crisis counseling techniques;

(iii) Community resources;

(iv) Rights and responsibilities regarding reporting;

(v) School district procedures to facilitate reporting and apprise supervisors and administrators of reports; and

(vi) Caring for a child's needs after a report is made;

(c) Training for licensed day care providers and parents that includes:

(i) Positive child guidance techniques;

(ii) Physical and behavioral indicators of abuse;

(iii) Recognizing and providing safe, quality day care;

(iv) Community resources;

(v) Rights and responsibilities regarding reporting; and

(vi) Caring for the abused or neglected child;

(d) Training for children that includes:

(i) The right of every child to live free of abuse;

(ii) How to disclose incidents of abuse and neglect;

(iii) The availability of support resources and how to obtain help;

(iv) Child safety training and age-appropriate self-defense techniques; and

(v) A period for crisis counseling and reporting immediately following the completion of each children's workshop in a school setting which maximizes the child's privacy and sense of safety.

(3) The primary prevention program established under this section shall be a voluntary program and shall not be part of the basic program of education.

(4) Parents shall be given notice of the primary prevention program and may refuse to have their children participate in the program. [1995 c 399 § 21; 1987 c 489 § 3. Formerly RCW 28A.03.514.]

Intent—1987 c 489: See note following RCW 28A.300.150.

28A.300.164 Energy information program. The office of the superintendent of public instruction shall develop an energy information program for use in local school districts. The program shall utilize existing curricu-

lum which may include curriculum as developed by districts or the state relating to the requirement under RCW 28A.230.020 that schools provide instruction in science with special reference to the environment, and shall include but not be limited to the following elements:

- (1) The fundamental role energy plays in the national and regional economy;
- (2) Descriptions and explanations of the various sources of energy which are used both regionally and nationally;
- (3) Descriptions and explanations of the ways to use various energy sources more efficiently; and
- (4) Advantages and disadvantages to the various sources of present and future supplies of energy.

Under this section the office of superintendent of public instruction shall emphasize providing teacher training, promoting the use of local energy experts in the classroom, and dissemination of energy education curriculum. [1990 c 301 § 2.]

Findings—1990 c 301: "The legislature finds that the state is facing an impending energy supply crisis. The legislature further finds that keeping the importance of energy in the minds of state residents is essential as a means to help avert a future energy supply crisis and that citizens need to be aware of the importance and trade-offs associated with energy efficiency, the implications of wasteful uses of energy, and the need for long-term stable supplies of energy. One efficient and effective method of informing the state's citizens on energy issues is to begin in the school system, where information may guide energy use decisions for decades into the future." [1990 c 301 § 1.]

28A.300.170 State general fund—Estimates for state support to public schools, from. At such time as the governor shall determine under the provisions of chapter 43.88 RCW, the superintendent of public instruction shall submit such detailed estimates and other information to the governor and in such form as the governor shall determine of the total estimated amount required for appropriation from the state general fund for state support to public schools during the ensuing biennium. [1980 c 6 § 2; 1969 ex.s. c 223 § 28A.41.040. Prior: 1945 c 141 § 11; Rem. Supp. 1945 § 4940-9. Formerly RCW 28A.41.040, 28.41.040.]

Severability—1980 c 6: See note following RCW 28A.515.320.

28A.300.190 Coordination of video telecommunications programming in schools. The office of the superintendent of public instruction shall provide state-wide coordination of video telecommunications programming for the common schools. [1990 c 208 § 8.]

28A.300.220 Cooperation with work force training and education coordinating board. The superintendent shall cooperate with the work force training and education coordinating board in the conduct of the board's responsibilities under RCW 28C.18.060 and shall provide information and data in a format that is accessible to the board. [1991 c 238 § 78.]

Effective dates—Severability—1991 c 238: See RCW 28B.50.917 and 28B.50.918.

28A.300.230 Findings—Integration of vocational and academic education. The legislature finds that the needs of the work force and the economy necessitate enhanced vocational education opportunities in secondary

education including curriculum which integrates vocational and academic education. In order for the state's work force to be competitive in the world market, employees need competencies in both vocational/technical skills and in core essential competencies such as English, math, science/technology, geography, history, and critical thinking. Curriculum which integrates vocational and academic education reflects that many students learn best through applied learning, and that students should be offered flexible education opportunities which prepare them for both the world of work and for higher education. [1991 c 238 § 140.]

Effective dates—Severability—1991 c 238: See RCW 28B.50.917 and 28B.50.918.

28A.300.235 Development of model curriculum integrating vocational and academic education. The superintendent of public instruction shall with the advice of the work force training and education coordinating board develop model curriculum integrating vocational and academic education at the secondary level. The curriculum shall integrate vocational education for gainful employment with education in the academic subjects of English, math, science/technology, geography, and history, and with education in critical thinking. Upon completion, the model curriculum shall be provided for consideration and use by school districts. [1991 c 238 § 141.]

Effective dates—Severability—1991 c 238: See RCW 28B.50.917 and 28B.50.918.

28A.300.240 International student exchange. (1) The superintendent of public instruction shall annually make available to school districts and approved private schools, from data supplied by the secretary of state, the names of international student exchange visitor placement organizations registered under chapter 19.166 RCW to place students in public schools in the state and a summary of the information the organizations have filed with the secretary of state under chapter 19.166 RCW.

(2) The superintendent shall provide general information and assistance to school districts regarding international student exchange visitors, including, to the extent feasible with available resources, information on the type of visa required for enrollment, how to promote positive educational experiences for visiting exchange students, and how to integrate exchange students into the school environment to benefit the education of both the exchange students and students in the state. [1991 c 128 § 11.]

Severability—Effective date—1991 c 128: See RCW 19.166.900 and 19.166.901.

28A.300.250 Participation in federal nutrition programs—Superintendent's duties. The superintendent of public instruction shall aggressively solicit eligible schools, child and adult day care centers, and other organizations to participate in the nutrition programs authorized by the United States department of agriculture. [1991 c 366 § 402.]

Finding—1991 c 366: "Hunger and malnutrition threaten the future of a whole generation of children in Washington. Children who are hungry or malnourished are unable to function optimally in the classroom and are thus at risk of lower achievement in school. The resultant diminished future

capacity of and opportunities for these children will affect this state's economic and social future. Thus, the legislature finds that the state has an interest in helping families provide nutritious meals to children.

The legislature also finds that the state has an interest in helping hungry and malnourished adults obtain necessary nourishment. Adequate nourishment is necessary for physical health, and physical health is the foundation of self-sufficiency. Adequate nourishment is especially critical in the case of pregnant and lactating women, both to ensure that all mothers and babies are as healthy as possible and to minimize the costs associated with the care of low-birthweight babies." [1991 c 366 § 1.]

Finding—1991 c 366: "The legislature finds that the school breakfast and lunch programs, the summer feeding program, and the child and adult day care feeding programs authorized by the United States department of agriculture are effective in addressing unmet nutritional needs. However, some communities in the state do not participate in these programs. The result is hunger, malnutrition, and inadequate nutrition education for otherwise eligible persons living in nonparticipating communities." [1991 c 366 § 401.]

Parts and headings not law—1991 c 366: "Parts and headings as used in this act constitute no part of the law." [1991 c 366 § 502.]

Severability—1991 c 366: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 366 § 503.]

Effective date—1991 c 366: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 366 § 504.]

28A.300.270 Violence prevention training. The superintendent of public instruction shall, to the extent funding is available, contract with school districts, educational service districts, and approved in-service providers to conduct training sessions for school certificated and classified employees in conflict resolution and other violence prevention topics. The training shall be developmentally and culturally appropriate for the school populations being served and be research based. The training shall not be based solely on providing materials, but also shall include techniques on imparting these skills to students. The training sessions shall be developed in coordination with school districts, the superintendent of public instruction, parents, law enforcement agencies, human services providers, and other interested parties. The training shall be offered to school districts and school staff requesting the training, and shall be made available at locations throughout the state. [1994 sp.s. c 7 § 602.]

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

28A.300.280 Conflict resolution program. The superintendent of public instruction and the office of the attorney general, in cooperation with the Washington state bar association, shall develop a volunteer-based conflict resolution and mediation program for use in community groups such as neighborhood organizations and the public schools. The program shall use lawyers to train students who in turn become trainers and mediators for their peers in conflict resolution. [1994 sp.s. c 7 § 611.]

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

28A.300.290 Effective reading programs—Identification. (1) The center for the improvement of student learning, or its designee, shall develop and imple-

ment a process for identifying programs that have been proven to be effective based upon valid research in teaching elementary students to read. Additional programs shall be reviewed after the initial identification of effective programs.

(2) In identifying effective reading programs, the center for the improvement of student learning, or its designee, shall consult primary education teachers, state-wide reading organizations, institutions of higher education, the commission on student learning, parents, legislators, and other appropriate individuals and organizations.

(3) In identifying effective reading programs, the following criteria shall be used:

(a) Whether the program will help the student meet the state-level and classroom-based assessments for reading;

(b) Whether the program has achieved documented results for students on valid and reliable assessments;

(c) Whether the results of the program have been replicated at different locations over a period of time;

(d) Whether the requirements and specifications for implementing the program are clear so that potential users can clearly determine the requirements of the program and how to implement it;

(e) Whether, when considering the cost of implementing the program, the program is cost-effective relative to other similar types of programs;

(f) Whether the program addresses differing student populations; and

(g) Other appropriate criteria and considerations.

(4) The initial identification of effective reading programs shall be completed and a list of the identified programs prepared by December 31, 1996. [1996 c 273 § 1.]

Effective date—1996 c 273: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 29, 1996]." [1996 c 273 § 6.]

28A.300.295 Identified programs—Grants for in-service training and instructional materials. The superintendent of public instruction shall establish a grant program to provide incentives for teachers, schools, and school districts to use the identified programs on the approved list in grades kindergarten through four. Schools, school districts, and educational service districts may apply for grants. Funds for the grants shall be used for in-service training and instructional materials. Grants shall be awarded and funds distributed not later than June 30, 1997, for programs in the 1996-97 and 1997-98 school years. Priority shall be given to grant applications involving schools and school districts with the lowest mean percentile scores on the state-wide fourth grade assessment required under RCW 28A.230.190 among grant applicants. [1996 c 273 § 2.]

Effective date—1996 c 273: See note following RCW 28A.300.290.

28A.300.300 Effective reading programs—Information—Development and implementation of strategies—Status report. (1) After effective programs have been identified in accordance with RCW 28A.300.290, the center for the improvement of student learning, or its designee, shall provide information and take other appropriate steps to inform elementary school teachers, principals, curriculum directors, superintendents, school board members,

college and university reading instruction faculty, and others of its findings.

(2) The center, in cooperation with state-wide organizations interested in improving literacy, also shall develop and implement strategies to improve reading instruction in the state, with a special emphasis on the instruction of reading in the primary grades using the effective reading programs that have been identified in accordance with RCW 28A.300.290. The strategies may include, but should not be limited to, expanding and improving reading instruction of elementary school teachers in teacher preparation programs, expanded in-service training in reading instruction, the training of paraprofessionals and volunteers in reading instruction, improving classroom-based assessment of reading, and increasing state-wide and regional technical assistance in reading instruction.

(3) The center shall submit a status report to appropriate committees of the legislature by December 31, 1996, regarding its efforts to implement RCW 28A.300.290 and subsections (1) and (2) of this section. The report shall include a description of safeguards enacted to ensure the integrity and objectivity of the assistance and advice provided by the center. [1996 c 273 § 4.]

Training in reading instruction and assessment—1996 c 273: "(1) The center for the improvement of student learning in collaboration with the commission on student learning and in consultation with the state board of education, faculty in educator preparation programs, educators, parents, and school directors, shall establish training programs in reading instruction and assessment for educators in the primary grades. The programs shall be designed to prepare educators to use the classroom-based assessments developed by the commission on student learning to determine how children are reading, select and implement appropriate instructional strategies and effective programs consistent with RCW 28A.300.290 to improve reading instruction, and to involve parents in helping their children to learn to read. Funds shall be used to develop the training program and to provide the training to the educators both through institutes and in the classroom during the school year.

(2) This section shall expire June 30, 1998." [1996 c 273 § 3.]

Effective date—1996 c 273: See note following RCW 28A.300.290.

Chapter 28A.305

STATE BOARD OF EDUCATION

Sections	
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Corporal punishment prohibited—Adoption of policy: RCW 28A.150.300.

Reimbursement for substitute if employee serves state board or superintendent: RCW 28A.160.220.

28A.305.010 Composition of board. The state board of education shall be comprised of one member from each congressional district of the state, not including any congressional district at large, elected by the members of the boards of directors of school districts thereof, as hereinafter in this chapter provided, the superintendent of public instruction and one member elected at large, as provided in this chapter, by the members of the boards of directors of all private schools in the state meeting the requirements of RCW 28A.195.010. The member representing private schools shall not vote on matters affecting public schools. If there is a dispute about whether or not an issue directly affects public schools, the dispute shall be settled by a majority vote of the other members of the board. [1992 c 56 § 1; 1990 c 33 § 257; 1988 c 255 § 1; 1980 c 179 § 1; 1969 ex.s. c 223 § 28A.04.010. Prior: 1955 c 218 § 1; 1947 c 258 § 1; 1925 ex.s. c 65 § 1; 1909 c 97 p 234 § 1; RRS § 4525; prior: 1907 c 240 § 2; 1901 c 177 § 6; 1897 c 118 § 24; 1890 p 352 § 6; Code 1881 § 3163. Formerly RCW 28A.04.010, 28.04.010, 43.63.010.]

Severability—1988 c 255: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 255 § 4.]

Severability—1980 c 179: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 179 § 8.]

28A.305.020 Call and notice of elections. Not later than the twenty-fifth day of August of each year, the superintendent of public instruction shall call for the following elections to be held: An election in each congressional district within which resides a member of the state board of education whose term of membership will end on the second Monday of January next following, and an election of the member of the state board of education representing private schools if the term of membership will end on the second Monday of January next following. The superintendent of public instruction shall give written notice thereof to each member of the board of directors of each common school district in such congressional district, and to the chair of the board of directors of each private school who shall distribute

said notice to each member of the private school board. Such notice shall include the election calendar and rules and regulations established by the superintendent of public instruction for the conduct of the election. [1990 c 33 § 258; 1988 c 255 § 2; 1981 c 38 § 1; 1969 ex.s. c 223 § 28A.04.020. Prior: 1955 c 218 § 2; 1947 c 258 § 2; Rem. Supp. 1947 § 4525-1. Formerly RCW 28A.04.020, 28.04.020, 43.63.020.]

Severability—1988 c 255: See note following RCW 28A.305.010.

Severability—1981 c 38: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 38 § 5.]

28A.305.030 Elections in new congressional districts—Call and conduct of—Member terms—Transitional measures to reduce number of members from each district. (1) Whenever any new and additional congressional district is created, except a congressional district at large, the superintendent of public instruction shall call an election in such district at the time of making the call provided for in RCW 28A.305.020. Such election shall be conducted as other elections provided for in this chapter. At the first such election one member of the state board of education shall be elected for a term of four years.

(2) The terms of office of members of the state board of education who are elected from the various congressional districts shall not be affected by the creation of either new or new and additional districts. In such an event, each board member may continue to serve in office for the balance of the term for which he or she was elected or appointed: PROVIDED, That the board member continues to reside within the boundaries of the congressional district as they existed at the time of his or her election or appointment. Vacancies which occur in a board member position during the balance of any such term shall be filled pursuant to RCW 28A.305.090 by a successor who resides within the boundaries of the congressional district from which the member whose office was vacated was elected as they existed at the time of his or her election. At the election immediately preceding expiration of the term of office of each board member provided for in this subsection following the creation of either new or new and additional congressional districts, and thereafter, a successor shall be elected from the congressional district which corresponds in number with the congressional district from which the incumbent was appointed or elected.

(3) Notwithstanding any other provision of this section or chapter, in order to reduce the number of state board of education members elected from each congressional district from two members to one member the following transitional measures shall govern board member terms, elections, and voting:

(a) The terms of office for each of the sixteen state board of education members and positions representing the first through the eighth congressional districts shall terminate in a sequence commencing with the terms of the four members and positions representing the third and sixth congressional districts as of the second Monday of January 1993, followed by the terms of the six members and positions representing the first, fourth, and seventh congressional districts as of the second Monday of January 1994, and

ending with the termination of the terms of the six members and positions representing the second, fifth, and eighth congressional districts as of the second Monday of January 1995;

(b) An election shall be conducted under RCW 28A.305.040 through 28A.305.060 each year preceding the termination of one or more terms under (a) of this subsection for the purpose of electing one state board of education member from each correspondingly numbered congressional district for a term of four years;

(c) If for any reason a vacancy occurs in one of two positions representing a congressional district before the termination of the term for the position under (a) of this subsection, no replacement may be appointed or elected and the position shall be deemed eliminated; and

(d) During the transition period from the second Monday of January 1993, to the second Monday of January 1995, a vote on any matter before the state board of education by any one of two members representing the same congressional district shall be equal to one-half [of] a vote and a vote by any other member shall be equal to one full vote. Thereafter, the vote of each member shall be equal to one full vote. [1992 c 56 § 3; 1990 c 33 § 259; 1982 1st ex.s. c 7 § 1; 1969 ex.s. c 223 § 28A.04.030. Prior: 1955 c 218 § 3. Formerly RCW 28A.04.030, 28.04.030, 43.63.021.]

Severability—1982 1st ex.s. c 7: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 7 § 3.]

28A.305.040 Declarations of candidacy—Qualifications of candidates—Members restricted from service on local boards—Forfeiture of office. (1) Candidates for membership on the state board of education shall file declarations of candidacy with the superintendent of public instruction on forms prepared by the superintendent. Declarations of candidacy may be filed by person or by mail not earlier than the first day of September, or later than the sixteenth day of September. The superintendent of public instruction may not accept any declaration of candidacy that is not on file in the superintendent's office or is not postmarked before the seventeenth day of September, or if not postmarked or the postmark is not legible, if received by mail after the twenty-first day of September. No person employed in any school, college, university, or other educational institution or any educational service district superintendent's office or in the office of superintendent of public instruction shall be eligible for membership on the state board of education and each member elected who is not representative of the private schools in this state and thus not running-at-large must be a resident of the congressional district from which he or she was elected. No member of a board of directors of a local school district or private school shall continue to serve in that capacity after having been elected to the state board.

(2) The prohibitions against membership upon the board of directors of a school district or school and against employment, as well as the residence requirement, established by this section, are conditions to the eligibility of state board members to serve as such which apply throughout the terms for which they have been elected or appointed. Any

state board member who hereafter fails to meet one or more of the conditions to eligibility shall be deemed to have immediately forfeited his or her membership upon the board for the balance of his or her term: PROVIDED, That such a forfeiture of office shall not affect the validity of board actions taken prior to the date of notification to the board during an open public meeting of the violation. [1990 c 33 § 260; 1982 1st ex.s. c 7 § 2; 1980 c 179 § 4; 1975 1st ex.s. c 275 § 49; 1971 c 48 § 1; 1969 ex.s. c 223 § 28A.04.040. Prior: 1967 ex.s. c 67 § 6; 1955 c 218 § 5. Formerly RCW 28A.04.040, 28.04.040, 43.63.023.]

Severability—1982 1st ex.s. c 7: See note following RCW 28A.305.030.

Severability—1980 c 179: See note following RCW 28A.305.010.

Severability—1971 c 48: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 c 48 § 55.] For codification of 1971 c 48, see Codification Tables, Volume 0.

28A.305.050 Qualifications of voters—Ballots—Voting instructions—Candidates' biographical data. Each member of the board of directors of each school district in each congressional district shall be eligible to vote for the candidates who reside in his or her congressional district. Each chair of the board of directors of each eligible private school shall cast a vote for the candidate receiving a majority in an election to be held as follows: Each member of the board of directors of each eligible private school shall vote for candidates representing the private schools in an election of the board, the purpose of which is to determine the board's candidate for the member representing private schools on the state board. Not later than the first day of October the superintendent of public instruction shall mail to each member of each common school district board of directors and to each chair of the board of directors of each private school, the proper ballot and voting instructions for his or her congressional district together with biographical data concerning each candidate listed on such ballot, which data shall have been prepared by the candidate. [1990 c 33 § 261; 1988 c 255 § 3; 1981 c 38 § 2; 1969 ex.s. c 223 § 28A.04.050. Prior: 1955 c 218 § 6. Formerly RCW 28A.04.050, 28.04.050, 43.63.025.]

Severability—1988 c 255: See note following RCW 28A.305.010.

Severability—1981 c 38: See note following RCW 28A.305.020.

28A.305.060 Election procedure—Certificate. Each member of the state board of education shall be elected by a majority of the electoral points accruing from all the votes cast at the election for all candidates for the position. All votes shall be cast by mail addressed to the superintendent of public instruction and no votes shall be accepted for counting if postmarked after the sixteenth day of October, or if not postmarked or the postmark is not legible, if received by mail after the twenty-first day of October following the call of the election. The superintendent of public instruction and an election board comprised of three persons appointed by the state board of education shall count and tally the votes and the electoral points accruing therefrom not later than the twenty-fifth day of October. The votes shall be counted and tallied and electoral points determined in the following manner for the ballot cast by common school

district board directors: Each vote cast by a school director shall be accorded as many electoral points as there are enrolled students in that director's school district as determined by the enrollment reports forwarded to the state superintendent of public instruction for apportionment purposes for the month of September of the year of election: PROVIDED, That school directors from a school district which has more than five directors shall have their electoral points based upon enrollment recomputed by multiplying such number by a fraction, the denominator of which shall be the number of directors in such district, and the numerator of which shall be five; the electoral points shall then be tallied for each candidate as the votes are counted; and it shall be the majority of electoral points which determines the winning candidate. The votes shall be counted and electoral points determined in the following manner for the ballots cast by chairs of the board of directors of each private school: Each vote cast by a private school board shall be accorded as many electoral points as the number of enrolled students in the respective school as determined by enrollment reports forwarded to the superintendent of public instruction for the month of September in the year previous to the year of election and it shall be the majority of electoral points which determines the winning candidate. If no candidate receives a majority of the electoral points cast, then, not later than the first day of November, the superintendent of public instruction shall call a second election to be conducted in the same manner and at which the candidates shall be the two candidates receiving the highest number of electoral points accruing from such votes cast. No vote cast at such second election shall be received for counting if postmarked after the sixteenth day of November, or if not postmarked or the postmark is not legible, if received by mail after the twenty-first day of November and the votes shall be counted as hereinabove provided on the twenty-fifth day of November. The candidate receiving a majority of electoral points accruing from the votes at any such second election shall be declared elected. In the event of a tie in such second election, the candidate elected shall be determined by a chance drawing of a nature established by the superintendent of public instruction. Within ten days following the count of votes in an election at which a member of the state board of education is elected, the superintendent of public instruction shall certify to the secretary of state the name or names of the persons elected to be members of the state board of education. [1990 c 33 § 262; 1981 c 38 § 3; 1980 c 179 § 5; 1975 c 19 § 2; 1969 ex.s. c 283 § 25; 1969 ex.s. c 223 § 28A.04.060. Prior: 1967 c 158 § 1; 1955 c 218 § 4; 1947 c 258 § 3; Rem. Supp. 1947 § 4525-2. Formerly RCW 28A.04.060, 28.04.060, 43.63.030.]

Severability—1981 c 38: See note following RCW 28A.305.020.

Severability—1980 c 179: See note following RCW 28A.305.010.

Severability—1969 ex.s. c 283: See note following RCW 28A.150.050.

28A.305.070 Action to contest election—Grounds—Procedure. Any common school district board member or any private school board member eligible to vote for a candidate for membership on the state board of education or any candidate for the position, within ten days after the state superintendent of public instruction's certification of election,

may contest the election of the candidate for any of the following causes:

(1) For malconduct on the part of the state superintendent of public instruction or any member of the election board with respect to such election;

(2) Because the person whose right is being contested was not eligible for membership on the state board of education at the time the person was certified as elected;

(3) Because the person whose right is being contested gave a bribe or reward to a voter or to an inspector, judge or clerk of the election for the purpose of procuring the person's election, or offered to do so;

(4) On account of illegal votes.

An action contesting an election pursuant to this section shall be conducted in compliance with RCW 29.65.020 and 29.65.040 through 29.65.120, as now or hereafter amended. [1980 c 179 § 6; 1975 c 19 § 1. Formerly RCW 28A.04.065.]

Severability—1980 c 179: See note following RCW 28A.305.010.

28A.305.080 Terms of office. The term of office of each member of the state board of education shall begin on the second Monday in January next following the election at which he or she was elected, and he or she shall hold office for the term for which he or she was elected and until his or her successor is elected and qualified. Except as otherwise provided in RCW 28A.305.030, each member of the state board of education shall be elected for a term of four years. [1992 c 56 § 2; 1990 c 33 § 263; 1969 ex.s. c 223 § 28A.04.070. Prior: 1955 c 218 § 7; 1947 c 258 § 9; Rem. Supp. 1947 § 4525-8. Formerly RCW 28A.04.070, 28.04.070, 43.63.090.]

28A.305.090 Vacancies, filling. Whenever there shall be a vacancy upon the state board of education, from any cause whatever, it shall be the duty of the remaining members of the board to fill such vacancy by appointment, and the person so appointed shall continue in office until his or her successor has been specially elected, as hereinafter in this section provided, and has qualified. Whenever a vacancy occurs, the superintendent of public instruction shall call, in the month of August next following the date of the occurrence of such vacancy, a special election to be held in the same manner as other elections provided for in this chapter, at which election a successor shall be elected to hold office for the unexpired term of the member whose office was vacated. [1990 c 33 § 264; 1969 ex.s. c 223 § 28A.04.080. Prior: 1955 c 218 § 8; 1947 c 258 § 10; Rem. Supp. 1947 § 4525-9. Formerly RCW 28A.04.080, 28.04.080, 43.63.100.]

28A.305.100 Superintendent as ex officio member and chief executive officer of board. The state board of education shall annually elect a president and vice president. The superintendent of public instruction shall be an ex officio member and the chief executive officer of the board. As such ex officio member the superintendent shall have the right to vote only when there is a question before the board upon which no majority opinion has been reached among the board members present and voting thereon and the superintendent's vote is essential for action thereon. The

superintendent, as chief executive officer of the board, shall furnish all necessary record books and forms for its use, and shall represent the board in directing the work of school inspection. [1982 c 160 § 1; 1969 ex.s. c 223 § 28A.04.090. Prior: 1967 c 158 § 2; 1909 c 97 p 235 § 2; RRS § 4526. Formerly RCW 28A.04.090, 28.04.090, 43.63.110.]

Severability—1982 c 160: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 160 § 4.]

28A.305.110 Executive director—Secretary of board. The state board of education may appoint an executive director who shall also serve as secretary of the board. The state board of education may also appoint other state board office assistants and clerical persons to perform duties in support of the activities of the state board and such other duties including duties involving supervision over matters pertaining to the public schools as the superintendent of public instruction may delegate to the state board. The secretary shall keep a correct record of board proceedings and, upon request, furnish to any person a copy of such proceedings. The executive director, his or her confidential secretary, and administrative assistants in the offices of the state board of education and superintendent of public instruction designated by the superintendent are exempt from civil service, together with other staff as now or hereafter designated as exempt in accordance with chapter 41.06 RCW. [1996 c 25 § 1; 1990 c 33 § 265; 1982 c 160 § 3; 1969 ex.s. c 223 § 28A.04.100. Prior: 1909 c 97 p 235 § 3; RRS § 4527. Formerly RCW 28A.04.100, 28.04.100, 43.63.120.]

Severability—1982 c 160: See note following RCW 28A.305.100.

Records of meetings kept by superintendent of public instruction: RCW 28A.300.040.

28A.305.120 Meetings—Compensation and travel expenses of members. The state board of education shall hold an annual meeting and such other regular meetings at such time and place within the state as the board shall determine and may hold such special meetings as may be deemed necessary for the transaction of public business, such special meetings to be called by the superintendent of public instruction, or by a majority of the board. The persons serving as members of the state board of education shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed by the superintendent of public instruction for travel expenses in accordance with RCW 43.03.050 and 43.03.060 incurred in the performance of their duties which expenses shall be paid by the state treasurer on warrants out of funds appropriated or otherwise available, upon the order of the superintendent. [1984 c 287 § 60; 1975-'76 2nd ex.s. c 34 § 67; 1973 c 106 § 13; 1969 ex.s. c 223 § 28A.04.110. Prior: 1909 c 97 p 235 § 4; RRS § 4528. Formerly RCW 28A.04.110, 28.04.110, 43.63.130.]

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

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

Records of meetings kept by superintendent of public instruction: RCW 28A.300.040.

State treasurer to issue state warrants: RCW 43.88.160.

28A.305.130 Powers and duties generally. In addition to any other powers and duties as provided by law, the state board of education shall:

(1) Approve or disapprove the program of courses leading to teacher, school administrator, and school specialized personnel certification offered by all institutions of higher education within the state which may be accredited and whose graduates may become entitled to receive such certification.

(2) Conduct every five years a review of the program approval standards, including the minimum standards for teachers, administrators, and educational staff associates, to reflect research findings and assure continued improvement of preparation programs for teachers, administrators, and educational staff associates.

(3) Investigate the character of the work required to be performed as a condition of entrance to and graduation from any institution of higher education in this state relative to such certification as provided for in subsection (1) above, and prepare a list of accredited institutions of higher education of this and other states whose graduates may be awarded such certificates.

(4)(a) The state board of education shall adopt rules to allow a teacher certification candidate to fulfill, in part, teacher preparation program requirements through work experience as a noncertificated teacher's aide in a public school or private school meeting the requirements of RCW 28A.195.010. The rules shall include, but are not limited to, limitations based upon the recency of the teacher preparation candidate's teacher aide work experience, and limitations based on the amount of work experience that may apply toward teacher preparation program requirements under this chapter.

(b) The state board of education shall require that at the time of the individual's enrollment in a teacher preparation program, the supervising teacher and the building principal shall jointly provide to the teacher preparation program of the higher education institution at which the teacher candidate is enrolled, a written assessment of the performance of the teacher candidate. The assessment shall contain such information as determined by the state board of education and shall include: Evidence that at least fifty percent of the candidate's work as a noncertificated teacher's aide was involved in instructional activities with children under the supervision of a certificated teacher and that the candidate worked a minimum of six hundred thirty hours for one school year; the type of work performed by the candidate; and a recommendation of whether the candidate's work experience as a noncertificated teacher's aide should be substituted for teacher preparation program requirements. In compliance with such rules as may be established by the state board of education under this section, the teacher preparation programs of the higher education institution where the candidate is enrolled shall make the final determination as to what teacher preparation program requirements may be fulfilled by teacher aide work experience.

(5) Supervise the issuance of such certificates as provided for in subsection (1) above and specify the types and kinds of certificates necessary for the several departments of the common schools by rule or regulation in accordance with RCW 28A.410.010.

(6) Accredite, subject to such accreditation standards and procedures as may be established by the state board of education, all schools that apply for accreditation, and approve, subject to the provisions of RCW 28A.195.010, private schools carrying out a program for any or all of the grades kindergarten through twelve: PROVIDED, That no private school may be approved that operates a kindergarten program only: PROVIDED FURTHER, That no public or private schools shall be placed upon the list of accredited schools so long as secret societies are knowingly allowed to exist among its students by school officials: PROVIDED FURTHER, That the state board may elect to require all or certain classifications of the public schools to conduct and participate in such pre-accreditation examination and evaluation processes as may now or hereafter be established by the board.

(7) Make rules and regulations governing the establishment in any existing nonhigh school district of any secondary program or any new grades in grades nine through twelve. Before any such program or any new grades are established the district must obtain prior approval of the state board.

(8) Prepare such outline of study for the common schools as the board shall deem necessary, and prescribe such rules for the general government of the common schools, as shall seek to secure regularity of attendance, prevent truancy, secure efficiency, and promote the true interest of the common schools.

(9) Continuously reevaluate courses and adopt and enforce regulations within the common schools so as to meet the educational needs of students and articulate with the institutions of higher education and unify the work of the public school system.

(10) Carry out board powers and duties relating to the organization and reorganization of school districts under RCW 28A.315.010 through 28A.315.680 and 28A.315.900.

(11) By rule or regulation promulgated upon the advice of the chief of the Washington state patrol, through the director of fire protection, provide for instruction of pupils in the public and private schools carrying out a K through 12 program, or any part thereof, so that in case of sudden emergency they shall be able to leave their particular school building in the shortest possible time or take such other steps as the particular emergency demands, and without confusion or panic; such rules and regulations shall be published and distributed to certificated personnel throughout the state whose duties shall include a familiarization therewith as well as the means of implementation thereof at their particular school.

(12) Hear and decide appeals as otherwise provided by law.

The state board of education is given the authority to promulgate information and rules dealing with the prevention of child abuse for purposes of curriculum use in the common schools. [1996 c 83 § 1; 1995 c 369 § 9; 1991 c 116 § 11; 1990 c 33 § 266. Prior: 1987 c 464 § 1; 1987 c 39 § 1; prior: 1986 c 266 § 86; 1986 c 149 § 3; 1984 c 40 § 2; 1979 ex.s. c 173 § 1; 1975-'76 2nd ex.s. c 92 § 1; 1975 1st ex.s. c 275 § 50; 1974 ex.s. c 92 § 1; 1971 ex.s. c 215 § 1; 1971 c 48 § 2; 1969 ex.s. c 223 § 28A.04.120; prior: 1963 c 32 § 1; 1961 c 47 § 1; prior: (i) 1933 c 80 § 1; 1915 c 161 § 1; 1909 c 97 p 236 § 5; 1907 c 240 § 3; 1903 c 104

§ 12; 1897 c 118 § 27; 1895 c 150 § 1; 1890 p 352 § 8; Code 1881 § 3165; RRS § 4529. (ii) 1919 c 89 § 3; RRS § 4684. (iii) 1909 c 97 p 238 § 6; 1897 c 118 § 29; RRS § 4530. Formerly RCW 28A.04.120, 28.04.120, 28.58.280, 28.58.281, 28.58.282, 43.63.140.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1984 c 40: See note following RCW 28A.195.050.

Severability—1975-'76 2nd ex.s. c 92: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 92 § 6.]

Child abuse and neglect—Development of primary prevention program: RCW 28A.300.160.

Districts to develop programs and establish programs regarding child abuse and neglect prevention: RCW 28A.225.200.

Professional certification not to be required of superintendents, deputy or assistant superintendents: RCW 28A.410.120.

Use of force on children—Policy—Actions presumed unreasonable: RCW 9A.16.100.

28A.305.140 Waiver from provisions authorized. (Contingent expiration date.) (1) The self-study process requirements under *RCW 28A.320.200, the teacher classroom contact requirements under RCW 28A.150.260(4), and the program hour offerings requirements under RCW 28A.150.200 through 28A.150.220 shall be waived for school districts or individual schools within a district if the school district submits to the state board of education a plan for restructuring its educational program, or the educational program of individual schools within the district that includes:

- (a) Specific standards for increased student learning that the district expects to achieve;
- (b) How the district plans to achieve the higher standards, including timelines for implementation;
- (c) How the district plans to determine if the higher standards are met;
- (d) Evidence that the board of directors, teachers, administrators, and classified employees are committed to working cooperatively in implementing the plan;
- (e) Evidence that opportunities were provided for parents and citizens to be involved in the development of the plan; and
- (f) Identification of the state requirements that will be waived.

(2) Waivers granted by the state board of education under this section shall be renewed every three years upon the state board of education receiving a renewal request from the school district board of directors. Before filing the request, the school district shall conduct at least one public meeting to evaluate the educational programs that were implemented as a result of the waivers. The request to the state board of education shall include information regarding the activities and programs implemented as a result of the waivers, whether the higher standards for students are being achieved, and a summary of the comments received at the public meeting or meetings.

(3) If a school district intends to waive the program hour offerings under RCW 28A.150.220, it shall make available to students enrolled in kindergarten at least a total instructional offering of four hundred fifty hours. Each

school district also shall make available to students enrolled in grades one through twelve at least a district-wide annual average total instructional hour offering of one thousand hours. A school district may schedule the last thirty instructional hours of any school year for noninstructional purposes in the case of students who are graduating from high school, including, but not limited to, the observance of graduation and early release from school upon the request of a student, and all such students may be claimed as full-time equivalent students to the extent they could otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260. The state board of education may define alternatives to classroom instructional time for students in grades nine through twelve enrolled in alternative learning experiences. The state board of education shall establish rules to determine annual average instructional hours for districts having fewer than twelve grades. The program shall include instruction in the essential academic learning requirements under RCW 28A.630.885 and other subjects and activities the school district determines to be appropriate.

(4) "Instructional hours" means those hours students are provided the opportunity to engage in educational activity planned by and under the direction of school district staff, as directed by the administration and board of directors of the district, inclusive of intermissions for class changes, recess, and teacher/parent-guardian conferences that are planned and scheduled by the district for the purpose of discussing students' educational needs or progress, and exclusive of time actually spent for meals. [1992 c 141 § 302; 1990 c 33 § 267; 1985 c 349 § 6. Formerly RCW 28A.04.127.]

***Reviser's note:** RCW 28A.320.200 was repealed by 1992 c 141 § 506, effective September 1, 1998.

Contingent expiration date—1992 c 141 § 302: "Section 302, chapter 141, Laws of 1992 shall expire September 1, 2000, unless by September 1, 2000, a law is enacted stating that a school accountability and academic assessment system is not in place." [1994 c 245 § 11; 1992 c 141 § 508.]

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Severability—1985 c 349: See note following RCW 28A.320.200.

28A.305.140 Waiver from provisions of RCW 28A.150.200 through 28A.150.220 authorized. (Contingent effective date.) The state board of education may grant waivers to school districts from the provisions of RCW 28A.150.200 through 28A.150.220 on the basis that such waiver or waivers are necessary to implement successfully a local plan to provide for all students in the district an effective education system that is designed to enhance the educational program for each student. The local plan may include alternative ways to provide effective educational programs for students who experience difficulty with the regular education program.

The state board shall adopt criteria to evaluate the need for the waiver or waivers. [1990 c 33 § 267; 1985 c 349 § 6. Formerly RCW 28A.04.127.]

Severability—1985 c 349: See note following RCW 28A.320.200.

28A.305.145 Application process for waivers under RCW 28A.305.140. School districts may use the application process in RCW 28A.300.138 to apply for waivers under RCW 28A.305.140. [1993 c 336 § 302.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

28A.305.150 Classification, numbering system of school districts—Rules and regulations for. The state board of education is hereby empowered, and it shall be the duty of said board, to prescribe rules and regulations governing the classification and numbering system of school districts, except as otherwise provided by law. [1971 c 54 § 1; 1969 ex.s. c 223 § 28A.04.130. Prior: 1917 c 21 § 2; RRS § 4711. Formerly RCW 28A.04.130, 28.04.130, 28.01.040, part; 43.63.150.]

Severability—1971 c 54: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 c 54 § 2.]

28A.305.160 Rules incorporating due process guarantees of pupils—Informal due process procedures when suspension of students. (1) The state board of education shall adopt and distribute to all school districts lawful and reasonable rules prescribing the substantive and procedural due process guarantees of pupils in the common schools. Such rules shall authorize a school district to use informal due process procedures in connection with the short-term suspension of students to the extent constitutionally permissible: PROVIDED, That the state board deems the interest of students to be adequately protected. When a student suspension or expulsion is appealed, the rules shall authorize a school district to impose the suspension or expulsion temporarily after an initial hearing for no more than ten consecutive school days or until the appeal is decided, whichever is earlier. Any days that the student is temporarily suspended or expelled before the appeal is decided shall be applied to the term of the student suspension or expulsion and shall not limit or extend the term of the student suspension or expulsion.

(2) Short-term suspension procedures may be used for suspensions of students up to and including, ten consecutive school days. [1996 c 321 § 2; 1975-'76 2nd ex.s. c 97 § 1; 1971 ex.s. c 268 § 2. Formerly RCW 28A.04.132.]

28A.305.170 Rules and regulations accepting national guard high school career training. In addition to any other powers and duties as provided by law, the state board of education shall adopt rules and regulations governing and authorizing the acceptance of national guard high school career training in lieu of either required high school credits or elective high school credits. Students enrolled in such national guard programs shall be considered enrolled in the common school last attended preceding enrollment in such national guard program. [1975 1st ex.s. c 262 § 1. Formerly RCW 28A.04.133.]

28A.305.190 Eligibility to take general educational development test. The state board of education shall adopt rules governing the eligibility of a child sixteen years of age and under nineteen years of age to take the general educational development test if the child provides a substantial and warranted reason for leaving the regular high school education program, or if the child was home-schooled. [1993 c

218 § 1; 1991 c 116 § 5; 1973 c 51 § 2. Formerly RCW 28A.04.135.]

Severability—1973 c 51: See note following RCW 28A.225.010.

Waiver of fees or residency requirements at community colleges for students completing a high school education: RCW 28B.15.520.

28A.305.200 Seal. The state board of education shall adopt a seal which shall be kept in the office of the superintendent of public instruction. [1969 ex.s. c 223 § 28A.04.140. Prior: 1909 c 97 p 238 § 7; RRS § 4531. Formerly RCW 28A.04.140, 28.04.140, 28.01.040, part; 43.63.160.]

28A.305.210 Assistance of educational service district boards and superintendents—Scope. The state board of education, by rule or regulation, may require the assistance of educational service district boards and/or superintendents in the performance of any duty, authority, or power imposed upon or granted to the state board of education by law, upon such terms and conditions as the state board of education shall establish. Such authority to assist the state board of education shall be limited to the service function of information collection and dissemination and the attestation to the accuracy and completeness of submitted information. [1975 1st ex.s. c 275 § 51; 1971 ex.s. c 282 § 30. Formerly RCW 28A.04.145.]

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

28A.305.220 Development of standardized high school transcripts—School districts to inform students of importance. (1) The state board of education shall develop for use by all public school districts a standardized high school transcript. The state board of education shall establish clear definitions for the terms "credits" and "hours" so that school programs operating on the quarter, semester, or trimester system can be compared.

(2) Transcripts are important documents to students who will apply for admission to postsecondary institutions of higher education. Transcripts are also important to students who will seek employment upon or prior to graduation from high school. It is recognized that student transcripts may be the only record available to employers in their decision-making processes regarding prospective employees. The superintendent of public instruction shall require school districts to inform annually all high school students that prospective employers may request to see transcripts and that the prospective employee's decision to release transcripts can be an important part of the process of applying for employment. [1984 c 178 § 1. Formerly RCW 28A.04.155.]

High school diplomas—Receiving final transcript optional: RCW 28A.230.120.

28A.305.280 Forum for education issues. In exercising the state board of education's authority to establish high school credit equivalencies for credits earned at institutions of higher education, the state board of education has highlighted the need for an ongoing forum that encourages the various education entities to provide each other with advice and counsel as rules and policies are adopted that have implications for students in all sectors of the state's

education system. The legislature appreciates the willingness of the state board of education to consider any recommendations from the task force created in RCW 28A.305.285 and to delay until September 1995, implementation of its rule establishing course equivalencies. Ultimately the issue of credit equivalencies must be decided within the broad context of education reform and the desire of the legislature to provide options for students to move through the system without meeting bureaucratic barriers to individual educational success. [1994 c 222 § 1.]

Effective date—1994 c 222: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 222 § 4.]

28A.305.285 Forum for education issues—Task force—Report on credit equivalencies. (1) By May 1, 1994, or as soon as possible thereafter, the higher education coordinating board and the state board of education shall convene a task force creating a forum for ongoing discussion of curriculum issues that transect higher education and the common schools. In selecting members of the task force, the boards shall consult the office of the superintendent of public instruction, the commission on student learning, the state board for community and technical colleges, the work force training and education coordinating board, the Washington council on high school-college relations, representatives of the four-year institutions, representatives of the school directors, the school and district administrators, teachers, higher education faculty, students, counselors, vocational directors, parents, and other interested organizations. The process shall be designed to provide advice and counsel to the appropriate boards on topics that may include but are not limited to: (a) The changing nature of educational instruction and crediting, and awarding appropriate credit for knowledge and competencies learned in a variety of ways in both institutions of higher education and high schools; (b) options for students to enroll in programs and institutions that will best meet the students' needs and educational goals; and (c) articulation agreements between institutions of higher education and high schools.

(2) By December 30, 1994, after considering the advice of the task force created in this section, the higher education coordinating board and the state board of education shall report the recommendations on establishing credit equivalencies to the house of representatives and senate education and higher education committees. [1994 c 222 § 2.]

Effective date—1994 c 222: See note following RCW 28A.305.280.

Chapter 28A.310

EDUCATIONAL SERVICE DISTRICTS

Sections

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Chapter not to apply to certain materials printed in educational service district: RCW 82.04.600.

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Regional educational technology support centers—Advisory councils: See RCW 28A.650.020.

Special education medical services: RCW 74.09.5253.

28A.310.010 Purpose. It shall be the intent and purpose of this chapter to establish educational service districts as regional agencies which are intended to:

(1) Provide cooperative and informational services to local school districts;

(2) Assist the superintendent of public instruction and the state board of education in the performance of their respective statutory or constitutional duties; and

(3) Provide services to school districts and to the school for the deaf and the school for the blind to assure equal educational opportunities. [1988 c 65 § 1; 1977 ex.s. c 283 § 1; 1975 1st ex.s. c 275 § 1; 1971 ex.s. c 282 § 1; 1969 ex.s. c 176 § 1. Formerly RCW 28A.21.010, 28.19.500.]

Severability—1977 ex.s. c 283: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 283 § 26.]

Severability—1971 ex.s. c 282: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 282 § 45.]

Rights preserved—1969 ex.s. c 176: "The amendment or repeal of any section referred to herein shall not be construed as affecting any existing right acquired under the provisions of the statutes amended or repealed nor any rule, regulation or order adopted pursuant thereto nor as affecting any proceeding as instituted thereunder." [1969 ex.s. c 176 § 160.]

Severability—1969 ex.s. c 176: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 176 § 161.]

28A.310.020 Changes in number of, boundaries—Initiating, hearings, considerations—Superintendent's duties. The state board of education upon its own initiative, or upon petition of any educational service district board, or upon petition of at least half of the district superintendents within an educational service district, or upon request of the superintendent of public instruction, may make changes in the number and boundaries of the educational service districts, including an equitable adjustment and transfer of any and all property, assets, and liabilities among the educational service districts whose boundaries and duties and

responsibilities are increased and/or decreased by such changes, consistent with the purposes of RCW 28A.310.010: PROVIDED, That no reduction in the number of educational service districts will take effect after June 30, 1995, without a majority approval vote by the affected school directors voting in such election by mail ballot. Prior to making any such changes, the state board shall hold at least one public hearing on such proposed action and shall consider any recommendations on such proposed action.

The state board in making any change in boundaries shall give consideration to, but not be limited by, the following factors: Size, population, topography, and climate of the proposed district.

The superintendent of public instruction shall furnish personnel, material, supplies, and information necessary to enable educational service district boards and superintendents to consider the proposed changes. [1994 sp.s. c 6 § 513; 1993 sp.s. c 24 § 522; 1990 c 33 § 270; 1977 ex.s. c 283 § 2; 1971 ex.s. c 282 § 2; 1969 ex.s. c 176 § 2. Formerly RCW 28A.21.020, 28.19.505.]

Severability—1994 sp.s. c 6: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 sp.s. c 6 § 904.]

Effective date—1994 sp.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 6, 1994]." [1994 sp.s. c 6 § 905.]

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.165.070.

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

Severability—Rights preserved—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.310.030 ESD board—Members—Number, from board-member districts—Board-member district boundaries, determination of, changes in. Except as otherwise provided in this chapter, in each educational service district there shall be an educational service district board consisting of seven members elected by the school directors of the educational service district, one from each of seven educational service district board-member districts. Board-member districts in districts reorganized under RCW 28A.310.020, or as provided for in RCW 28A.310.120 and under this section, shall be initially determined by the state board of education. If a reorganization pursuant to RCW 28A.310.020 places the residence of a board member into another or newly created educational service district, such member shall serve on the board of the educational service district of residence and at the next election called by the secretary to the state board of education pursuant to RCW 28A.310.080 a new seven member board shall be elected. If the redrawing of board-member district boundaries pursuant to this chapter shall cause the resident board-member district of two or more board members to coincide, such board members shall continue to serve on the board and at the next election called by the secretary to the state board of education a new board shall be elected. The board-member districts shall be arranged so far as practicable on a basis of equal population, with consideration being given existing board members of

existing educational service district boards. Each educational service district board member shall be elected by the school directors of each school district within the educational service district. Beginning in 1971 and every ten years thereafter, educational service district boards shall review and, if necessary, shall change the boundaries of board-member districts so as to provide so far as practicable equal representation according to population of such board-member districts and to conform to school district boundary changes: PROVIDED, That all board-member district boundaries, to the extent necessary to conform with this chapter, shall be immediately redrawn for the purposes of the next election called by the secretary to the state board of education following any reorganization pursuant to this chapter. Such district board, if failing to make the necessary changes prior to June 1 of the appropriate year, shall refer for settlement questions on board-member district boundaries to the state board of education, which, after a public hearing, shall decide such questions. [1990 c 33 § 271; 1977 ex.s. c 283 § 14; 1975 1st ex.s. c 275 § 3; 1974 ex.s. c 75 § 1; 1971 ex.s. c 282 § 3; 1969 ex.s. c 176 § 3. Formerly RCW 28A.21.030, 28.19.510.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

Severability—1974 ex.s. c 75: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 75 § 24.]

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

Severability—Rights preserved—1969 ex.s. c 176: See notes following RCW 28A.310.010.

City, town, and district general elections—Exceptions—Special elections: RCW 29.13.020.

County auditor designated supervisor of certain elections: RCW 29.04.020.

Notice of election—Certification of measures: RCW 29.27.080.

28A.310.040 ESD board—Members—Terms. The term of office for each board member shall be four years and until a successor is duly elected and qualified. For the first election or an election following reorganization, board-member district positions numbered one, three, five, and seven in each educational service district shall be for a term of four years and positions numbered two, four, and six shall be for a term of two years. [1975 1st ex.s. c 275 § 5; 1974 ex.s. c 75 § 4. Formerly RCW 28A.21.0303.]

Severability—1974 ex.s. c 75: See note following RCW 28A.310.030.

28A.310.050 ESD board—Members—Terms, when nine member board. Any educational service district board may elect by resolution of the board to increase the board member size to nine board members. In such case positions number eight and nine shall be filled at the next election called by the secretary to the state board of education, position numbered eight to be for a term of two years, position numbered nine to be for a term of four years. Thereafter the terms for such positions shall be for four years. [1977 ex.s. c 283 § 19; 1975 1st ex.s. c 275 § 6; 1974 ex.s. c 75 § 5. Formerly RCW 28A.21.0304.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

Severability—1974 ex.s. c 75: See note following RCW 28A.310.030.

28A.310.060 ESD board—Members—Terms, begin when—Vacancies, filling of. The term of every educational service district board member shall begin on the second Monday in January next following the election at which he or she was elected: PROVIDED, That a person elected to less than a full term pursuant to this section shall take office as soon as the election returns have been certified and he or she has qualified. In the event of a vacancy in the board from any cause, such vacancy shall be filled by appointment of a person from the same board-member district by the educational service district board. In the event that there are more than three vacancies in a seven-member board or four vacancies in a nine-member board, the state board of education shall fill by appointment sufficient vacancies so that there shall be a quorum of the board serving. Each appointed board member shall serve until his or her successor has been elected at the next election called by the secretary to the state board of education and has qualified. [1977 ex.s. c 283 § 20; 1975 1st ex.s. c 275 § 7; 1974 ex.s. c 75 § 6. Formerly RCW 28A.21.0305.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

Severability—1974 ex.s. c 75: See note following RCW 28A.310.030.

28A.310.070 ESD board—Members—Restriction on other service. No person shall serve as an employee of a school district or as a member of a board of directors of a common school district or as a member of the state board of education and as a member of an educational service district board at the same time. [1975 1st ex.s. c 275 § 8; 1974 ex.s. c 75 § 7. Formerly RCW 28A.21.0306.]

Severability—1974 ex.s. c 75: See note following RCW 28A.310.030.

28A.310.080 ESD board—Members—Elections, calling and notice of. On or before the twenty-fifth day of August, 1978, and not later than the twenty-fifth day of August of every subsequent year, the secretary to the state board of education shall call an election to be held in each educational service district within which resides a member of the board of the educational service district whose term of office expires on the second Monday of January next following, and shall give written notice thereof to each member of the board of directors of each school district in such educational service district. Such notice shall include instructions, rules, and regulations established by the state board of education for the conduct of the election. [1977 ex.s. c 283 § 15. Formerly RCW 28A.21.031.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

28A.310.090 ESD board—Members—Elections, filing of declarations of candidacy. Candidates for membership on an educational service district board shall file declarations of candidacy with the secretary to the state board of education on forms prepared by the secretary. Declarations of candidacy may be filed by person or by mail not earlier than the first day of September, nor later than the

sixteenth day of September. The secretary to the state board of education may not accept any declaration of candidacy that is not on file in his or her office or is not postmarked before the seventeenth day of September. [1977 ex.s. c 283 § 16. Formerly RCW 28A.21.032.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

28A.310.100 ESD board—Members—Elections, procedure—Certification of results. Each member of an educational service district board shall be elected by a majority of the votes cast at the election for all candidates for the position. All votes shall be cast by mail addressed to the secretary to the state board of education and no votes shall be accepted for counting if postmarked after the sixteenth day of October or if not postmarked or the postmark is not legible, if received by mail after the twenty-first day of October following the call of the election. The secretary to the state board of education and an election board comprised of three persons appointed by the state board of education shall count and tally the votes not later than the twenty-fifth day of October in the following manner: Each vote cast by a school director shall be accorded as one vote. If no candidate receives a majority of the votes cast, then, not later than the first day of November, the secretary to the state board of education shall call a second election to be conducted in the same manner and at which the candidates shall be the two candidates receiving the highest number of votes cast. No vote cast at such second election shall be received for counting if postmarked after the sixteenth day of November or if not postmarked or the postmark is not legible, if received by mail after the twenty-first day of November and the votes shall be counted as hereinabove provided on the twenty-fifth day of November. The candidate receiving a majority of votes at any such second election shall be declared elected. In the event of a tie in such second election, the candidate elected shall be determined by a chance drawing of a nature established by the secretary to the state board of education. Within ten days following the count of votes in an election at which a member of an educational service district board is elected, the secretary to the state board of education shall certify to the county auditor of the headquarters county of the educational service district the name or names of the persons elected to be members of the educational service district board. [1980 c 179 § 7; 1977 ex.s. c 283 § 17. Formerly RCW 28A.21.033.]

Severability—1980 c 179: See note following RCW 28A.305.010.

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

28A.310.110 ESD board—Members—Elections, contest of. Any common school district board member eligible to vote for a candidate for membership on an educational service district or any candidate for the position, within ten days after the secretary to the state board of education's certification of election, may contest the election of the candidate pursuant to RCW 28A.305.070. [1990 c 33 § 272; 1977 ex.s. c 283 § 18. Formerly RCW 28A.21.034.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

28A.310.120 ESD board—Return to seven member board. Any educational service district board which elects under RCW 28A.310.050 to increase the size of the educational service district board from seven to nine members, after at least four years, may elect by resolution of the board to return to a membership of seven educational service board members. In such case, at the next election a new board consisting of seven educational service board members shall be elected in accordance with the provisions of this chapter. [1990 c 33 § 273; 1977 ex.s. c 283 § 21; 1975 1st ex.s. c 275 § 9; 1974 ex.s. c 75 § 8; 1971 ex.s. c 282 § 4. Formerly RCW 28A.21.035.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

Severability—1974 ex.s. c 75: See note following RCW 28A.310.030.

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

28A.310.130 ESD board—Vacation of board member position because of failure to attend meetings. Absence of any educational service district board member from four consecutive regular meetings of the board, unless excused on account of sickness or otherwise authorized by resolution of the board, shall be sufficient cause for the members of the educational service district board to declare by resolution that such board member position is vacated. [1975 1st ex.s. c 275 § 10; 1971 ex.s. c 282 § 5. Formerly RCW 28A.21.037.]

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

28A.310.140 School district to be entirely within single educational service district. Every school district must be included entirely within a single educational service district. If the boundaries of any school district within an educational service district are changed in any manner so as to extend the school district beyond the boundaries of that educational service district, the state board shall change the boundaries of the educational service districts so affected in a manner consistent with the purposes of RCW 28A.310.010 and this section. [1990 c 33 § 274; 1975 1st ex.s. c 275 § 11; 1971 ex.s. c 282 § 6; 1969 ex.s. c 176 § 4. Formerly RCW 28A.21.040, 28.19.515.]

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

Severability—Rights preserved—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.310.150 ESD board—Members, qualification, oath, bond—Organization—Quorum. Every candidate for membership on a educational service district board shall be a registered voter and a resident of the board-member district for which such candidate files. On or before the date for taking office, every member shall make an oath or affirmation to support the Constitution of the United States and the state of Washington and to faithfully discharge the duties of the office according to the best of such member's ability. The members of the board shall not be required to give bond unless so directed by the state board of education. At the first meeting of newly elected members and after the qualification for office of the newly elected members, each

educational service district board shall reorganize by electing a chair and a vice chair. A majority of all of the members of the board shall constitute a quorum. [1990 c 33 § 275; 1977 ex.s. c 283 § 22; 1975 1st ex.s. c 275 § 12; 1971 ex.s. c 282 § 7; 1969 ex.s. c 176 § 5. Formerly RCW 28A.21.050, 28.19.520.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

Severability—Rights preserved—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.310.160 ESD board—Reimbursement of members for expenses. The actual expenses of educational service board members in going to, returning from and attending meetings called or held pursuant to district business or while otherwise engaged in the performance of their duties under this chapter shall be paid; all such claims shall be approved by the educational service district board and paid from the budget of the educational service district. [1977 ex.s. c 283 § 3; 1975-'76 2nd ex.s. c 34 § 68; 1975 1st ex.s. c 275 § 13; 1971 ex.s. c 282 § 8; 1969 ex.s. c 176 § 6. Formerly RCW 28A.21.060, 28.19.525.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

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

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

Severability—Rights preserved—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.310.170 ESD superintendent—Appointment, procedure—Term, salary, discharge—ESD superintendent review committee. (1) Every educational service district board shall employ and set the salary of an educational service district superintendent who shall be employed by a written contract for a term to be fixed by the board, but not to exceed three years, and who may be discharged for sufficient cause.

(2) There is hereby established within each educational service district an educational service district superintendent review committee. Such review committee shall be composed of two school district superintendents from within the educational service district selected by the educational service district board and a representative of the state superintendent of public instruction selected by the state superintendent of public instruction.

(3) Prior to the employment by the educational service district board of a new educational service district superintendent, the review committee shall screen all applicants for the position and recommend to the board a list of three candidates. The educational service district board shall select the new superintendent from the list of three candidates or shall reject the entire list and request the review committee to submit three additional candidates, and the educational service district board shall repeat this process until a superintendent is selected. [1985 c 341 § 7; 1977 ex.s. c 283 § 4. Formerly RCW 28A.21.071.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

28A.310.180 ESD board—Compliance with rules and regulations—Depository and distribution center—Cooperative service programs, joint purchasing programs, and direct student service programs including pupil transportation. In addition to other powers and duties as provided by law, every educational service district board shall:

(1) Comply with rules or regulations of the state board of education and the superintendent of public instruction.

(2) If the district board deems necessary, establish and operate for the schools within the boundaries of the educational service district a depository and distribution center for films, tapes, charts, maps, and other instructional material as recommended by the school district superintendents within the service area of the educational service district: PROVIDED, That the district may also provide the services of the depository and distribution center to private schools within the district so long as such private schools pay such fees that reflect actual costs for services and the use of instructional materials as may be established by the educational service district board.

(3) Establish cooperative service programs for school districts within the educational service district and joint purchasing programs for schools within the educational service district pursuant to RCW 28A.320.080(3): PROVIDED, That on matters relating to cooperative service programs the board and superintendent of the educational service district shall seek the prior advice of the superintendents of local school districts within the educational service district.

(4) Establish direct student service programs for school districts within the educational service district including pupil transportation. However, for the provision of state-funded pupil transportation for special education cooperatives programs for special education conducted under RCW 28A.155.010 through 28A.155.100, the educational service district, with the consent of the participating school districts, shall be entitled to receive directly state apportionment funds for that purpose: PROVIDED, That the board of directors and superintendent of a local school district request the educational service district to perform said service or services: PROVIDED FURTHER, That the educational service district board of directors and superintendents agree to provide the requested services: PROVIDED, FURTHER, That the provisions of chapter 39.34 RCW are strictly adhered to: PROVIDED FURTHER, That the educational service district board of directors may contract with the school for the deaf and the school for the blind to provide transportation services. [1990 c 33 § 276; 1988 c 65 § 2; 1987 c 508 § 3; 1982 c 46 § 1; 1979 ex.s. c 66 § 1; 1975 1st ex.s. c 275 § 16; 1971 ex.s. c 282 § 11. Formerly RCW 28A.21.086.]

Severability—1979 ex.s. c 66: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 66 § 3.]

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

28A.310.190 ESD board—Teachers' institutes, directors' meetings—Cooperation with state supervisor—Certification of data. In addition to other powers and

duties as provided by law, every educational service district board shall:

(1) If the district board deems necessary, hold each year one or more teachers' institutes as provided for in RCW 28A.415.010 and one or more school directors' meetings.

(2) Cooperate with the state supervisor of special aid for children with disabilities as provided in RCW 28A.155.010 through 28A.155.100.

(3) Certify statistical data as basis for apportionment purposes to county and state officials as provided in chapter 28A.545 RCW.

(4) Perform such other duties as may be prescribed by law or rule of the state board of education and/or the superintendent of public instruction as provided in RCW 28A.300.030 and 28A.305.210. [1995 c 77 § 20; 1990 c 33 § 277; 1983 c 56 § 2; 1981 c 103 § 2; 1975 1st ex.s. c 275 § 17; 1971 ex.s. c 282 § 12. Formerly RCW 28A.21.088.]

Severability—1983 c 56: See note following RCW 28A.195.010.

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

28A.310.200 ESD board—District budgets—Meetings—Personnel approval—Employee bonds—School district boundary transcripts—Acquisition and disposal of property—Cooperative and informational services—Bylaws, rules—Contractual authority. In addition to other powers and duties as provided by law, every educational service district board shall:

(1) Approve the budgets of the educational service district in accordance with the procedures provided for in this chapter.

(2) Meet regularly according to the schedule adopted at the organization meeting and in special session upon the call of the chair or a majority of the board.

(3) Approve the selection of educational service district personnel and clerical staff as provided in RCW 28A.310.230.

(4) Fix the amount of and approve the bonds for those educational service district employees designated by the board as being in need of bonding.

(5) Keep in the educational service district office a full and correct transcript of the boundaries of each school district within the educational service district.

(6) Acquire by borrowing funds or by purchase, lease, devise, bequest, and gift and otherwise contract for real and personal property necessary for the operation of the educational service district and to the execution of the duties of the board and superintendent thereof and sell, lease, or otherwise dispose of that property not necessary for district purposes. No real property shall be acquired or alienated without the prior approval of the state board of education and the acquisition or alienation of all such property shall be subject to such provisions as the board may establish. When borrowing funds for the purpose of acquiring property, the educational service district board shall pledge as collateral the property to be acquired. Borrowing shall be evidenced by a note or other instrument between the district and the lender. The authority to borrow under this subsection shall be limited to educational service districts serving a minimum of two hundred thousand students in grades kindergarten through twelve.

(7) Under RCW 28A.310.010, upon the written request of the board of directors of a local school district or districts served by the educational service district, the educational service district board of directors may provide cooperative and informational services not in conflict with other law that provide for the development and implementation of programs, activities, services, or practices that support the education of preschool through twelfth grade students in the public schools or that support the effective, efficient, or safe management and operation of the school district or districts served by the educational service district.

(8) Adopt such bylaws and rules and regulations for its own operation as it deems necessary or appropriate.

(9) Enter into contracts, including contracts with common and educational service districts and the school for the deaf and the school for the blind for the joint financing of cooperative service programs conducted pursuant to RCW 28A.310.180(3), and employ consultants and legal counsel relating to any of the duties, functions, and powers of the educational service districts. [1993 c 298 § 1. Prior: 1990 c 159 § 1; 1990 c 33 § 278; 1988 c 65 § 3; 1983 c 56 § 3; 1975 1st ex.s. c 275 § 18; 1971 ex.s. c 282 § 13; 1971 c 53 § 1; 1969 ex.s. c 176 § 9. Formerly RCW 28A.21.090, 28.19.540.]

Severability—1983 c 56: See note following RCW 28A.195.010.

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

Severability—1971 c 53: See note following RCW 28A.315.400.

Severability—Rights preserved—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.310.210 ESD board—Payment of member expenses—Payment of dues into state-wide association of board members, restrictions. In addition to other powers and duties prescribed by law every educational service district board shall be authorized to:

(1) Pay the expenses of its members in accordance with law for attendance at state-wide meetings of educational service district board members.

(2) Pay dues from educational service district funds in an amount not to exceed one hundred dollars per board member per year for membership in a state-wide association of educational service district board members: PROVIDED, That dues to such an association shall not be paid unless the formation of such an association, including its constitution and bylaws, is approved by a resolution passed by at least two-thirds of the educational service district boards within the state: PROVIDED FURTHER, That such association if formed shall not employ any staff but shall contract either with the Washington state school directors' association or with the superintendent of public instruction for staff and informational services. [1975 1st ex.s. c 275 § 19; 1971 ex.s. c 282 § 14. Formerly RCW 28A.21.092.]

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

28A.310.220 ESD board—Delegation of powers and duties to superintendent. Each educational service district board, by written order filed in the headquarters office, may delegate to the educational service district superintendent any of the powers and duties vested in or imposed upon the

board by law or rule or regulation of the state board of education and/or the superintendent of public instruction. Such delegated powers and duties shall not be in conflict with rules or regulations of the superintendent of public instruction or the state board of education and may be exercised by the educational service district superintendent in the name of the board. [1975 1st ex.s. c 275 § 20; 1974 ex.s. c 75 § 9; 1971 ex.s. c 282 § 15. Formerly RCW 28A.21.095.]

Severability—1974 ex.s. c 75: See note following RCW 28A.310.030.

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

28A.310.230 Assistant superintendents and other personnel—Appointment, salaries, duties. The educational service district superintendent may appoint with the consent of the educational service district board assistant superintendents and such other professional personnel and clerical help as may be necessary to perform the work of the office at such salaries as may be determined by the educational service district board and shall pay such salaries out of the budget of the district. In the absence of the educational service district superintendent a designated assistant superintendent shall perform the duties of the office. The educational service district superintendent shall have the authority to appoint on an acting basis an assistant superintendent to perform any of the duties of the office. [1975 1st ex.s. c 275 § 21; 1974 ex.s. c 75 § 10; 1971 ex.s. c 282 § 16; 1969 ex.s. c 176 § 10. Formerly RCW 28A.21.100, 28.19.545.]

Severability—1974 ex.s. c 75: See note following RCW 28A.310.030.

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

Severability—Rights preserved—1969 ex.s. c 176: See notes following RCW 28A.310.010.

Job sharing: RCW 28A.405.070.

28A.310.240 Employee leave policy required. (1) Every educational service district board shall adopt written policies granting leaves to persons under contracts of employment with the district in positions requiring either certification or noncertification qualifications, including but not limited to leaves for attendance at official or private institutes and conferences and sabbatical leaves for employees in positions requiring certification qualification, and leaves for illness, injury, bereavement, and emergencies for both certificated and noncertificated employees, with such compensation as the board prescribes. The board shall adopt written policies granting annual leave with compensation for illness, injury, and emergencies as follows:

(a) For persons under contract with the district for a full fiscal year, at least ten days;

(b) For persons under contract with the district as part-time employees, at least that portion of ten days as the total number of days contracted for bears to one hundred eighty days;

(c) For certificated and noncertificated employees, annual leave with compensation for illness, injury, and emergencies shall be granted and accrue at a rate not to exceed twelve days per fiscal year. Provisions of any contract in force on July 23, 1989, which conflict with

requirements of this subsection shall continue in effect until contract expiration; after expiration, any new contract executed between the parties shall be consistent with this subsection;

(d) Compensation for leave for illness or injury actually taken shall be the same as the compensation the person would have received had the person not taken the leave provided in this section;

(e) Leave provided in this section not taken shall accumulate from fiscal year to fiscal year up to a maximum of one hundred eighty days for the purposes of RCW 28A.310.490, and for leave purposes up to a maximum of the number of contract days agreed to in a given contract, but not greater than one fiscal year. Such accumulated time may be taken at any time during the fiscal year, or up to twelve days per year may be used for the purpose of payments for unused sick leave; and

(f) Accumulated leave under this section shall be transferred to educational service districts, school districts, and the office of the superintendent of public instruction, and from any such district or office to another such district or office. An intervening customary summer break in employment or the performance of employment duties shall not preclude such a transfer.

(2) Leave accumulated by a person in a district prior to leaving the district may, under rules of the board, be granted to the person when the person returns to the employment of the district.

(3) Leave for illness or injury accumulated before July 23, 1989, under the administrative practices of an educational service district, and such leave transferred before July 23, 1989, to or from an educational service district, school district, or the office of the superintendent of public instruction under the administrative practices of the district or office, is declared valid and shall be added to such leave for illness or injury accumulated after July 23, 1989. [1990 c 33 § 279; 1989 c 208 § 1. Formerly RCW 28A.21.102.]

28A.310.250 Certificated employees of district—Contracts of employment—Nonrenewal of contracts—Notice. No certificated employee of an educational service district shall be employed as such except by written contract, which shall be in conformity with the laws of this state. Every such contract shall be made in duplicate, one copy of which shall be retained by the educational service district superintendent and the other shall be delivered to the employee.

Every educational service district superintendent or board determining that there is probable cause or causes that the employment contract of a certificated employee thereof is not to be renewed for the next ensuing term shall be notified in writing on or before May 15th preceding the commencement of such term of that determination or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 1st, which notification shall specify the cause or causes for nonrenewal of contract. Such notice shall be served upon that employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. The procedure and standards for the

review of the decision of the hearing officer, superintendent or board and appeal therefrom shall be as prescribed for nonrenewal cases of teachers in RCW 28A.405.210, 28A.405.300 through 28A.405.380, and 28A.645.010. Appeals may be filed in the superior court of any county in the educational service district. [1996 c 201 § 4; 1990 c 33 § 280; 1977 ex.s. c 283 § 7; 1975 1st ex.s. c 275 § 22; 1974 ex.s. c 75 § 11; 1971 c 48 § 6; 1969 ex.s. c 34 § 19. Formerly RCW 28A.21.105.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

Severability—1974 ex.s. c 75: See note following RCW 28A.310.030.

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.310.260 Certificated employees of district—Adverse change in contract status—Notice—Probable cause—Review—Appeal. Every educational service district superintendent or board determining that there is probable cause or causes for a certificated employee or superintendent, hereinafter referred to as employee, of that educational service district to be discharged or otherwise adversely affected in his or her contract status shall notify such employee in writing of its decision, which notice shall specify the cause or causes for such action. Such notice shall be served upon that employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. The procedure and standards for review of the decision of the superintendent or board and appeal therefrom shall be as prescribed in discharge cases of teachers in RCW 28A.405.210, 28A.405.300 through 28A.405.380, and 28A.645.010. The board and the educational service district superintendent, respectively, shall have the duties of the boards of directors and superintendents of school districts in RCW 28A.405.210, 28A.405.300 through 28A.405.380, and 28A.645.010. Appeals may be filed in the superior court of any county in the educational service district. [1990 c 33 § 281; 1977 ex.s. c 283 § 8; 1975 1st ex.s. c 275 § 23; 1974 ex.s. c 75 § 12; 1971 c 48 § 7; 1969 ex.s. c 34 § 20. Formerly RCW 28A.21.106.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

Severability—1974 ex.s. c 75: See note following RCW 28A.310.030.

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.310.270 ESD superintendent's powers and duties—Generally. In addition to other powers and duties as provided by law, each educational service district superintendent shall:

(1) Serve as chief executive officer of the educational service district and secretary of the educational service district board.

(2) Visit the schools in the educational service district, counsel with directors and staff, and assist in every possible way to advance the educational interest in the educational service district. [1975 1st ex.s. c 275 § 24; 1974 ex.s. c 75 § 13; 1972 ex.s. c 3 § 1; 1971 ex.s. c 282 § 17; 1969 ex.s. c 176 § 11. Formerly RCW 28A.21.110, 28.19.550.]

Severability—1974 ex.s. c 75: See note following RCW 28A.310.030.

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

Severability—Rights preserved—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.310.280 ESD superintendent's powers and duties—Records and reports. In addition to other powers and duties as provided by law, each educational service district superintendent shall:

(1) Perform such record keeping, including such annual reports as may be required, and liaison and informational services to local school districts and the superintendent of public instruction as required by rule or regulation of the superintendent of public instruction or state board of education: PROVIDED, That the superintendent of public instruction and the state board of education may require some or all of the school districts to report information directly when such reporting procedures are deemed desirable or feasible.

(2) Keep records of official acts of the educational service district board and superintendents in accordance with RCW 28A.21.120, as now or hereafter amended.

(3) Preserve carefully all reports of school officers and teachers and deliver to the successor of the office all records, books, documents, and papers belonging to the office either personally or through a personal representative, taking a receipt for the same, which shall be filed in the office of the county auditor in the county where the office is located. [1975 1st ex.s. c 275 § 25; 1974 ex.s. c 75 § 14. Formerly RCW 28A.21.111.]

Severability—1974 ex.s. c 75: See note following RCW 28A.310.030.

28A.310.290 ESD superintendent's powers and duties—Oaths and affirmations. In addition to other powers and duties as provided by law, each educational service district superintendent shall:

(1) Administer oaths and affirmations to school directors, teachers, and other persons on official matters connected with or relating to schools, when appropriate, but not make or collect any charge or fee for so doing.

(2) Require the oath of office of all school district officers be filed as provided in RCW 28A.315.500 and furnish a directory of all such officers to the county auditor and to the county treasurer of the county in which the school district is located as soon as such information can be obtained after the election or appointment of such officers is determined and their oaths placed on file. [1990 c 33 § 282; 1975 1st ex.s. c 275 § 26; 1974 ex.s. c 75 § 15. Formerly RCW 28A.21.112.]

Severability—1974 ex.s. c 75: See note following RCW 28A.310.030.

28A.310.300 ESD superintendent's powers and duties—School district budgets—Compulsory attendance—Aid by nonhigh districts—School district organization. In addition to other powers and duties as provided by law, each educational service district superintendent shall:

(1) Assist the school districts in preparation of their budgets as provided in chapter 28A.505 RCW.

(2) Enforce the provisions of the compulsory attendance law as provided in RCW 28A.225.010 through *28A.225.150, 28A.200.010, and 28A.200.020.

(3) Perform duties relating to capital fund aid by nonhigh districts as provided in chapter 28A.540 RCW.

(4) Carry out the duties and issue orders creating new school districts and transfers of territory as provided in chapter 28A.315 RCW.

(5) Perform all other duties prescribed by law and the educational service district board. [1990 c 33 § 283; 1975 1st ex.s. c 275 § 27; 1974 ex.s. c 75 § 16. Formerly RCW 28A.21.113.]

*Reviser's note: RCW 28A.225.150 was repealed by 1995 c 312 § 86.

Severability—1974 ex.s. c 75: See note following RCW 28A.310.030.

28A.310.310 Headquarters office—Records transferred, state board duties. The educational service district board shall designate the headquarters office of the educational service district. Educational service districts shall provide for their own office space, heating, contents insurance, electricity, and custodial services, which may be obtained through contracting with any board of county commissioners. Official records of the educational service district board and superintendent, including each of the county superintendents abolished by chapter 176, Laws of 1969 ex. sess., shall be kept by the educational service district superintendent. Whenever the boundaries of any of the educational service districts are reorganized pursuant to RCW 28A.310.020, the state board of education shall supervise the transferral of such records so that each educational service district superintendent shall receive those records relating to school districts within the appropriate educational service district. [1990 c 33 § 284; 1985 c 341 § 8; 1975 1st ex.s. c 275 § 28; 1974 ex.s. c 75 § 17; 1971 ex.s. c 282 § 18; 1969 ex.s. c 176 § 12. Formerly RCW 28A.21.120, 28.19.555.]

Severability—1974 ex.s. c 75: See note following RCW 28A.310.030.

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

Severability—Rights preserved—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.310.320 ESD superintendents, employees—Travel expenses and subsistence—Advance payment. For all actual and necessary travel in the performance of official duties and while in attendance upon meetings and conferences, each educational service district superintendent and employee shall be reimbursed for their travel expenses in the amounts provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. All claims shall be approved by the educational service district board and paid from the funds budgeted by the district. Each educational service district superintendent and employee may be advanced sufficient sums to cover their anticipated expenses in accordance with rules and regulations promulgated by the state auditor and which shall substantially conform to the procedures provided in RCW 43.03.150 through 43.03.210. [1975-'76 2nd ex.s. c 34 § 69; 1975 1st ex.s. c 275 § 29;

1971 ex.s. c 282 § 19; 1969 ex.s. c 176 § 13. Formerly RCW 28A.21.130, 28.19.560.]

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

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

Severability—Rights preserved—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.310.330 Budgeting procedures for districts. The superintendent of public instruction by rule and regulation shall adopt budgeting procedures for educational service districts modeled after the statutory procedures for school districts as provided in chapter 28A.505 RCW and in accordance with RCW 28A.310.340, 28A.310.350, and 28A.310.360. [1990 c 33 § 285; 1977 ex.s. c 283 § 12; 1975 1st ex.s. c 275 § 30; 1971 ex.s. c 282 § 20. Formerly RCW 28A.21.135.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

28A.310.340 Identification of core services for budget purposes—Generally. It is the intent of the legislature that a basic core of uniform services be provided by educational service districts and be identified in statute so that biennial budget requests for educational service districts may be based upon measurable goals and needs. Educational service districts as noted in RCW 28A.310.010, are intended primarily to:

(1) Provide cooperative and informational services to local districts and to perform functions for those districts when such functions are more effectively or economically administered from the regional level;

(2) Assist the state educational agencies, office of superintendent of public instruction and the state board of education in the legal performance of their duties; and

(3) Assist in providing pupils with equal educational opportunities.

The purpose of RCW 28A.310.350 and 28A.310.360 is to further identify those core services in order to prepare educational service district budgets for the 1979-81 biennium, and those bienniums beyond. [1990 c 33 § 286; 1977 ex.s. c 283 § 9. Formerly RCW 28A.21.136.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

28A.310.350 Identification of core services for budget purposes—Specific services listed. The basic core services and cost upon which educational service districts are budgeted shall include, but not be limited to, the following:

(1) Educational service district administration and facilities such as office space, maintenance and utilities;

(2) Cooperative administrative services such as assistance in carrying out procedures to abolish sex and race bias in school programs, fiscal services, grants management services, special education services and transportation services;

(3) Personnel services such as certification/registration services;

(4) Learning resource services such as audio visual aids;

(5) Cooperative curriculum services such as health promotion and health education services, in-service training, workshops and assessment; and

(6) Special needs of local education agencies. [1977 ex.s. c 283 § 10. Formerly RCW 28A.21.137.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

28A.310.360 Identification of core services for budget purposes—Formula utilized for ESD's biennial budget request. The superintendent of public instruction, pursuant to RCW 28A.310.330 shall prepare the biennial budget request for the operation of educational service districts based upon a formula using the following factors:

(1) The core service cost itemized in RCW 28A.310.350 which shall receive primary weighting for formula purposes;

(2) A weighting factor constituting a geographical factor which shall be used to weight the larger sized educational service districts for formula purposes; and

(3) A weighting factor which shall be based on the number and size of local school districts within each educational service district for formula purposes.

The sum of subsection (1) of this section, together with the weighting factors of subsections (2) and (3) of this section for each educational service district, shall reflect the variables among the educational service districts and when combined, a total budget for all educational service districts shall be the result. [1990 c 33 § 287; 1977 ex.s. c 283 § 11. Formerly RCW 28A.21.138.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

28A.310.370 District budget—State funds, allocation of—District general expense fund—Created, deposits, expenditures. The superintendent of public instruction shall examine and revise the biennial budget request of each educational service district and shall fix the amount to be requested in state funds for the educational service district system from the legislature. Once funds have been appropriated by the legislature, the superintendent of public instruction shall fix the annual budget of each educational service district and shall allocate quarterly the state's portion from funds appropriated for that purpose to the county treasurer of the headquarters county of the educational service district for deposit to the credit of the educational service district general expense fund.

In each educational service district, there shall be an educational service district general expense fund into which there shall be deposited such moneys as are allocated by the superintendent of public instruction under provisions of this chapter and other funds of the educational service district, and such moneys shall be expended according to the method used by first or second class school districts, whichever is deemed most feasible by the educational service district board. No vouchers for warrants other than moneys being distributed to the school districts shall be approved for expenditures not budgeted by the educational service district board. [1983 c 56 § 4; 1975 1st ex.s. c 275 § 31; 1971 ex.s. c 282 § 22; 1969 ex.s. c 176 § 14. Formerly RCW 28A.21.140, 28.19.565.]

Severability—1983 c 56: See note following RCW 28A.195.010.

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

Severability—Rights preserved—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.310.390 District budget request—Procedure for approval. The biennial budget request of each educational service district shall be approved by the respective educational service district board and then forwarded to the superintendent of public instruction for revision and approval as provided in RCW 28A.310.370. [1990 c 33 § 288; 1975 1st ex.s. c 275 § 33; 1971 ex.s. c 282 § 21; 1969 ex.s. c 176 § 17. Formerly RCW 28A.21.170, 28.19.580.]

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

Severability—Rights preserved—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.310.400 Legal services. The superintendent of public instruction shall be responsible for the provision of legal services to all educational service districts: PROVIDED, That any educational service district board may contract with any county for the legal services of its prosecuting attorney. [1975 1st ex.s. c 275 § 35; 1974 ex.s. c 75 § 23. Formerly RCW 28A.21.195.]

Severability—1974 ex.s. c 75: See note following RCW 28A.310.030.

28A.310.410 Ex officio treasurer of district. The county treasurer of the county in which the headquarters office of the educational service district is located shall serve as the ex officio treasurer of the district. The treasurer shall keep all funds and moneys of the district separate and apart from all other funds and moneys in the treasurer's custody and shall disburse such moneys only upon proper order of the educational service district board or superintendent. [1990 c 33 § 289; 1975 1st ex.s. c 275 § 36; 1969 ex.s. c 176 § 21. Formerly RCW 28A.21.200, 28.19.595.]

Severability—Rights preserved—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.310.420 County or intermediate district superintendent and board employees to terminate or transfer employment—Benefits retained. As of July 1, 1969, employees of the various offices of county or intermediate district superintendent and county or intermediate district board shall terminate their employment therein, or such employees, at their election, may transfer their employment to the new intermediate school district in which their respective county is located. If such employment is so transferred, each employee shall retain the same leave benefits and other benefits that he or she had in his or her previous position. If the intermediate school district has a different system of computing leave benefits and other benefits, then the employee shall be granted the same leave and other benefits as a person will receive who would have had similar occupational status and total years of service with the new intermediate school district. [1990 c 33 § 290; 1969 ex.s. c 176 § 22. Formerly RCW 28A.21.210, 28.19.600.]

Severability—Rights preserved—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.310.430 Local school district superintendents to advise board and superintendent. The superintendents of all local school districts within an educational service district shall serve in an advisory capacity to the educational service district board and superintendent in matters pertaining to budgets, programs, policy, and staff. [1975 1st ex.s. c 275 § 37; 1971 ex.s. c 282 § 28; 1969 ex.s. c 176 § 23. Formerly RCW 28A.21.220, 28.19.605.]

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

Severability—Rights preserved—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.310.440 ESD as self-insurer—Authority. The board of directors of any educational service district is authorized to enter into agreements with the board of directors of any local school district and/or other educational service districts to form a self-insurance group for the purpose of qualifying as a self-insurer under chapter 51.14 RCW. [1982 c 191 § 9. Formerly RCW 28A.21.255.]

Effective date—Severability—1982 c 191: See notes following RCW 28A.315.270.

Educational service districts as self-insurers: RCW 51.14.150 and 51.14.160.

28A.310.460 Contracts to lease building space and portable buildings and lease or have maintained security systems, computers and other equipment. The board of any educational service district may enter into contracts for their respective districts for periods not exceeding twenty years in duration with public and private persons, organizations, and entities for the following purposes:

(1) To rent or lease building space, portable buildings, security systems, computers and other equipment; and

(2) To have maintained and repaired security systems, computers and other equipment.

The budget of each educational service district shall identify that portion of each contractual liability incurred pursuant to this section extending beyond the fiscal year by amount, duration, and nature of the contracted service and/or item in accordance with rules and regulations of the superintendent of public instruction adopted pursuant to RCW 28A.310.330 and 28A.505.140. [1990 c 33 § 291; 1987 c 508 § 2; 1977 ex.s. c 210 § 2. Formerly RCW 28A.21.310.]

Severability—1977 ex.s. c 210: See note following RCW 28A.335.170.

28A.310.470 Delegation to ESD of SPI program, project or service—Contract. The superintendent of public instruction may delegate to any educational service district or combination of educational service districts all or any portion of a program, project, or service authorized or directed by the legislature to be performed by the superintendent of public instruction: PROVIDED, That any such delegation shall be by contract pursuant to chapter 39.34 RCW, as now or hereafter amended. [1977 ex.s. c 283 § 5. Formerly RCW 28A.21.350.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

28A.310.480 Delegation to ESD of state board of education program, project or service—Contract. The

state board of education may delegate to any educational service district or combination of educational service districts all or any portion of a program, project, or service authorized or directed by the legislature to be performed by the state board of education: PROVIDED, That any such delegation shall be by contract pursuant to chapter 39.34 RCW, as now or hereafter amended. [1977 ex.s. c 283 § 6. Formerly RCW 28A.21.355.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

28A.310.490 ESD employee attendance incentive program—Remuneration or benefit plan for unused sick leave. Every educational service district board of directors shall establish an attendance incentive program for all certificated and noncertificated employees in the following manner.

(1) In January of the year following any year in which a minimum of sixty days of leave for illness or injury is accrued, and each January thereafter, any eligible employee may exercise an option to receive remuneration for unused leave for illness or injury accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each four full days of accrued leave for illness or injury in excess of sixty days. Leave for illness or injury for which compensation has been received shall be deducted from accrued leave for illness or injury at the rate of four days for every one day's monetary compensation. No employee may receive compensation under this section for any portion of leave for illness or injury accumulated at a rate in excess of one day per month.

(2) At the time of separation from educational service district employment due to retirement or death an eligible employee or the employee's estate shall receive remuneration at a rate equal to one day's current monetary compensation of the employee for each four full days accrued leave for illness or injury.

(3) In lieu of remuneration for unused leave for illness or injury as provided for in subsections (1) and (2) of this section, an educational service district board of directors may, with equivalent funds, provide eligible employees a benefit plan that provides reimbursement for medical expenses. Any benefit plan adopted after July 28, 1991, shall require, as a condition of participation under the plan, that the employee sign an agreement with the district to hold the district harmless should the United States government find that the district or the employee is in debt to the United States as a result of the employee not paying income taxes due on the equivalent funds placed into the plan, or as a result of the district not withholding or deducting any tax, assessment, or other payment on such funds as required under federal law.

Moneys or benefits received under this section shall not be included for the purposes of computing a retirement allowance under any public retirement system in this state.

The superintendent of public instruction in its administration hereof, shall promulgate uniform rules and regulations to carry out the purposes of this section.

Should the legislature revoke any benefits granted under this section, no affected employee shall be entitled thereafter to receive such benefits as a matter of contractual right.

[1991 c 92 § 1; 1989 c 69 § 1; 1985 c 341 § 9; 1980 c 182 § 6. Formerly RCW 28A.21.360.]

Severability—1980 c 182: See note following RCW 41.04.340.

Chapter 28A.315

ORGANIZATION AND REORGANIZATION OF SCHOOL DISTRICTS

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28A.315.010 Purpose. It is the intent and purpose of this chapter (1) to incorporate into a single, permanent, school district organization law all essential provisions

governing the formation and establishment of new school districts, the alteration of the boundaries of existing districts, and the adjustment of the assets and liabilities of school districts when changes are made as aforesaid; and (2) to establish methods and procedures whereby the aforesaid changes in the school district system may be brought about by the people concerned and affected, all to the end that the territorial organization of school districts may be more readily adapted to the needs of the changing economic pattern and educational program in the state; that existing disparities among school districts in ability to provide current and capital outlay funds may be reduced and the educational opportunities of children thereby enhanced; and that a wiser use of public funds may be secured through improvement in the school district system. It is not the intent nor purpose of this chapter to apply to organizational changes and the procedure therefor relating to capital fund aid by nonhigh districts as provided for in chapter 28A.540 RCW. [1990 c 33 § 292; 1969 ex.s. c 223 § 28A.57.010. Prior: 1947 c 266 § 1; Rem. Supp. 1947 § 4693-20; prior: 1941 c 248 § 1; Rem. Supp. 1941 § 4709-1. Formerly RCW 28A.57.010, 28.57.010.]

28A.315.020 Definitions. As used in this chapter:

(1) "Change in the organization and extent of school districts" means the formation and establishment of new school districts, the dissolution of existing school districts, the alteration of the boundaries of existing school districts, or all of them.

(2) "Regional committee" means the regional committee on school district organization created by this chapter.

(3) "State board" means the state board of education.

(4) "School district" means the territory under the jurisdiction of a single governing board designated and referred to as the board of directors.

(5) "Educational service district superintendent" means the educational service district superintendent as provided for in RCW 28A.310.170 or his or her designee. [1990 c 33 § 293; 1985 c 385 § 1; 1983 c 3 § 33; 1975 1st ex.s. c 275 § 78; 1971 c 48 § 25; 1969 ex.s. c 223 § 28A.57.020. Prior: 1955 c 395 § 1; 1947 c 266 § 2; Rem. Supp. 1947 § 4693-21. Formerly RCW 28A.57.020, 28.57.020.]

Severability—1985 c 385: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 385 § 41.]

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.315.030 County regional committee members—Assignment of committee member position numbers. Notwithstanding any other provision of this chapter to the contrary, the term of office of each regional committee member and position shall expire as of the second Monday of January 1995. Each regional committee member position shall therefore be open for election purposes in 1994. Members of each regional committee shall be elected by majority vote and shall serve for the staggered terms of office set forth in RCW 28A.315.080 and until their successors are certified as elected pursuant to RCW 28A.315.060. Regional committee member position numbers shall be assigned by the educational service district superintendent for purposes of all elections held pursuant to RCW 28A.315.060. [1993

c 416 § 1; 1990 c 33 § 294; 1985 c 385 § 30. Formerly 28A.57.029.]

Effective date—1993 c 416: "This act shall take effect September 1, 1994." [1993 c 416 § 4.]

Severability—1985 c 385: See note following RCW 28A.315.020.

28A.315.040 Regional committees—Created. There is hereby created in each educational service district a committee which shall be known as the regional committee on school district organization, which committee shall be composed of not less than seven nor more than nine registered voters of the educational service district, the number to correspond with the number of board member districts established for the governance of the educational service district in which the regional committee is located. One member of the regional committee shall be elected from the registered voters of each such educational service district board member district. [1985 c 385 § 2; 1969 ex.s. c 223 § 28A.57.030. Prior: 1947 c 266 § 11, part; Rem. Supp. 1947 § 4693-30, part; prior: 1941 c 248 § 3, part; Rem. Supp. 1941 § 4709-3, part. Formerly RCW 28A.57.030, 28.57.030, part.]

Severability—1985 c 385: See note following RCW 28A.315.020.

28A.315.050 Regional committees—Membership limitation. Persons possessing the status of any of the following positions shall not be eligible to be a member of a regional committee: The superintendent of public instruction, a member of the state board of education, an educational service district superintendent, a member of a board of directors of a school district, a member of an educational service district board, a member of a governing board of either a private school or a private school district which conducts any grades kindergarten through twelve, officers appointed by any such governing board, and employees of a school district, an educational service district, the office of the superintendent of public instruction, a private school, or a private school district. [1985 c 385 § 3; 1975 1st ex.s. c 275 § 79; 1969 ex.s. c 176 § 115; 1969 ex.s. c 223 § 28A.57.031. Prior: 1947 c 226 § 11, part; Rem. Supp. 1947 § 4693-30, part; prior: 1941 c 248 § 3, part; Rem. Supp. 1941 § 4709-3, part. Formerly RCW 28A.57.031, 28.57.030, part.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.060 Regional committees—Election of members—Qualifications. The members of each regional committee shall be elected in the following manner:

(1) On or before the 25th day of September, 1994, and not later than the 25th day of September of every subsequent even-numbered year, each superintendent of an educational service district shall call an election to be held in each educational service district within which resides a member of a regional committee whose term of office expires on the second Monday of January next following, and shall give written notice thereof to each member of the board of directors of each school district in the educational service district. Such notice shall include instructions, and the rules and regulations established by the state board of education

for the conduct of the election. The state board of education is hereby empowered to adopt rules pursuant to chapter 34.05 RCW which establish standards and procedures which the state board deems necessary to conduct elections pursuant to this section; to conduct run-off elections in the event an election for a position is indecisive; and to decide run-off elections which result in tie votes, in a fair and orderly manner.

(2) Candidates for membership on a regional committee shall file a declaration of candidacy with the superintendent of the educational service district wherein they reside. Declarations of candidacy may be filed by person or by mail not earlier than the 1st day of October, and not later than the 15th day of October of each even-numbered year. The superintendent may not accept any declaration of candidacy that is not on file in his or her office or not postmarked before the 16th day of October, or if not postmarked or the postmark is not legible, if received by mail after the 20th day of October of each even-numbered year.

(3) Each member of the regional committee shall be elected by a majority of the votes cast for all candidates for the position by the members of the boards of directors of school districts in the educational service district. All votes shall be cast by mail ballot addressed to the superintendent of the educational service district wherein the school director resides. No votes shall be accepted for counting if postmarked after the 16th day of November or if not postmarked or the postmark is not legible, if received by mail after the 21st day of November of each even-numbered year. An election board comprised of three persons appointed by the board of the educational service district shall count and tally the votes not later than the 25th day of November or the next business day if the 25th falls on a Saturday, Sunday, or legal holiday of each even-numbered year. Each vote cast by a school director shall be recorded as one vote. Within ten days following the count of votes, the educational service district superintendent shall certify to the superintendent of public instruction the name or names of the person(s) elected to be members of the regional committee.

(4) In the event of a change in the number of educational service districts or in the number of educational service district board members pursuant to chapter 28A.310 RCW a new regional committee shall be elected for each affected educational service district at the next election conducted pursuant to this section. Those persons who were serving on a regional committee within an educational service district affected by a change in the number of districts or board members shall continue to constitute the regional committee for the educational service district within which they are registered to vote until the majority of a new board has been elected and certified.

(5) No member of a regional committee shall continue to serve thereon if he or she ceases to be a registered voter of the educational service district board member district or if he or she is absent from three consecutive meetings of the committee without an excuse acceptable to the committee. [1993 c 416 § 2; 1990 c 33 § 295; 1985 c 385 § 4; 1975-'76 2nd ex.s. c 15 § 1. Prior: 1975 1st ex.s. c 275 § 80; 1975 c 43 § 3; 1969 ex.s. c 176 § 116; 1969 ex.s. c 223 § 28A.57.032; prior: 1947 c 226 § 11, part; Rem. Supp. 1947 § 4693-30, part; prior: 1941 c 248 § 3, part; Rem. Supp.

1941 § 4709-3, part. Formerly RCW 28A.57.032, 28.57.030, part.]

Effective date—1993 c 416: See note following RCW 28A.315.030.

Severability—1985 c 385: See note following RCW 28A.315.020.

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.070 Regional committees—Vacancies, filling of. In case of a vacancy from any cause on a regional committee, the remaining members of the committee shall fill such vacancy by appointment pursuant to a majority vote of the remaining members: PROVIDED, That should there exist fewer members on a regional committee than constitutes a majority of the legally established committee member positions, the educational service district board members of the district in which the committee is located, by the vote of a majority of the members in its legally established number of board member positions, shall appoint a sufficient number of committee members to constitute a legal majority on the committee. Appointees to fill vacancies shall meet the requirements provided by law for committee members and shall serve until the next regular election for members of regional committees at which time a successor shall be elected for the balance of the unexpired term. [1985 c 385 § 5; 1975 1st ex.s. c 275 § 81; 1969 ex.s. c 176 § 117; 1969 ex.s. c 223 § 28A.57.033. Prior: 1947 c 266 § 11, part; Rem. Supp. 1947 § 4693-30, part; prior: 1941 c 248 § 3, part; Rem. Supp. 1941 § 4709-3, part. Formerly RCW 28A.57.033, 28.57.030, part.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.080 Regional committees—Terms of members. The terms of members of the regional committees shall be for four years and until their successors are certified as elected. For the 1994 election conducted pursuant to RCW 28A.315.030 and the election of a new regional committee following a change in the number of educational service districts or board members, regional committee member positions one, three, five, seven, and nine shall be for a term of two years, positions two, four, six, and eight shall be for a term of four years. [1993 c 416 § 3; 1990 c 33 § 296; 1985 c 385 § 6; 1969 ex.s. c 223 § 28A.57.034. Prior: 1947 c 226 § 11, part; Rem. Supp. 1947 § 4693-30, part; prior: 1941 c 248 § 3, part; Rem. Supp. 1941-§ 4709-3, part. Formerly RCW 28A.57.034, 28.57.030, part.]

Effective date—1993 c 416: See note following RCW 28A.315.030.

Severability—1985 c 385: See note following RCW 28A.315.020.

28A.315.090 Regional committees—Members' expenses reimbursed. Members of each regional committee shall serve without compensation but shall be reimbursed for expenses necessarily incurred in the performance of their duties. [1985 c 385 § 7; 1969 ex.s. c 176 § 118; 1969 ex.s. c 223 § 28A.57.035. Prior: 1947 c 266 § 11, part; Rem. Supp. 1947 § 4693-30, part; prior: 1941 c 248 § 3, part;

Rem. Supp. 1941 § 4709-3, part. Formerly RCW 28A.57.035, 28.57.030, part.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.100 Regional committees—Organization, meetings, quorum. Each regional committee shall organize by electing from its membership a chair and a vice chair. The educational service district superintendent shall be the secretary of the committee. Meetings of the committee shall be held upon call of the chair or of a majority of the members thereof. A majority of the committee shall constitute a quorum. [1990 c 33 § 297; 1985 c 385 § 8; 1975 1st ex.s. c 275 § 82; 1969 ex.s. c 176 § 119; 1969 ex.s. c 223 § 28A.57.040. Prior: 1947 c 266 § 12; Rem. Supp. 1947 § 4693-31; prior: 1941 c 248 § 4; Rem. Supp. 1941 § 4709-4. Formerly RCW 28A.57.040, 28.57.040.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.110 Regional committees—Powers and duties. The powers and duties of each regional committee shall be:

(1) To initiate, on its own motion and whenever it deems such action advisable, proposals or alternate proposals for changes in the organization and extent of school districts in the educational service district; to receive, consider, and revise, whenever in its judgment revision is advisable, proposals initiated by petition or presented to the committee by the educational service district superintendent as provided for in this chapter; to prepare and submit to the state board any of the aforesaid proposals that are found by the regional committee to provide for satisfactory improvement in the school district system of the educational service district and state; to prepare and submit with the aforesaid proposals, a map showing the boundaries of existing school districts affected by any proposed change and the boundaries, including a description thereof, of each proposed new school district or of each existing school district as enlarged or diminished by any proposed change, or both, and a summary of the reasons for the proposed change; and such other reports, records, and materials as the state board may request. The committee may utilize as a basis of its proposals and changes that comprehensive plan for changes in the organization and extent of the school districts of the county prepared and submitted to the state board prior to September 1, 1956, or, if the then county committee found, after considering the factors listed in RCW 28A.315.120, that no changes in the school district organization of the county were needed, the report to this effect submitted to the state board.

(2)(a) To make an equitable adjustment of the property and other assets and of the liabilities, including bonded indebtedness and excess tax levies as otherwise authorized under this section, as to the old school districts and the new district or districts, if any, involved in or affected by a proposed change in the organization and extent of the school districts; and (b) to make an equitable adjustment of the bonded indebtedness outstanding against any of the aforesaid

districts whenever in its judgment such adjustment is advisable, as to all of the school districts involved in or affected by any change heretofore or hereafter effected; and (c) to provide that territory transferred from a school district by a change in the organization and extent of school districts shall either remain subject to, or be relieved of, any one or more excess tax levies which are authorized for the school district under RCW 84.52.053 before the effective date of the transfer of territory from the school district; and (d) to provide that territory transferred to a school district by a change in the organization and extent of school districts shall either be made subject to, or be relieved of, any one or more excess tax levies which are authorized for the school district under RCW 84.52.053 before the effective date of the transfer of territory to the school district; and (e) to submit to the state board the proposed terms of adjustment and a statement of the reasons therefor in each case. In making the adjustments herein provided for, the regional committee shall consider the number of children of school age resident in and the assessed valuation of the property located in each school district and in each part of a district involved or affected; the purpose for which the bonded indebtedness of any school district was incurred; the value, location, and disposition of all improvements located in the school districts involved or affected; and any other matters which in the judgment of the committee are of importance or essential to the making of an equitable adjustment.

(3) To hold and keep a record of a public hearing or public hearings (a) on every proposal for the formation of a new school district or for the transfer from one existing district to another of any territory in which children of school age reside or for annexation of territory when the conditions set forth in RCW 28A.315.290 or 28A.315.320 prevail; and (b) on every proposal for adjustment of the assets and of the liabilities of school districts provided for in this chapter. Three members of the regional committee or two members of the committee and the educational service district superintendent may be designated by the committee to hold any public hearing that the committee is required to hold. The regional committee shall cause notice to be given, at least ten days prior to the date appointed for any such hearing, in one or more newspapers of general circulation within the geographical boundaries of the school districts affected by the proposed change or adjustment. In addition notice may be given by radio and television, or either thereof, when in the committee's judgment the public interest will be served thereby.

(4) To prepare and submit to the superintendent of public instruction from time to time or, upon his or her request, reports and recommendations respecting the urgency of need for school plant facilities, the kind and extent of the facilities required, and the development of improved local school administrative units and attendance areas in the case of school districts that seek state assistance in providing school plant facilities. [1991 c 288 § 2. Prior: 1990 c 161 § 2; 1990 c 33 § 298; 1987 c 100 § 1; 1985 c 385 § 9; 1985 c 6 § 1; 1975-'76 2nd ex.s. c 15 § 2; prior: 1975 1st ex.s. c 275 § 83; 1975 c 43 § 4; 1969 ex.s. c 176 § 120; 1969 ex.s. c 223 § 28A.57.050; prior: 1959 c 268 § 2, part; 1955 c 395 § 2, part; 1947 c 266 § 13, part; Rem. Supp. 1941 § 4693-32, part; prior: 1941 c 248 § 5, part; Rem. Supp. 1941

§ 4709-5, part. Formerly RCW 28A.57.050, 28.57.050, part.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

Department of community, trade, and economic development: Chapter 43.330 RCW.

28A.315.120 Regional committees—Recommendations—Standards. Each regional committee, in carrying out the purposes of RCW 28A.315.110, shall base its judgment and recommendations, if any, to the state board of education, upon such standards and considerations as are established by the state board of education pursuant to chapter 34.05 RCW for the preparation of recommended changes in the organization and extent of school districts and terms of adjustment as provided for in RCW 28A.315.110. Such rules and regulations shall provide for giving consideration: (1) To equalization of the educational opportunities of pupils and to economies in the administration and operation of schools through the formation of larger units of administration and areas of attendance; (2) to equalization among school districts of the tax burden for general fund and capital purposes through a reduction in disparities in per-pupil valuation; (3) to geographical and other features, including, but not limited to such physical characteristics as mountains, lakes and rivers, waste land, climatic conditions, highways, and means of transportation; (4) to the convenience and welfare of pupils, including but not limited to remoteness or isolation of their places of residence and time required to travel to and from school; (5) to improvement of the educational opportunities of pupils through improvement and extension of school programs and through better instruction facilities, equipment, materials, libraries, and health and other services; (6) to equalization of the burden of financing the cost of high school facilities through extension of the boundaries of high school districts to include within each such district all of the territory served by the high school located therein: **PROVIDED**, That a nonhigh school district may be excluded from a plan if such district is found by the regional committee and the state board to be so situated with respect to location, present and clearly foreseeable future population, and other pertinent factors as to warrant the establishment and operation of a high school therein or the inclusion of its territory in a new district formed for the purpose of establishing and operating a high school; (7) to the future effective utilization of existing satisfactory school buildings, sites, and playfields; the adequacy of such facilities located in the proposed new district; and additional facilities required if such proposed district is formed; and (8) to any other matters which in the judgment of the state board of education are related to or may operate to further equalization and improvement of school facilities and services, economies in operating and capital fund expenditures, and equalization among school districts of tax rates for school purposes. [1990 c 33 § 299; 1985 c 385 § 10; 1969 ex.s. c 223 § 28A.57.055. Prior: 1959 c 268 § 2, part; 1955 c 395 § 2, part; 1947 c 266 § 13, part; Rem. Supp. 1941 § 4693-32, part; prior: 1941 c 248

§ 5, part; Rem. Supp. 1941 § 4709-5, part. Formerly RCW 28A.57.055, 28.57.050, part.]

Severability—1985 c 385: See note following RCW 28A.315.020.

28A.315.130 Changing conflicting or incorrectly described school district boundaries. In case the boundaries of any of the school districts are conflicting or incorrectly described, the regional committee on school organization after due notice and a public hearing, shall change, harmonize, and describe them and shall so certify, with a complete transcript of boundaries of all districts affected, such action to the state board of education for its approval or revision. Upon receipt of notification of state board of education action, the regional committee on school organization shall transmit to the county commissioners of the county or counties in which the affected districts are located a complete transcript of the boundaries of all districts affected. [1985 c 385 § 11; 1971 ex.s. c 282 § 26. Formerly RCW 28A.57.057.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

28A.315.140 Powers and duties of state board, generally. The powers and duties of the state board with respect to this chapter shall be:

(1) To aid regional committees in the performance of their duties by furnishing them with plans of procedure, standards, data, maps, forms, and other necessary materials and services essential to a study and understanding of the problems of school district organization in their respective educational service districts.

(2) To receive, file, and examine the proposals and the maps, reports, records, and other materials relating thereto submitted by regional committees and to approve such proposals and so notify the regional committees when said proposals are found to provide for satisfactory improvement in the school district system of the counties and the state and for an equitable adjustment of the assets and liabilities, including bonded indebtedness and excess tax levies as authorized under RCW 28A.315.110(2), of the school districts involved or affected: **PROVIDED**, That whenever the state board approves a recommendation from a regional committee for the transfer of territory from one school district to another school district, such state board approval must be made not later than March 1 of any given year for implementation the school year immediately following: **PROVIDED FURTHER**, That whenever such proposals are found by the state board to be unsatisfactory or inequitable, the board shall so notify the regional committee and, upon request, assist the committee in making revisions which revisions shall be resubmitted within sixty days after such notification for reconsideration and approval or disapproval. Implementation of state board-approved transfers of territory from one school district to another school district shall become effective at the commencement of the next school year unless an earlier implementation is agreed upon in writing by the boards of directors of the affected school districts. [1990 c 33 § 300; 1987 c 100 § 2; 1985 c 385 § 12; 1969 ex.s. c 223 § 28A.57.060. Prior: 1955 c 395 § 3; 1947 c 266 § 14; Rem. Supp. 1947 § 4693-33; prior: 1941

c 248 § 8; Rem. Supp. 1941 § 4709-8. Formerly RCW 28A.57.060, 28.57.060.]

Severability—1985 c 385: See note following RCW 28A.315.020.

28A.315.150 Action upon board's report. Upon receipt by a regional committee of such notice from the state board as is required in RCW 28A.315.140(2), the educational service district superintendent shall make an order establishing all approved changes involving the alteration of the boundaries of an established school district or districts and all approved terms of adjustment of assets and liabilities involving an established district or districts the boundaries of which have been or are hereafter altered in the manner provided by law, and shall certify his or her action to each county auditor for the board of county commissioners, each county treasurer, each county assessor and the superintendents of all school districts affected by such action. Upon receipt of such certification the superintendent of each school district which is annexed to another district by the action shall deliver to the superintendent of the school district to which annexed all books, papers, documents, records, and other materials pertaining to his or her office. [1990 c 33 § 301; 1985 c 385 § 13; 1975 1st ex.s. c 275 § 84; 1969 ex.s. c 176 § 121; 1969 ex.s. c 223 § 28A.57.070. Prior: 1957 c 129 § 1, part; 1955 c 395 § 4, part; 1951 c 87 § 1, part; 1947 c 266 § 19, part; Rem. Supp. 1947 § 4693-38, part. Formerly RCW 28A.57.070, 28.57.070, part.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.160 Adjustment of bonded indebtedness—Special election in certain cases. Whenever adjustments of bonded indebtedness are made between or among school districts in connection with the alteration of the boundaries thereof, pursuant to the provisions of this chapter, the order of the educational service district superintendent establishing the terms of adjustment of bonded indebtedness shall provide and specify:

(1) In every case where bonded indebtedness is transferred from one school district to another school district (a) that such bonded indebtedness is assumed by the school district to which it is transferred; (b) that thereafter such bonded indebtedness shall be the obligation of the school district to which it is transferred; (c) that, if the terms of adjustment so provide, any bonded indebtedness thereafter incurred by such transferee school district through the sale of bonds authorized prior to the date its boundaries were altered shall be the obligation of such school district including the territory added thereto; and (d) that taxes shall be levied thereafter against the taxable property located within such school district as it is constituted after its boundaries were altered, said taxes to be levied at the times and in the amounts required to pay the principal of and the interest on the bonded indebtedness assumed or incurred as aforesaid, as the same become due and payable.

In computing the debt limitation of any school district from which or to which bonded indebtedness has been transferred, the amount of such transferred bonded indebtedness at any time outstanding (a) shall be an offset against and deducted from the total bonded indebtedness, if any, of

the school district from which such bonded indebtedness was transferred and (b) shall be deemed to be bonded indebtedness solely of the transferee school district that assumed such indebtedness.

(2) In every case where adjustments of bonded indebtedness do not provide for transfer of bonded indebtedness from one school district to another school district (a) that the existing bonded indebtedness of each school district the boundaries of which are altered and any bonded indebtedness incurred by each such school district through the sale of bonds authorized prior to the date its boundaries were altered shall be the obligation of the school district in its reduced or enlarged form, as the case may be; and (b) that taxes shall be levied thereafter against the taxable property located within each such school district in its reduced or enlarged form, as the case may be, at the times and in the amounts required to pay the principal of and interest on such bonded indebtedness as the same become due and payable.

If a change in school district organization approved by the state board concerns a proposal to form a new school district or a proposal for adjustment of bonded indebtedness involving an established school district and one or more former school districts now included therein pursuant to a vote of the people concerned, a special election of the voters residing within the territory of the proposed new district or of the established district involved in a proposal for adjustment of bonded indebtedness as the case may be shall be held for the purpose of affording said voters an opportunity to approve or reject such proposals as concern or affect them.

In a case involving both the question of the formation of a new school district and the question of adjustment of bonded indebtedness, the questions may be submitted to the voters either in the form of a single proposition or as separate propositions, whichever to the educational service district superintendent seems expedient. When the regional committee has passed appropriate resolutions for the questions to be submitted and the educational service district superintendent has given notice thereof to the county auditor such special election shall be called, conducted, and the returns canvassed as in regular school district elections. [1985 c 385 § 14; 1975 1st ex.s. c 275 § 85; 1969 ex.s. c 176 § 122; 1969 ex.s. c 223 § 28A.57.075. Prior: 1957 c 129 § 1, part; 1955 c 395 § 4, part; 1951 c 87 § 1, part; 1947 c 266 § 19, part; Rem. Supp. 1947 § 4693-38, part. Formerly RCW 28A.57.075, 28.57.070, part.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.170 Notice of election—Contents. Notice of such special elections as provided for in RCW 28A.315.160 shall be given by the county auditor as in RCW 29.27.080 provided. The notice of election shall state the purpose for which the election has been called and shall contain a description of the boundaries of the proposed new district and a statement of any terms of adjustment of bonded indebtedness to be voted on. [1990 c 33 § 302; 1985 c 385 § 15; 1975 1st ex.s. c 275 § 86; 1971 c 48 § 26; 1969 ex.s. c 223 § 28A.57.080. Prior: 1947 c 266 § 20; Rem.

Supp. 1947 § 4693-39. Formerly RCW 28A.57.080, 28.57.080.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Severability—1971 ex.s. c 48: See note following RCW 28A.305.040.

28A.315.180 Vote, how determined—ESD superintendent's order—Certification—Effective date. Whenever a special election is held to vote on a proposal or alternate proposals to form a new school district, the votes cast by the registered voters in each component district shall be tabulated separately and any such proposition shall be considered approved only if it receives a majority of the votes cast in each separate district voting thereon. Whenever a special election is held to vote on a proposal for adjustment of bonded indebtedness the entire vote cast by the registered voters of the proposed new district or of the established district as the case may be shall be tabulated and any such proposition shall be considered approved if sixty percent or more of all votes cast thereon are in the affirmative.

In the event of approval of a proposition or propositions voted on at a special election, the educational service district superintendent shall: (1) Make an order establishing such new school district or such terms of adjustment of bonded indebtedness or both, as were approved by the registered voters and shall also order effected such other terms of adjustment, if there be any, of property and other assets and of liabilities other than bonded indebtedness as have been approved by the state board; and (2) certify his or her action to the county and school district officials specified in RCW 28A.315.150. He or she may designate, with the approval of the superintendent of public instruction, a name and number different from that of any component thereof but must designate the new district by name and number different from any other district in existence in the county.

The educational service district superintendent shall fix, as the effective date of any order or orders he or she is required by this chapter to make, a date no later than the first day of September next succeeding the date of final approval of any change in the organization and extent of school districts or of any terms of adjustment of the assets and liabilities of school districts subject, for taxing purposes, to the redrawing of taxing district boundaries pursuant to RCW 84.09.030.

Upon receipt of the aforesaid certification, the superintendent of each school district which is included in the new district shall deliver to the superintendent of the new school district all books, papers, documents, records and other materials pertaining to his or her office. [1990 c 33 § 303; 1985 c 385 § 16; 1975 1st ex.s. c 275 § 87; 1969 ex.s. c 176 § 123; 1969 ex.s. c 223 § 28A.57.090. Prior: 1957 c 296 § 1; 1955 c 395 § 5; 1947 c 266 § 21; Rem. Supp. 1947 § 4693-40. Formerly RCW 28A.57.090, 28.57.090.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.190 Procedure upon rejection of proposal. If a proposal for the formation of a new school district and for adjustment of bonded indebtedness, or either, is rejected

by the registered voters at a special election, the regional committee may make such revisions therein as it deems advisable and submit the revised proposal or proposals to the state board. Thereafter such revised proposal or proposals shall be subject to the provisions and procedural requirements of this chapter applicable to original proposals submitted to said board. [1985 c 385 § 17; 1969 ex.s. c 223 § 28A.57.100. Prior: 1947 c 266 § 22; Rem. Supp. 1947 § 4693-41. Formerly RCW 28A.57.100, 28.57.100.]

Severability—1985 c 385: See note following RCW 28A.315.020.

28A.315.200 Personnel and supplies to be furnished by state superintendent—Expenses reimbursed. The superintendent of public instruction shall furnish to the state board and to regional committees the services of employed personnel and the materials and supplies necessary to enable them to perform the duties imposed upon them by this chapter and shall reimburse the members thereof for expenses necessarily incurred by them in the performance of their duties, such reimbursement for regional committee members to be in accordance with RCW 28A.315.090, and such reimbursement for state board members to be in accordance with RCW 28A.305.120. [1990 c 33 § 304; 1985 c 385 § 18; 1969 ex.s. c 223 § 28A.57.110. Prior: 1947 c 266 § 39; Rem. Supp. 1947 § 4693-58. Formerly RCW 28A.57.110, 28.57.110.]

Severability—1985 c 385: See note following RCW 28A.315.020.

28A.315.210 Appeal. An appeal may be taken, as provided for in RCW 28A.645.010, to the superior court of the county in which a school district or any part thereof is situated on any question of adjustment of property and other assets and of liabilities provided for in this chapter. If the court finds the terms of the adjustment in question not equitable, the court shall make an adjustment that is equitable. [1990 c 33 § 305; 1983 c 3 § 34; 1969 ex.s. c 223 § 28A.57.120. Prior: 1947 c 266 § 40; Rem. Supp. 1947 § 4693-59. Formerly RCW 28A.57.120, 28.57.120.]

Boundary change, copy of decision to county assessor: RCW 28A.645.040.

28A.315.220 Organization of school districts. A school district shall be organized in form and manner as hereinafter in this chapter provided, and shall be known as (insert here the name of the district) School District No. county, state of Washington: PROVIDED, That all school districts now existing as shown by the records of the educational service district superintendent are hereby recognized as legally organized districts: PROVIDED FURTHER, That all school districts existing on April 25, 1969 as shown by the records of the county or intermediate district superintendents are hereby recognized as legally organized districts. [1975 1st ex.s. c 275 § 88; 1969 ex.s. c 176 § 124; 1969 ex.s. c 223 § 28A.57.130. Prior: 1947 c 266 § 3; Rem. Supp. 1947 § 4693-22. Formerly RCW 28A.57.130, 28.57.130.]

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.230 Classes of districts—Change of classification. Any school district in the state having a student enrollment within the public schools of such district of two

thousand pupils or more, as shown by evidence acceptable to the educational service district superintendent and the superintendent of public instruction, shall be a school district of the first class. Any other school district shall be a school district of the second class.

Whenever the educational service district superintendent finds that the classification of a school district should be changed, and upon the approval of the superintendent of public instruction, he or she shall make an order in conformity with his or her findings and alter the records of his or her office accordingly. Thereafter the board of directors of the district shall organize in the manner provided by law for the organization of the board of a district of the class to which said district then belongs. [1991 c 116 § 25; 1990 c 33 § 306; 1975-76 2nd ex.s. c 15 § 3. Prior: 1975 1st ex.s. c 275 § 89; 1975 c 43 § 1; 1969 ex.s. c 176 § 125; 1969 ex.s. c 223 § 28A.57.140; prior: 1947 c 266 § 9; Rem. Supp. 1947 § 4693-28; prior: 1909 p 264 §§ 2, 3, 4; RRS §§ 4695, 4696, 4697. Formerly RCW 28A.57.140, 28.57.140.]

Effective date—1975 c 43: "The effective date of this amendatory act shall be July 1, 1975." [1975 c 43 § 37.]

Severability—1975 c 43: "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 c 43 § 38.]

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.240 Classes of districts—Change of classification—Delay of authorized. Notwithstanding any other provision of chapter 43, Laws of 1975, the *educational service district superintendent, with the concurrence of the superintendent of public instruction, may delay approval of a change in classification of any school district for a period not exceeding three years when, in fact, the student enrollment of the district within any such time period does not exceed ten percent, either in a decrease or increase thereof. [1975 c 43 § 35. Formerly RCW 28A.57.145.]

***Reviser's note:** "Educational service district superintendent" has been substituted for "intermediate school district superintendent" pursuant to RCW 28A.310.010 and 28A.310.900.

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

28A.315.250 City or town districts. Each incorporated city or town in the state shall be comprised in one school district: PROVIDED, That nothing in this section shall be construed: (1) To prevent the extension of the boundaries of a school district beyond the limits of the city or town contained therein, or (2) to prevent the inclusion of two or more incorporated cities or towns in a single school district, or (3) to change or disturb the boundaries of any school district organized prior to the incorporation of any city or town, except as hereafter in this section provided.

In case all or any part of a school district that operates a school or schools on one site only or operates elementary schools only on two or more sites is included in an incorporated city or town through the extension of the limits of such city or town in the manner provided by law, the educational service district superintendent shall: (1) Declare the territory so included to be a part of the school district containing the city or town and (2) whenever a part of a district so included

contains a school building of the district, present to the regional committee a proposal for the disposition of any part or all of the remaining territory of the district.

In case of the extension of the limits of a town to include territory lying in a school district that operates on more than one site one or more elementary schools and one or more junior high schools or high schools, the regional committee shall, in its discretion, prepare a proposal or proposals for annexation to the school district in which the town is located any part or all of the territory aforesaid which has been included in the town and for annexation to the school district in which the town is located or to some other school district or districts any part or all of the remaining territory of the school district affected by extension of the limits of the town: PROVIDED, That where no school or school site is located within the territory annexed to the town and not less than seventy-five percent of the registered voters residing within the annexed territory present a petition in writing for annexation and transfer of said territory to the school district in which the town is located, the educational service district superintendent shall declare the territory so included to be a part of the school district containing said town: PROVIDED FURTHER, That territory approved for annexation to a city or town by vote of the electors residing therein prior to January 12, 1953, shall not be subject to the provisions herein respecting annexation to a school district or school districts: AND PROVIDED FURTHER, That the provisions and procedural requirements of this chapter as now or hereafter amended not in conflict with or inconsistent with the provisions hereinabove in this section stated shall apply in the case of any proposal or proposals (1) for the alteration of the boundaries of school districts through and by means of annexation of territory as aforesaid, and (2) for the adjustment of the assets and liabilities of the school districts involved or affected thereby.

In case of the incorporation of a city or town containing territory lying in two or more school districts or of the uniting of two or more cities or towns not located in the same school district, the educational service district superintendent, except where the incorporation or consolidation would affect a district or districts of the first class, shall: (1) Order and declare to be established in each such case a single school district comprising all of the school districts involved, and (2) designate each such district by name and by a number different from that of any other district in existence in the county.

The educational service district superintendent shall fix as the effective date of any declaration or order required under this section a date no later than the first day of September next succeeding the date of the issuance of such declaration or order. [1985 c 385 § 19; 1975 1st ex.s. c 275 § 90; 1969 ex.s. c 176 § 126; 1969 ex.s. c 223 § 28A.57.150. Prior: 1965 ex.s. c 108 § 1; 1963 c 208 § 1; 1953 c 49 § 1; 1947 c 266 § 5; Rem. Supp. 1947 § 4693-24; prior: 1909 c 97 p 265 § 3; RRS § 4703. Formerly RCW 28A.57.150, 28.57.150.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.260 Reorganization of districts by transfer of territory or annexation. A new school district may be formed comprising contiguous territory lying in either a single county or in two or more counties. Such new district may comprise two or more whole school districts and/or a part of one or more school districts and/or territory which is not a part of any school district. The boundaries of existing school districts may be altered (1) by the transfer of territory from one district to another district, or (2) by the annexation to a district of a part or all of one or more other districts or of territory which is not a part of any school district: PROVIDED, That such territory shall be contiguous to the district to which it is transferred or annexed. Territory may be transferred or annexed to an existing school district without regard to county boundaries. [1969 ex.s. c 223 § 28A.57.160. Prior: 1947 c 266 § 4; Rem. Supp. 1947 § 4693-23. Formerly RCW 28A.57.160, 28.57.160.]

28A.315.270 Petition for reorganization—Conditions. For the purpose of forming a new school district, a petition in writing may be presented to the educational service district superintendent, as secretary of the regional committee, by registered voters residing (1) in each whole district and in each part of a district proposed to be included in any single new district, or (2) in the territory of a proposed new district which comprises a part only of one or more districts. A total of ten or more registered voters residing in such affected areas or area as the case may be may sign and present such petition with the approval of the boards of directors of the affected school districts. A total of ten percent or more of the registered voters residing in such affected areas or area as the case may be may sign and present such petition with or without the approval of the boards of directors of the affected school districts. The petition shall state the name and number of each district involved in or affected by the proposal to form the new district and shall describe the boundaries of the proposed new district. No more than one petition for consolidation of the same two school districts or parts thereof will be considered during a school fiscal year. [1985 c 385 § 20; 1982 c 191 § 1; 1975 1st ex.s. c 275 § 91; 1969 ex.s. c 176 § 127; 1969 ex.s. c 223 § 28A.57.170. Prior: 1947 c 266 § 15; Rem. Supp. 1947 § 4693-34; prior: 1909 c 97 p 266 § 1; RRS § 4721; prior: 1899 c 14 § 1; 1897 c 118 § 4; 1891 c 127 § 7; 1890 p 361 § 19. Formerly RCW 28A.57.170, 28.57.170.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Effective date—1982 c 191: "The effective date of sections 3 and 4 of this amendatory act shall be September 1, 1982." [1982 c 191 § 13.] Sections 3 and 4 of this amendatory act [1982 c 191] were codified as RCW 28A.58.131 and 28A.58.035, respectively.

Severability—1982 c 191: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 191 § 14.]

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.280 Transfer of territory—By petition—By ESD superintendent—When election required. For the purpose of transferring territory from one school district to another district, a petition in writing may be presented to the

educational service district superintendent, as secretary of the regional committee, signed by a majority of the registered voters residing in the territory proposed to be transferred, or by the board of directors of one of the districts affected by a proposed transfer of territory if there is no registered voter resident in the territory, which petition shall state the name and number of each district affected, describe the boundaries of the territory proposed to be transferred, and state the reasons for desiring the change and the number of children of school age, if any, residing in the territory: PROVIDED, That the educational service district superintendent, without being petitioned to do so, may present to the regional committee a proposal for the transfer from one school district to another of any territory in which no children of school age reside: PROVIDED FURTHER, That the educational service district superintendent shall not complete any transfer of territory pursuant to the provisions of this section which involves ten percent or more of the common school student population of the entire district from which such transfer is proposed, unless he or she has first called and held a special election of the voters of the entire school district from which such transfer of territory is proposed for the purpose of affording said voters an opportunity to approve or reject such proposed transfer, and has obtained approval of the proposed transfer by a majority of those registered voters voting in said election; and if such proposed transfer is disapproved, the state board of education shall determine whether or not said district is meeting or capable of meeting minimum standards of education as set up by the state board. If the state board decides in the negative, the superintendent of public instruction may thereupon withhold from such district, in whole or in part, state contributed funds. [1985 c 385 § 21; 1975 1st ex.s. c 275 § 92; 1969 ex.s. c 176 § 128; 1969 ex.s. c 223 § 28A.57.180. Prior: 1959 c 268 § 14; 1947 c 266 § 16; Rem. Supp. 1947 § 4693-35; prior: 1915 c 50 § 1; RRS § 4727. Formerly RCW 28A.57.180, 28.57.180.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.290 Annexation of district bounded on three sides by high school district. Whenever all or any part of a school district in which no accredited high school is maintained is bounded on three or more sides by a school district in which an accredited high school is situated and maintained, or by a school district in which a high school with a program approved by the state board of education is situated and maintained, the educational service district superintendent shall report said fact to the regional committee, which committee shall consider the question of the annexation to the aforesaid high school district of the territory or district so bounded. [1985 c 385 § 22; 1975 1st ex.s. c 275 § 93; 1969 ex.s. c 176 § 129; 1969 ex.s. c 223 § 28A.57.190. Prior: 1947 c 266 § 17; Rem. Supp. 1947 § 4693-36. Formerly RCW 28A.57.190, 28.57.190.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.300 Single school district for certain United States military reservations—Mandated. Notwithstanding other provisions of this chapter or any other provision of law and except as otherwise provided in RCW 28A.315.310, as of July 1, 1972, any United States military reservation in the state of Washington with more than two thousand five hundred common school age children in public schools resident thereon shall be included wholly within the boundaries of a single school district. Such single school district shall be one of the school districts presently having boundary lines within such military reservation and serving pupils thereon. The procedure for achieving such single school districts where they do not now exist, or in any year in the future when there are more than two thousand five hundred common school age children on such a military reservation resident therein, shall be as prescribed in RCW 28A.315.310. [1990 c 33 § 307; 1972 ex.s. c 63 § 1. Formerly RCW 28A.57.195.]

28A.315.310 Single school district for certain United States military reservations—Procedure—Limitations. On or before June 1, 1972, or in any year in the future when there are more than two thousand five hundred common school age children on a military reservation as referred to in RCW 28A.315.300 resident therein, whichever is the case, and notwithstanding other provisions of this chapter or any other provision of law, the regional committee of each educational service district in which such a United States military reservation is located, or in the case such military reservation is located in two or more educational service districts, the joint regional committee established pursuant to RCW 28A.315.360, shall order effective September 1 of the then calendar year the annexation of portions of reservation territory not currently within the single school district, as required by RCW 28A.315.300, to one of the school districts encompassing a portion of the military reservation: PROVIDED, That notwithstanding any other provision of RCW 28A.315.300 and 28A.315.310 the annexation order shall not include territory of school districts on such military reservations in which none or less than a majority of the pupils residing within that portion of the district within such military reservation have one or more parents serving in the military and under such military command. Notwithstanding any other provision of law, the decision as to which school district shall serve the pupils residing within such military reservation shall rest solely with the regional committee of the educational service district in which the affected military reservation is located. The regional committee shall order such equitable transfer of assets and liabilities as is deemed necessary for the orderly transfer of the territory in accordance with transfers in other annexation proceedings authorized under this chapter. [1990 c 33 § 308; 1985 c 385 § 23; 1972 ex.s. c 63 § 2. Formerly RCW 28A.57.196.]

Severability—1985 c 385: See note following RCW 28A.315.020.

28A.315.320 Dissolution and annexation of certain districts—Annexation of nondistrict property. In case any school district shall have an average enrollment of fewer than five kindergarten through eighth grade pupils during the preceding school year, including the 1984-85 school year and any subsequent school year, or shall not have made a

reasonable effort to maintain, during the preceding school year at least the minimum term of school required by law, the educational service district superintendent shall report said fact to the regional committee, which committee shall dissolve the school district and annex the territory thereof to some other district or districts: PROVIDED, That for the purposes of this section, in addition to any other finding, "reasonable effort" shall be deemed to mean the attempt to make up whatever days are short of the legal requirement by the conducting of school classes on any days to include available holidays, though not to include Saturdays and Sundays, prior to June 15 of that year: PROVIDED FURTHER, That school districts operating an extended school year program, most commonly implemented as a 45-15 plan, shall be deemed to be making a reasonable effort: PROVIDED FURTHER, That in the event any school district has suffered any interruption in its normal school calendar due to a strike or other work stoppage or slowdown by any of its employees such district shall not be subject to the requirements of this section. In case any territory is not a part of any school district, the educational service district superintendent shall present to the regional committee a proposal for the annexation of said territory to some contiguous district or districts. [1985 c 385 § 24; 1975-'76 2nd ex.s. c 15 § 4. Prior: 1975 1st ex.s. c 275 § 94; 1975 1st ex.s. c 23 § 1; 1970 ex.s. c 86 § 4; 1969 ex.s. c 176 § 130; 1969 ex.s. c 223 § 28A.57.200; prior: 1947 c 266 § 18; Rem. Supp. 1947 § 4693-37. Formerly RCW 28A.57.200, 28.57.200.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Severability—1970 ex.s. c 86: "If any provision of this 1970 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 86 § 7.]

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.330 Adjustment of indebtedness—Basis. The fact of the issuance of bonds by a school district, heretofore or hereafter, shall not prevent changes in the organization and extent of school districts, regardless of whether or not such bonds or any part thereof are outstanding at the time of change. In case of any change (1) the bonded indebtedness outstanding against any school district involved in or affected by such change shall be adjusted equitably among the old school districts and the new district or districts, if any, involved or affected; and (2) the property and other assets and the liabilities other than bonded indebtedness of any school district involved in or affected by any such change shall also be adjusted in the manner and to the effect hereinbefore in this section provided for, except when all the territory of an old school district is included in a single new district or is annexed to a single existing district, in which event the title to the property and other assets and the liabilities other than bonded indebtedness of such old district shall vest in and become the assets and liabilities of the new district or of the existing district as the case may be. [1969 ex.s. c 223 § 28A.57.210. Prior: 1947 c 266 § 7; Rem. Supp. 1947 § 4693-26. Formerly RCW 28A.57.210, 28.57.210.]

28A.315.340 Corporate existence retained to pay bonded indebtedness—Tax levies—Joint school districts.

Each school district involved in or affected by any change heretofore or hereafter made in the organization and extent of school districts shall retain its corporate existence insofar as is necessary for the purpose until the bonded indebtedness outstanding against it on and after the effective date of said change has been paid in full: PROVIDED, That nothing in this section shall be so construed as to prevent, after the aforesaid effective date, such adjustments of bonded indebtedness as are provided for in this chapter. The county commissioners shall have the power and it shall be their duty to provide by appropriate levies on the taxable property of each school district for the payment of the bonded indebtedness outstanding against it after any of the aforesaid changes and/or adjustments have been effected. In case any such changes or adjustments involve a joint school district, the tax levy for the payment of any bonded indebtedness outstanding against such joint district after said changes or adjustments are effected shall be made and the proceeds thereof shall be transmitted, credited, and paid out in conformity with the provisions of law applicable to the payment of the bonded indebtedness of joint school districts heretofore established. [1969 ex.s. c 223 § 28A.57.220. Prior: 1947 c 266 § 8; Rem. Supp. 1947 § 4693-27. Formerly RCW 28A.57.220, 28.57.220.]

28A.315.350 Joint school districts—Defined—Designation. Any school district composed of territory lying in more than one county shall be known as a joint school district, and shall be designated by number in accordance with rules and regulations promulgated under RCW 28A.305.150. [1990 c 33 § 309; 1973 c 47 § 1; 1969 ex.s. c 223 § 28A.57.230. Prior: 1947 c 266 § 25; Rem. Supp. 1947 § 4693-44; prior: 1909 c 97 p 264 § 6; RRS § 4699; prior: 1897 c 118 § 13. Formerly RCW 28A.57.230, 28.57.230.]

Severability—1973 c 47: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 47 § 6.]

28A.315.360 School districts in two or more educational service districts—Change or adjustment of districts—Procedure generally. The duties in this chapter imposed upon and required to be performed by a regional committee and by an educational service district superintendent in connection with a change in the organization and extent of school districts and/or with the adjustment of the assets and liabilities of school districts and with all matters related to such change or adjustment whenever territory lying in a single educational service district is involved shall be performed jointly by the regional committees and by the superintendents of the several educational service districts as required whenever territory lying in more than one educational service district is involved in a proposed change in the organization and extent of school districts: PROVIDED, That a regional committee may designate three of its members, or two of its members and the educational service district superintendent, as a subcommittee to serve in lieu of the whole committee, but action by a subcommittee shall not be binding unless approved by a majority of the regional committee. Proposals for changes in the organization and extent of school districts and proposed terms of adjustment

of assets and liabilities thus prepared and approved shall be submitted to the state board by the regional committee of the educational service district in which is located the part of the proposed or enlarged district having the largest number of common school pupils residing therein. [1985 c 385 § 25; 1975 1st ex.s. c 275 § 95; 1973 c 47 § 2; 1969 ex.s. c 176 § 131; 1969 ex.s. c 223 § 28A.57.240. Prior: 1947 c 266 § 26; Rem. Supp. 1947 § 4693-45. Formerly RCW 28A.57.240, 28.57.240.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Severability—1973 c 47: See note following RCW 28A.315.350.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.370 School districts in two or more educational service districts—Proposed change or adjustment—Procedure when one committee does not approve, or fails to act—Temporary committee. Whenever a proposed change in the organization and extent of school districts or an adjustment of the assets and liabilities of school districts, or both, or any other matters related to such change or adjustment involve school districts in two or more educational service districts, and a majority of at least one of the regional committees involved approve a proposal but the proposal is not approved by the other regional committee or committees or one or more of said committees fails or refuses to act upon the proposal within sixty days of its receipt, the regional committee or committees approving the proposal shall certify the proposal and its approval to the state superintendent of public instruction. Upon receipt of a properly certified proposal, the state superintendent of public instruction shall appoint a temporary committee composed of five persons. The members of the temporary committee shall be selected from the membership of any regional committee in this state except that no member shall be appointed from any educational service district in which there is situated a school district that would be affected by the proposed change. Said committee shall meet at the call of the state superintendent of public instruction and organize by electing a chair and secretary. Thereupon, this temporary committee shall have jurisdiction of the proposal and shall treat the same as a proposal initiated on its own motion. Said committee shall have the powers and duties imposed upon and required to be performed by a regional committee under the provisions of this chapter and the secretary of the committee shall have the powers and duties imposed upon and required to be performed by the educational service district superintendents under the provisions of this chapter. It shall be the duty of the educational service district superintendents of the educational service districts in which the school districts that would be affected by the proposed change are situated to assist the temporary committee by supplying said committee with information from the records and files of their offices and with a proper and suitable place for holding meetings. [1990 c 33 § 310; 1985 c 385 § 26; 1975 1st ex.s. c 275 § 96; 1969 ex.s. c 176 § 132; 1969 ex.s. c 223 § 28A.57.245. Prior: 1959 c 268 § 5. Formerly RCW 28A.57.245, 28.57.245.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.380 Joint school districts—Administration—County to which joint school district considered as belonging. For all purposes essential to the maintenance, operation, and administration of the schools of a district, including the apportionment of current state and county school funds, the county in which a joint school district shall be considered as belonging shall be as designated by the state board of education. Prior to making such designation, the state board of education shall hold at least one public hearing on the matter, at which time the recommendation of the joint school district shall be presented and, in addition to such recommendation, the state board shall consider the following prior to its designation:

- (1) Service needs of such district;
- (2) Availability of services;
- (3) Geographic location of district and servicing agencies; and
- (4) Relationship to contiguous school districts. [1973 c 47 § 3; 1969 ex.s. c 223 § 28A.57.250. Prior: 1947 c 266 § 27; Rem. Supp. 1947 § 4693-46. Formerly RCW 28A.57.250, 28.57.250.]

Severability—1973 c 47: See note following RCW 28A.315.350.

28A.315.390 Joint school districts—Special rules for electors voting for directors. The registered voters residing within a joint school district shall be entitled to vote on the office of school director of their district.

Jurisdiction of any such election shall rest with the county auditor of the county administering such joint district as provided in RCW 28A.315.380.

At each general election, or upon approval of a request for a special election as provided for in RCW 29.13.020, such county auditor shall:

- (1) See that there shall be at least one polling place in each county;
- (2) At least twenty days prior to the elections concerned, certify in writing to the superintendent of the school district the number and location of the polling places established by such auditor for such regular or special elections; and
- (3) Do all things otherwise required by law for the conduct of such election.

It is the intention of this section that the qualified electors of a joint school district shall not be forced to go to a different polling place on the same day when other elections are being held to vote for school directors of their district. [1990 c 33 § 311; 1983 c 56 § 6; 1975 1st ex.s. c 275 § 97; 1973 c 47 § 4; 1969 ex.s. c 176 § 133; 1969 ex.s. c 223 § 28A.57.255. Prior: 1961 c 130 § 23. Formerly RCW 28A.57.255, 28.57.255.]

Severability—1983 c 56: See note following RCW 28A.195.010.

Severability—1973 c 47: See note following RCW 28A.315.350.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.400 Joint school districts—Directors—Vacancies. A vacancy in the office of director of a joint district shall be filled in the manner provided by RCW 28A.315.530 for filling vacancies, such appointment to be valid only until a director is elected and qualified to fill such vacancy at the next regular district election. [1990 c 33 § 312; 1973 c 47 § 5; 1971 c 53 § 3; 1969 ex.s. c 176 § 134;

1969 ex.s. c 223 § 28A.57.260. Prior: 1947 c 266 § 28; Rem. Supp. 1947 § 4693-47. Formerly RCW 28A.57.260, 28.57.260.]

Severability—1973 c 47: See note following RCW 28A.315.350.

Severability—1971 c 53: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 c 53 § 6.]

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.410 Joint school districts—Powers and duties. A joint school district and the officers thereof shall possess all the powers and be subject to all of the duties vested in or imposed upon other school districts of the same class and upon the officers thereof, except as otherwise provided by law. Whenever the laws relating to school districts shall provide for any action by a county officer, such action, if required to be performed in behalf of a joint school district, shall be performed by the proper officer of the county to which the joint district belongs, except as otherwise provided by law. [1969 ex.s. c 223 § 28A.57.270. Prior: 1947 c 266 § 29; Rem. Supp. 1947 § 4693-48. Formerly RCW 28A.57.270, 28.57.270.]

28A.315.420 Joint school districts—Assessed valuation of district property to be certified. It shall be the duty of the assessor of each county, a part of which is included within a joint school district, to certify annually to the auditor of the assessor's county and to the auditor of the county to which the joint district belongs, for the board of county commissioners thereof, the aggregate assessed valuation of all taxable property in the assessor's county situated in such joint school district, as the same appears from the last assessment roll of the assessor's county. [1990 c 33 § 313; 1969 ex.s. c 223 § 28A.57.280. Prior: 1947 c 266 § 30; Rem. Supp. 1947 § 4693-49; prior: 1927 c 286 § 1; 1925 ex.s. c 77 § 8; RRS § 4753-8. Formerly RCW 28A.57.280, 28.57.280.]

28A.315.430 Joint school districts—Levy of tax—Ratio. The amount of tax to be levied upon the taxable property of that part of a joint school district lying in one county shall be in such ratio to the whole amount levied upon the property in the entire joint district as the assessed valuation of the property lying in such county bears to the assessed valuation of the property in the entire joint district. [1983 c 56 § 7; 1975 1st ex.s. c 275 § 98; 1969 ex.s. c 176 § 135; 1969 ex.s. c 223 § 28A.57.290. Prior: 1947 c 266 § 31; Rem. Supp. 1947 § 4693-50; prior: (i) 1925 ex.s. c 77 § 10; RRS § 4753-10. (ii) 1927 c 286 § 2; RRS § 4753-11. Formerly RCW 28A.57.290, 28.57.290.]

Severability—1983 c 56: See note following RCW 28A.195.010.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.440 Joint school districts—Levy of tax—Remittance of collections to district treasurer. Upon receipt of the aforesaid certificate, it shall be the duty of the county legislative authority of each county to levy on all taxable property of that part of the joint school district which

lies within the county a tax sufficient to raise the amount necessary to meet the county's proportionate share of the estimated expenditures of the joint district, as shown by the certificate of the educational service district superintendent of the district to which the joint school district belongs. Such taxes shall be levied and collected in the same manner as other taxes are levied and collected, and the proceeds thereof shall be forwarded monthly by the treasurer of each county, other than the county to which the joint district belongs, to the treasurer of the county to which such district belongs and shall be placed to the credit of said district. The treasurer of the county to which a joint school district belongs is hereby declared to be the treasurer of such district. [1994 c 301 § 3; 1975 1st ex.s. c 275 § 99; 1969 ex.s. c 176 § 136; 1969 ex.s. c 223 § 28A.57.300. Prior: 1947 c 266 § 32; Rem. Supp. 1947 § 4693-51. Formerly RCW 28A.57.300, 28.57.300.]

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.450 Directors—Elections—Terms—Number. The governing board of a school district shall be known as the board of directors of the district.

Unless otherwise specifically provided, as in RCW 29.13.060, each member of a board of directors shall be elected by ballot by the registered voters of the school district and shall hold office for a term of four years and until a successor is elected and qualified. Terms of school directors shall be staggered, and insofar as possible, not more than a majority of one shall be elected to full terms at any regular election. In case a member or members of a board of directors are to be elected to fill an unexpired term or terms, the ballot shall specify the term for which each such member is to be elected.

Except for a school district of the first class having within its boundaries a city with a population of four hundred thousand people or more which shall have a board of directors of seven members, the board of directors of every school district of the first class or school district of the second class shall consist of five members. [1991 c 363 § 20; 1980 c 35 § 1; 1980 c 47 § 1. Prior: 1979 ex.s. c 183 § 1; 1979 ex.s. c 126 § 4; 1975 c 43 § 5; 1973 2nd ex.s. c 21 § 1; 1969 c 131 § 8; 1969 ex.s. c 223 § 28A.57.312; prior: 1957 c 67 § 1; 1955 c 55 § 11; 1947 c 266 § 10; Rem. Supp. 1947 § 4693-29; prior: 1909 pp 289, 290 §§ 1,2; RRS §§ 4790, 4791. Formerly RCW 28A.57.312, 28.57.338, 28.58.080.]

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

Severability—1980 c 35: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 35 § 10.]

Severability—1980 c 47: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 47 § 5.]

Effective date—Severability—1979 ex.s. c 183: See notes following RCW 28A.315.580.

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

28A.315.460 Directors—First class districts having city with population of 400,000 people or more—Terms. After July 1, 1979, the election of directors of any first class school district having within its boundaries a city with a population of four hundred thousand people or more, shall be to four year terms. The initial four year terms required by this section shall commence upon the expiration of terms in existence at July 1, 1979. Nothing in *this amendatory act shall affect the term of office of any incumbent director of any such first class school district. [1991 c 363 § 21; 1979 ex.s. c 183 § 10. Formerly RCW 28A.57.313.]

***Reviser's note:** For codification of "this amendatory act" [1979 ex.s. c 183], see Codification Tables, Volume 0.

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

Effective date—Severability—1979 ex.s. c 183: See notes following RCW 28A.315.580.

Directors—Number and terms of in new first class district having city with population of 400,000 people or more: RCW 28A.315.630.

28A.315.470 Directors—Declarations of candidacy—Positions as separate offices. Candidates for the position of school director shall file their declarations of candidacy as provided in Title 29 RCW.

The positions of school directors in each district shall be dealt with as separate offices for all election purposes, and where more than one position is to be filled, each candidate shall file for one of the positions so designated: PROVIDED, That in school districts containing director districts, or a combination of director districts and director at large positions, candidates shall file for such director districts or at large positions. Position numbers shall be assigned to correspond to director district numbers to the extent possible. [1990 c 161 § 4; 1990 c 59 § 98; 1969 ex.s. c 223 § 28A.57.314. Prior: 1963 c 223 § 1. Formerly RCW 28A.57.314, 28.58.082.]

***Reviser's note:** This section was amended by 1990 c 59 § 98 and by 1990 c 161 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Commencement of terms of office: RCW 29.13.020, 29.13.050.

Nonpartisan primaries and elections: Chapter 29.21 RCW.

School district elections

in counties with a population of less than two hundred ten thousand, times for holding: RCW 29.13.020.

in counties with a population of two hundred ten thousand or more, times for holding: RCW 29.13.020, 29.13.060.

Terms of office: RCW 29.13.020, 29.13.050, 29.13.060.

28A.315.480 Directors—Ballots—Form. Except as provided in RCW 29.21.010, the positions of school directors and the candidates therefor shall appear separately on the nonpartisan ballot in substantially the following form:

SCHOOL DIRECTOR ELECTION BALLOT

District No.

Date

To vote for a person make a cross (X) in the square at the right of the name of the person for whom you desire to vote.

School District Directors
 Position No. 1
 Vote for One

.....

Position No. 2
 Vote for One

.....

To Fill Unexpired Term
 Position No. 3
 2 (or 4) year term
 Vote for One

.....

The names of candidates shall appear upon the ballot in order of filing for each position. There shall be no rotation of names in the printing of such ballots. [1969 ex.s. c 223 § 28A.57.316. Prior: 1963 c 223 § 2. Formerly RCW 28A.57.316, 28.58.083.]

28A.315.490 Directors—Elected when—Qualifications. Directors of school districts shall be elected at regular school elections. No person shall be eligible to the office of school director who is not a citizen of the United States and the state of Washington and a registered voter of either the school district or director district, as the case may be. [1969 ex.s. c 223 § 28A.57.318. Prior: 1909 c 97 p 285 § 1; RRS § 4775; prior: 1903 c 104 § 16; 1901 c 41 § 2; 1899 c 142 § 7; 1897 c 118 § 39; 1893 c 107 § 2; 1890 p 364 § 25. Formerly RCW 28A.57.318, 28.58.090.]

28A.315.500 Directors—Oath of office. Every person elected or appointed to the office of school director, before entering upon the discharge of the duties thereof, shall take an oath or affirmation to support the Constitution of the United States and the state of Washington and to faithfully discharge the duties of the office according to the best of his or her ability. In case any official has a written appointment or commission, the official's oath or affirmation shall be endorsed thereon and sworn to before any officer authorized to administer oaths. School officials are hereby authorized to administer all oaths or affirmations pertaining to their respective offices without charge or fee. All oaths of office, when properly made, shall be filed with the county auditor. Every person elected to the office of school director shall begin his or her term of office at the first official meeting of the board of directors following certification of the election results. [1990 c 33 § 314; 1988 c 187 § 1; 1986 c 167 § 16; 1969 ex.s. c 223 § 28A.57.322. Prior: 1909 c 97 p 288 § 11; RRS § 4786; prior: 1897 c 118 § 61; 1890 p 380 § 70. Formerly RCW 28A.57.322, 28.58.095, 28.63.015, 28.63.017, 42.04.030.]

Severability—1986 c 167: See note following RCW 29.01.055.

28A.315.510 Directors—Meetings. Regular meetings of the board of directors of any school district shall be held monthly or more often at such a time as the board of directors by resolution shall determine or the bylaws of the board may prescribe. Special or deferred meetings may be held from time to time as circumstances may demand, at the call of the president, if a first class district, or the chair of the board, if a second class district, or on petition of a majority of the members of the board. All meetings shall be open to the public unless the board shall otherwise order an executive session as provided in RCW 42.30.110. [1990 c 33 § 315; 1983 c 3 § 35; 1975 c 43 § 6; 1969 ex.s. c 223 § 28A.57.324. Prior: (i) 1909 c 97 p 291 § 9; RRS § 4798; prior: 1897 c 118 § 86; 1890 p 389 § 13. Formerly RCW 28.62.090. (ii) 1965 ex.s. c 87 § 1; 1909 c 97 p 299 § 6; RRS § 4816. Formerly RCW 28.63.030. (iii) 1965 ex.s. c 87 § 2; 1909 c 97 p 302 § 6; RRS § 4828. Formerly RCW 28A.57.324, 28.63.032.]

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

28A.315.520 Directors—Quorum—Failure to attend meetings may result in vacation of office. A majority of all members of the board of directors shall constitute a quorum. Absence of any board member from four consecutive regular meetings of the board, unless on account of sickness or authorized by resolution of the board, shall be sufficient cause for the remaining members of the board to declare by resolution that such board member position is vacated. In addition, vacancies shall occur as provided in RCW 42.12.010. [1994 c 223 § 5; 1971 c 53 § 4. Formerly RCW 28A.57.325.]

Severability—1971 c 53: See note following RCW 28A.315.400.

28A.315.530 Directors—Filling vacancies. (1) In case of a vacancy from any cause on the board of directors of a school district other than a reconstituted board resulting from reorganized school districts, a majority of the legally established number of board members shall fill such vacancy by appointment: PROVIDED, That should there exist fewer board members on the board of directors of a school district than constitutes a majority of the legally established number of board members, the educational service district board members of the district in which the school district is located by the vote of a majority of its legally established number of board members shall appoint a sufficient number of board members to constitute a legal majority on the board of directors of such school district; and the remaining vacancies on such board of directors shall be filled by such board of directors in accordance with the provisions of this section: PROVIDED FURTHER, That should any board of directors for whatever reason fail to fill a vacancy within ninety days from the creation of such vacancy, the members of the educational service district board of the district in which the school district is located by majority vote shall fill such vacancy.

(2) Appointees to fill vacancies on boards of directors of school districts shall meet the requirements provided by law for school directors and shall serve until the next regular school district election, at which time a successor shall be elected for the unexpired term.

(3) If a vacancy will be created by a board member who has submitted a resignation, that board member may not vote on the selection of his or her replacement. [1991 c 60 § 1; 1975 1st ex.s. c 275 § 100; 1971 c 53 § 2; 1969 ex.s. c 176 § 156; 1969 ex.s. c 223 § 28A.57.326. Prior: (i) 1909 c 97 p 292 § 12; RRS 4801; prior: 1907 c 31 § 3; 1897 c 118 § 89; 1890 p 390 § 16. Formerly RCW 28.62.120. (ii) 1909 c 97 p 298 § 3; RRS § 4813. Formerly RCW 28.63.020. (iii) 1909 c 97 p 301 § 3; RRS § 4825. Formerly RCW 28.63.022. (iv) 1959 c 216 § 7, part; 1955 c 157 § 14, part; prior: 1909 p 281 § 4, part; 1903 c 104 § 14, part; 1899 c 142 § 6, part; 1897 c 118 § 33, part; 1891 c 127 § 3, part; 1890 p 355 § 11, part; RRS § 4770, part. Formerly RCW 28A.57.326, 28.19.060, part.]

Severability—1971 c 53: See note following RCW 28A.315.400.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.540 Directors—Compensation—Waiver.

Each member of the board of directors of a school district may receive compensation of fifty dollars per day or portion thereof for attending board meetings and for performing other services on behalf of the school district, not to exceed four thousand eight hundred dollars per year, if the district board of directors has authorized by board resolution, at a regularly scheduled meeting, the provision of such compensation. A board of directors of a school district may authorize such compensation only from locally collected excess levy funds available for that purpose, and compensation for board members shall not cause the state to incur any present or future funding obligation.

Any director may waive all or any portion of his or her compensation under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the director's election and before the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

The compensation provided in this section shall be in addition to any reimbursement for expenses paid to such directors by the school district. [1987 c 307 § 2. Formerly RCW 28A.57.327.]

Intent—1987 c 307: "The legislature declares it is the policy of the state to:

(1) Ensure, for the sake of educational excellence, that the electorate has the broadest possible field in which to choose qualified candidates for its school boards;

(2) Ensure that the opportunity to serve on school boards be open to all, regardless of financial circumstances; and

(3) Ensure that the time-consuming and demanding service as directors not be limited to those able or willing to make substantial personal and financial sacrifices." [1987 c 307 § 1.]

Effective date—1987 c 307: "This act shall take effect on September 1, 1987." [1987 c 307 § 3.]

28A.315.550 Directors—Number and terms in new second class districts. Upon the establishment of a new school district of the second class, the directors of the old school districts who reside within the limits of the new district shall meet at the call of the educational service district superintendent and shall constitute the board of directors of the new district. If fewer than five such

directors reside in any such new second class school district, they shall become directors of said district, and the educational service district board shall appoint the number of additional directors required to constitute a board of five directors for the new second class district. Vacancies once such a board has been reconstituted shall not be filled unless the number of remaining board members is less than five in a second class district, and such vacancies shall be filled in the manner otherwise provided by law.

Each board of directors so constituted shall proceed at once to organize in the manner prescribed by law and thereafter shall have all the powers and authority conferred by law upon boards of directors of other districts of the same class. Each initial director shall hold office until his or her successor is elected and qualified: **PROVIDED,** That the election of the successor shall be held during the second district general election after the initial directors have assumed office. At such election, no more than five directors shall be elected either at large or by director districts, as the case may be, two for a term of two years and three for a term of four years. Directors thereafter elected and qualified shall serve such terms as provided for in RCW 28A.315.450. [1990 c 33 § 316; 1980 c 35 § 2; 1979 ex.s. c 126 § 5; 1975-'76 2nd ex.s. c 15 § 5. Prior: 1975 1st ex.s. c 275 § 101; 1975 c 43 § 7; 1971 c 67 § 1; 1969 ex.s. c 176 § 137; 1969 ex.s. c 223 § 28A.57.328; prior: 1959 c 268 § 7, part; 1947 c 266 § 24, part; Rem. Supp. 1947 § 4693-43, part. Formerly RCW 28A.57.328, 28.57.350, part.]

Severability—1980 c 35: See note following RCW 28A.315.450.

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.560 Directors—Candidates in undivided districts to indicate term sought—How elected. Whenever the directors to be elected in a school district that is not divided into directors' districts are not all to be elected for the same term of years, the county auditor shall distinguish them and designate the same as provided for in *RCW 29.21.140, and assign position numbers thereto as provided in RCW 28A.315.470 and each candidate shall indicate on his or her declaration of candidacy the term for which he or she seeks to be elected and position number for which he or she is filing. The candidate receiving the largest number of votes for each position shall be deemed elected. [1990 c 33 § 317; 1969 ex.s. c 223 § 28A.57.334. Prior: 1959 c 268 § 12. Formerly RCW 28A.57.334, 28.57.420.]

***Reviser's note:** RCW 29.21.140 was recodified as RCW 29.15.140 pursuant to 1990 c 59 § 110, effective July 1, 1992.

28A.315.570 Directors—Terms in certain first class districts to be staggered. Any first class school district having a board of directors of five members as provided in RCW 28A.315.450 and which elects directors for a term of six years under the provisions of RCW 29.13.060 shall cause the office of at least one director and no more than two directors to be up for election at each regular school district election held hereafter and, except as provided in RCW 28A.315.680, any first class school district having a board of

directors of seven members as provided in RCW 28A.315.450 shall cause the office of two directors and no more than three directors to be up for election at each regular school district election held hereafter. [1990 c 33 § 318; 1969 c 131 § 11; 1969 ex.s. c 223 § 28A.57.336. Prior: 1959 c 268 § 13. Formerly RCW 28A.57.336, 28.57.430.]

28A.315.580 Directors' districts in certain school districts—Submittal of proposition at formation election. Whenever an election shall be held for the purpose of securing the approval of the voters for the formation of a new school district other than a school district of the first class having within its boundaries a city with a population of four hundred thousand people or more, if requested by one of the boards of directors of the school districts affected, there shall also be submitted to the voters at the same election a proposition to authorize the board of directors to divide the school district, if formed, into five directors' districts in first class school districts and a choice of five directors' districts or no fewer than three directors' districts with the balance of the directors to be elected at large in second class school districts. Such director districts in second class districts, if approved, shall not become effective until the regular school election following the next regular school election at which time a new board of directors shall be elected as provided in RCW 28A.315.550. Such director districts in first class districts, if approved, shall not become effective until the next regular school election at which time a new board of directors shall be elected as provided in RCW 28A.315.600, 28A.315.610, and 28A.315.620. Each of the five directors shall be elected from among the residents of the respective director district, or from among the residents of the entire school district in the case of directors at large, by the electors of the entire school district. [1991 c 363 § 22; 1991 c 288 § 3. Prior: 1990 c 161 § 5; 1990 c 33 § 319; 1985 c 385 § 27; 1979 ex.s. c 183 § 2; 1975 c 43 § 8; 1973 2nd ex.s. c 21 § 2; 1971 c 67 § 2; 1969 ex.s. c 223 § 28A.57.342; prior: 1959 c 268 § 4. Formerly RCW 28A.57.342, 28.57.342.]

Reviser's note: This section was amended by 1991 c 288 § 3 and by 1991 c 363 § 22, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

Severability—1985 c 385: See note following RCW 28A.315.020.

Effective date—1979 ex.s. c 183: "This amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1979." [1979 ex.s. c 183 § 12.]

Severability—1979 ex.s. c 183: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 183 § 13.]

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

28A.315.590 Directors' districts in certain school districts—Election to authorize division in school districts not already divided into directors' districts. The board of directors of every first class school district other than a school district of the first class having within its boundaries

a city with a population of four hundred thousand people or more which is not divided into directors' districts may submit to the voters at any regular school district election a proposition to authorize the board of directors to divide the district into directors' districts or for second class school districts into director districts or a combination of no fewer than three director districts and no more than two at large positions. If a majority of the votes cast on the proposition is affirmative, the board of directors shall proceed to divide the district into directors' districts following the procedure established in RCW 29.70.100. Such director districts, if approved, shall not become effective until the next regular school election when a new five member board of directors shall be elected, one from each of the director districts from among the residents of the respective director district, or from among the residents of the entire school district in the case of directors at large, by the electors of the entire district, two for a term of two years and three for a term of four years, unless such district elects its directors for six years, in which case, one for a term of two years, two for a term of four years, and two for a term of six years. [1991 c 363 § 23; 1991 c 288 § 4; 1990 c 161 § 6; 1985 c 385 § 28; 1979 ex.s. c 183 § 3; 1975 c 43 § 9; 1973 2nd ex.s. c 21 § 3; 1971 c 67 § 8; 1969 ex.s. c 223 § 28A.57.344. Prior: 1959 c 268 § 3. Formerly RCW 28A.57.344, 28.57.344.]

Reviser's note: This section was amended by 1991 c 288 § 4 and by 1991 c 363 § 23, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

Severability—1985 c 385: See note following RCW 28A.315.020.

Effective date—Severability—1979 ex.s. c 183: See notes following RCW 28A.315.580.

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

28A.315.593 Division or redivision of district into director districts. It is the responsibility of each school district board of directors to prepare for the division or redivision of the district into director districts no later than eight months after any of the following:

- (1) Receipt of federal decennial census data from the redistricting commission established in RCW 44.05.030;
- (2) Consolidation of two or more districts into one district under RCW 28A.315.270;
- (3) Transfer of territory to or from the district under RCW 28A.315.280;
- (4) Annexation of territory to or from the district under RCW 28A.315.290 or 28A.315.320; or
- (5) Approval by a majority of the registered voters voting on a proposition authorizing the division of the district into director districts pursuant to RCW 28A.315.590.

The districting or redistricting plan shall be consistent with the criteria and adopted according to the procedure established under RCW 29.70.100. [1991 c 288 § 1.]

28A.315.597 District boundary changes—Submission to county auditor. (1) Any district boundary changes, including changes in director district boundaries, shall be submitted to the county auditor by the school district board of directors within thirty days after the changes have

been approved by the board. The board shall submit both legal descriptions and maps.

(2) Any boundary changes submitted to the county auditor after the fourth Monday in June of odd-numbered years shall not take effect until the following year. [1991 c 288 § 9.]

28A.315.600 Directors—Number and terms of in first class districts containing no former first class district. Upon the establishment of a new school district of the first class as provided for in RCW 28A.315.580 containing no former first class district, the directors of the old school districts who reside within the limits of the new district shall meet at the call of the educational service district superintendent and shall constitute the board of directors of the new district. If fewer than five such directors reside in such new district, they shall become directors of said district and the educational service district board shall appoint the number of additional directors to constitute a board of five directors for the district. Vacancies, once such a board has been reconstituted, shall not be filled unless the number of remaining board members is less than five, and such vacancies shall be filled in the manner otherwise provided by law.

Each board of directors so constituted shall proceed at once to organize in the manner prescribed by law and thereafter shall have all the powers and authority conferred by law upon boards of directors of first class school districts until the next regular school election in the district at which election their successors shall be elected and qualified. At such election no more than five directors shall be elected either at large or by director districts, as the case may be, two for a term of two years and three for a term of four years: PROVIDED, That if such first class district is in a county with a population of two hundred ten thousand or more and contains a city of the first class, two directors shall be elected for a term of three years and three directors shall be elected for a term of six years. [1991 c 363 § 24; 1990 c 33 § 320; 1980 c 35 § 3; 1979 ex.s. c 126 § 6; 1975 1st ex.s. c 275 § 102; 1971 c 67 § 3. Formerly RCW 28A.57.355.]

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

Severability—1980 c 35: See note following RCW 28A.315.450.

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

28A.315.610 Directors—Number and terms of in first class districts containing only one former first class district. Upon the establishment of a new school district of the first class as provided for in RCW 28A.315.580 containing only one former first class district, the directors of the former first class district and two directors representative of former second class districts selected by a majority of the board members of former second class districts shall meet at the call of the educational service district superintendent and shall constitute the board of directors of the new district. Vacancies, once such a board has been reconstituted, shall not be filled unless the number of remaining board members is less than five, and such vacancies shall be filled in the manner otherwise provided by law.

Each board of directors so constituted shall proceed at once to organize in the manner prescribed by law and thereafter shall have all the powers and authority conferred by law upon boards of directors of first class school districts until the next regular school election in the district at which election their successors shall be elected and qualified. At such election no more than five directors shall be elected either at large or by director districts, as the case may be, two for a term of two years and three for a term of four years: PROVIDED, That if such first class district is in a county with a population of two hundred ten thousand or more and contains a city of the first class, two directors shall be elected for a term of three years and three directors shall be elected for a term of six years. [1991 c 363 § 25; 1990 c 33 § 321; 1980 c 35 § 4; 1979 ex.s. c 126 § 7; 1975-'76 2nd ex.s. c 15 § 6. Prior: 1975 1st ex.s. c 275 § 103; 1975 c 43 § 10; 1971 c 67 § 4. Formerly RCW 28A.57.356.]

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

Severability—1980 c 35: See note following RCW 28A.315.450.

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

28A.315.620 Directors—Number and terms of in first class districts containing more than one former first class district. Upon the establishment of a new school district of the first class as provided for in RCW 28A.315.580 containing more than one former first class district, the directors of the largest former first class district and three directors representative of the other former first class districts selected by a majority of the board members of the former first class districts and two directors representative of former second class districts selected by a majority of the board members of former second class districts shall meet at the call of the educational service district superintendent and shall constitute the board of directors of the new district. Vacancies once such a board has been reconstituted shall not be filled unless the number of remaining board members is less than seven, and such vacancies shall be filled in the manner otherwise provided by law.

Each board of directors so constituted shall proceed at once to organize in the manner prescribed by law and thereafter shall have all the powers and authority conferred by law upon boards of first class districts until the next regular school election and until their successors are elected and qualified. At such election other than districts electing directors for six-year terms as provided in RCW 29.13.060, as now or hereafter amended, five directors shall be elected either at large or by director districts, as the case may be, two for a term of two years and three for a term of four years. At such election for districts electing directors for six years other than a district having within its boundaries a city with a population of four hundred thousand people or more and electing directors for six year terms, five directors shall be elected either at large or by director districts, as the case may be, one for a term of two years, two for a term of four years, and two for a term of six years. [1991 c 363 § 26; 1990 c 33 § 322; 1980 c 35 § 5; 1980 c 47 § 2. Prior: 1979 ex.s. c 183 § 4; 1979 ex.s. c 126 § 8; 1975-'76 2nd ex.s. c 15 § 7; prior: 1975 1st ex.s. c 275 §

104; 1975 c 43 § 11; 1973 2nd ex.s. c 21 § 10; 1973 c 19 § 1; 1971 c 67 § 5. Formerly RCW 28A.57.357.]

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

Severability—1980 c 35: See note following RCW 28A.315.450.

Severability—1980 c 47: See note following RCW 28A.315.450.

Effective date—Severability—1979 ex.s. c 183: See notes following RCW 28A.315.580.

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

28A.315.630 Directors—Number and terms of in new first class district having city with population of 400,000 people or more. Upon the establishment of a new school district of the first class having within its boundaries a city with a population of four hundred thousand people or more, the directors of the largest former first class district and three directors representative of the other former first class districts selected by a majority of the board members of the former first class districts and two directors representative of former second class districts selected by a majority of the board members of former second class districts shall meet at the call of the educational service district superintendent and shall constitute the board of directors of the new district. Each board of directors so constituted shall proceed at once to organize in the manner prescribed by law and thereafter shall have all the powers and duties conferred by law upon boards of first class districts, until the next regular school election and until their successors are elected and qualified. Such duties shall include establishment of new director districts as provided for in RCW 28A.315.670. At the next regular school election seven directors shall be elected by director districts, two for a term of two years, two for a term of four years and three for a term of six years. Thereafter their terms shall be as provided in RCW 28A.315.460.

Vacancies once such a board has been reconstituted shall not be filled unless the number of remaining board members is less than seven, and such vacancies shall be filled in the manner otherwise provided by law. [1991 c 363 § 27; 1990 c 33 § 323; 1980 c 35 § 6; 1980 c 47 § 3. Prior: 1979 ex.s. c 183 § 5; 1979 ex.s. c 126 § 9; 1975-'76 2nd ex.s. c 15 § 8; prior: 1975 1st ex.s. c 275 § 105; 1975 c 43 § 12; 1973 2nd ex.s. c 21 § 4; 1971 c 67 § 6. Formerly RCW 28A.57.358.]

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

Severability—1980 c 35: See note following RCW 28A.315.450.

Severability—1980 c 47: See note following RCW 28A.315.450.

Effective date—Severability—1979 ex.s. c 183: See notes following RCW 28A.315.580.

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

Directors—First class districts having city with population of 400,000 people or more—Terms: RCW 28A.315.460.

28A.315.640 Directors—Map and record of directors' districts. Each educational service district superintendent shall prepare and keep in his or her office (1) a map showing the boundaries of the directors' districts of

all school districts in or belonging to his or her educational service district that are so divided, and (2) a record of the action taken by the regional committee in establishing such boundaries. [1990 c 33 § 324; 1985 c 385 § 29; 1975 1st ex.s. c 275 § 106; 1969 ex.s. c 176 § 140; 1969 ex.s. c 223 § 28A.57.390. Prior: 1947 c 266 § 38; Rem. Supp. 1947 § 4693-57. Formerly RCW 28A.57.390, 28.57.390.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.315.650 Directors—Terms specified for directors in divided districts whose terms are not the same. Whenever all directors to be elected in a school district that is divided into directors' districts are not all to be elected for the same term of years, the county auditor, prior to the date set by law for filing a declaration of candidacy for the office of director, shall determine by lot the directors' districts from which directors shall be elected for a term of two years and the directors' districts from which directors shall be elected for a term of four years. In districts with a combination of directors' districts and directors at large, the county auditor shall determine the terms of office in such a manner that two-year terms and four-year terms are distributed evenly to the extent possible between the director district and at large positions. Each candidate shall indicate on his or her declaration of candidacy the directors' district from which he or she seeks to be elected or whether the candidate is seeking election as a director at large. [1990 c 161 § 7; 1990 c 33 § 325; 1969 ex.s. c 223 § 28A.57.410. Prior: 1959 c 268 § 11. Formerly RCW 28A.57.410, 28.57.410.]

Reviser's note: This section was amended by 1990 c 33 § 325 and by 1990 c 161 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

28A.315.660 Directors—Dissolution of directors' districts. Upon receipt by the educational service district superintendent of a resolution adopted by the board of directors or a written petition from a second class school district signed by at least twenty percent of the registered voters of a school district previously divided into directors' districts, which resolution or petition shall request dissolution of the existing directors' districts and re-apportionment of the district into no fewer than three directors' districts and with no more than two directors at large, the superintendent, after formation of the question to be submitted to the voters, shall give notice thereof to the county auditor who shall call and hold a special election of the voters of the entire school district to approve or reject such proposal, such election to be called, conducted and the returns canvassed as in regular school district elections.

If approval of a majority of those registered voters voting in said election is acquired, at the expiration of terms of the incumbent directors of such school district their successors shall be elected in the manner approved. [1990 c 161 § 3; 1990 c 33 § 326; 1975-'76 2nd ex.s. c 15 § 9. Prior: 1975 1st ex.s. c 275 § 107; 1975 c 43 § 13; 1971 c 48 § 27; 1969 ex.s. c 223 § 28A.57.415. Formerly RCW 28A.57.415.]

Reviser's note: This section was amended by 1990 c 33 § 326 and by 1990 c 161 § 3, each without reference to the other. Both amendments

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

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.315.670 Directors' districts in first class districts having city with population of 400,000 people or more—Boundaries—Director candidate eligibility—Declaration of candidacy—Primary limited to voters within district—Terms of directors. Notwithstanding any other provision of law, any school district of the first class having within its boundaries a city with a population of four hundred thousand people or more shall be divided into seven director districts. The boundaries of such director districts shall be established by the members of the school board, such boundaries to be established so that each such district shall comply, as nearly as practicable, with the criteria established in RCW 29.70.100. Boundaries of such director districts shall be adjusted by the school board following the procedure established in RCW 29.70.100 after each federal decennial census if population change shows the need thereof to comply with the criteria of RCW 29.70.100. No person shall be eligible for the position of school director in any such director district unless such person resides in the particular director district. Residents in the particular director district desiring to be a candidate for school director shall file their declarations of candidacy for such director district and for the position of director in that district and shall be voted upon, in any primary required to be held for the position under Title 29 RCW, by the registered voters of that particular director district. In the general election, each position shall be voted upon by all the registered voters in the school district. The order of the names of candidates shall appear on the primary and general election ballots as required for nonpartisan positions under Title 29 RCW. Except as provided in RCW 28A.315.680, every such director so elected in school districts divided into seven director districts shall serve for a term of four years as otherwise provided in RCW 28A.315.460. [1991 c 363 § 28; 1991 c 288 §§ 5, 6. Prior: 1990 c 59 § 99; 1990 c 33 § 327; 1979 ex.s. c 183 § 6; 1973 2nd ex.s. c 21 § 5; 1969 c 131 § 9. Formerly RCW 28A.57.425.]

Reviser's note: This section was amended by 1991 c 288 §§ 5, 6 and by 1991 c 363 § 28, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—1991 c 363 §§ 28, 29, 33, 47, 131: "(1) Sections 28, 29, 33, and 131 of this act shall take effect July 1, 1992.

(2) Section 47 of this act shall take effect July 1, 1993." [1991 c 363 § 165.]

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

Effective date—1991 c 288 §§ 6, 8: "Sections 6 and 8 of this act shall take effect July 1, 1992." [1991 c 288 § 12.]

Expiration date—1991 c 288 §§ 5, 7: "Sections 5 and 7 of this act shall expire July 1, 1992." [1991 c 288 § 11.]

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1979 ex.s. c 183: See notes following RCW 28A.315.580.

28A.315.680 Directors' districts in first class districts having city with population of 400,000 people or more—Initial district boundaries—Appointments to fill vacancies for new director districts—Director district numbers. The school boards of any school district of the first class having within its boundaries a city with a population of four hundred thousand people or more shall establish the director district boundaries. Appointment of a board member to fill any vacancy existing for a new director district prior to the next regular school election shall be by the school board. Prior to the next regular election in the school district and the filing of declarations of candidacy therefor, the incumbent school board shall designate said director districts by number. Directors appointed to fill vacancies as above provided shall be subject to election, one for a six-year term, and one for a two-year term and thereafter the term of their respective successors shall be for four years. The term of office of incumbent members of the board of such district shall not be affected by RCW 28A.315.450, 28A.315.460, 28A.315.570, 28A.315.670, and 28A.315.680. [1995 c 335 § 106. Prior: 1991 c 363 § 29; 1991 c 288 §§ 7, 8; prior: 1990 c 59 § 72; 1990 c 33 § 328; 1983 c 3 § 36; 1979 ex.s. c 183 § 7; 1973 2nd ex.s. c 21 § 6; 1969 c 131 § 10. Formerly RCW 28A.57.435.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Effective dates—1991 c 363 §§ 28, 29, 33, 47, 131: See note following RCW 28A.315.670.

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

Effective date—1991 c 288 §§ 6, 8: See note following RCW 28A.315.670.

Intent—Effective date—1990 c 59: See notes following RCW 29.01.006.

Effective date—Severability—1979 ex.s. c 183: See notes following RCW 28A.315.580.

28A.315.690 Change of district name—Authorized—Petition for. Any school district in the state, regardless of size or method of organization, may change its name in the following manner: Upon receipt of a petition signed by ten percent of the registered voters of the district, requesting that the name of the school district shall be changed and submitting with said request a proposed name, the school board shall accept or reject the petition within the time for the next two regular meetings. If the petition is rejected, the board's action shall not be appealed. [1969 ex.s. c 223 § 28A.58.600. Prior: 1967 ex.s. c 69 § 1. Formerly RCW 28A.58.600, 28.58.600.]

28A.315.700 Change of district name—Public hearing on—Notice of—Hearing may include additional petitions. If the petition is accepted, the board shall set a date for a public hearing thereon to be held within one month of the date of acceptance and cause notice thereof, together with the proposed new name to be published once a week for three consecutive weeks in a newspaper of general circulation within the school district: PROVIDED, That additional petitions for change of name may be heard at the same public hearing without the necessity of additional publication of notice, so long as the additional proposed names are presented at any board meeting, whether special

or regular, including at the public hearing. At the hearing any interested elector who is a resident of the school district may appear and speak for or against the propositions. [1969 ex.s. c 223 § 28A.58.601. Prior: 1967 ex.s. c 69 § 2. Formerly RCW 28A.58.601, 28.58.601.]

28A.315.710 Change of district name—Board selection of name for voter approval. Within two regular meetings after the public hearing the board shall select one name to present to the residents of the school district for their approval or rejection at the next special or general election. [1969 ex.s. c 223 § 28A.58.602. Prior: 1967 ex.s. c 69 § 3. Formerly RCW 28A.58.602, 28.58.602.]

28A.315.720 Change of district name—Procedure upon voter approval—Recording—Notice to interested institutions. If a majority of the electors voting at the election at which the proposed name is voted upon approve the proposed name, the new name shall be recorded in the school district office, the office of the educational service district superintendent, the offices of the state superintendent of public instruction and the state board of education.

All institutions which have a legal or financial interest in the status of a school district whose name has been changed shall be notified in a manner prescribed by the state attorney general. [1975 1st ex.s. c 275 § 114; 1971 c 48 § 32; 1969 ex.s. c 223 § 28A.58.603. Prior: 1967 ex.s. c 69 § 4. Formerly RCW 28A.58.603, 28.58.603.]

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.315.900 Proceedings as of July 28, 1985—Effect of 1985 c 385. Any proceeding or hearing now or hereafter initiated, being considered, or in progress pursuant to this chapter as of July 28, 1985, or thereafter which is interrupted by a change in committee membership by chapter 385, Laws of 1985 shall continue and be assumed and decided with equal force and effect by the initial regional committees and all other successor committees provided for in RCW 28A.315.060 and 28A.315.120: PROVIDED, That such committees may elect to reconduct proceedings on hearings already in progress and shall reconduct wholly or partially completed hearings required pursuant to this chapter unless the majority of the committee deciding the matter have either read or heard previously submitted testimony and evidence. [1990 c 33 § 329; 1985 c 385 § 38. Formerly RCW 28A.57.900.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Chapter 28A.320

PROVISIONS APPLICABLE TO ALL DISTRICTS

Sections

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DISTRICT POWERS

28A.320.010 Corporate powers. A school district shall constitute a body corporate and shall possess all the usual powers of a public corporation, and in that name and style may sue and be sued and transact all business necessary for maintaining school and protecting the rights of the district, and enter into such obligations as are authorized

therefor by law. [1969 ex.s. c 223 § 28A.58.010. Prior: (i) 1909 c 97 p 287 § 7, part; RRS § 4782, part; prior: 1897 c 118 § 44, part; 1891 c 127 § 11, part; 1890 p 366 § 30, part. Formerly RCW 28.58.040, part. (ii) 1947 c 266 § 6, part; Rem. Supp. 1947 § 4693-25, part; prior: 1909 c 97 p 265 § 2, part. Formerly RCW 28A.58.010, 28.57.135, 28.58.010.]

28A.320.015 School boards of directors—Powers—Notice of adoption of policy. (1) The board of directors of each school district may exercise the following:

(a) The broad discretionary power to determine and adopt written policies not in conflict with other law that provide for the development and implementation of programs, activities, services, or practices that the board determines will:

(i) Promote the education of kindergarten through twelfth grade students in the public schools; or

(ii) Promote the effective, efficient, or safe management and operation of the school district;

(b) Such powers as are expressly authorized by law; and

(c) Such powers as are necessarily or fairly implied in the powers expressly authorized by law.

(2) Before adopting a policy under subsection (1)(a) of this section, the school district board of directors shall comply with the notice requirements of the open public meetings act, chapter 42.30 RCW, and shall in addition include in that notice a statement that sets forth or reasonably describes the proposed policy. The board of directors shall provide a reasonable opportunity for public written and oral comment and consideration of the comment by the board of directors. [1992 c 141 § 301.]

Findings—Part headings—Severability—1992 c 141: See note following RCW 28A.410.040.

28A.320.020 Liability for debts and judgments. Every school district shall be liable for any debts legally due, and for judgments against the district, and such district shall pay any such judgment or liability out of the proper school funds to the credit of the district. [1969 ex.s. c 223 § 28A.58.020. Prior: 1909 c 97 p 287 § 4; RRS § 4779; prior: 1897 c 118 § 41; 1890 p 365 § 27. Formerly RCW 28A.58.020, 28.58.020.]

28A.320.030 Gifts, conveyances, etc., for scholarship and student aid purposes, receipt and administration. The board of directors of any school district may accept, receive and administer for scholarship and student aid purposes such gifts, grants, conveyances, devises and bequests of personal or real property, in trust or otherwise, for the use or benefit of the school district or its students; and sell, lease, rent or exchange and invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof, if any, for the foregoing purposes; and enter into contracts and adopt regulations deemed necessary by the board to provide for the receipt and expenditure of the foregoing. [1974 ex.s. c 8 § 1. Formerly RCW 28A.58.030.]

28A.320.040 Bylaws for board and school government. Every board of directors shall have power to make

such bylaws for their own government, and the government of the common schools under their charge, as they deem expedient, not inconsistent with the provisions of this title, or rules and regulations of the superintendent of public instruction or the state board of education. [1969 ex.s. c 223 § 28A.58.110. Prior: 1909 c 97 p 287 § 6; RRS § 4781; prior: 1897 c 118 § 43; 1890 p 366 § 29. Formerly RCW 28A.58.110, 28.58.110.]

28A.320.050 Reimbursement of expenses of directors, other school representatives, and superintendent candidates—Advancing anticipated expenses. The actual expenses of school directors in going to, returning from and attending upon directors' meetings or other meetings called or held pursuant to statute shall be paid. Likewise, the expenses of school superintendents and other school representatives chosen by the directors to attend any conferences or meetings or to attend to any urgent business at the behest of the state superintendent of public instruction or the board of directors shall be paid. The board of directors may pay the actual and necessary expenses for travel, lodging and meals a superintendent candidate incurs when he or she attends an employment interview in the school district. The school directors, school superintendents, other school representatives or superintendent candidates may be advanced sufficient sums to cover their anticipated expenses in accordance with rules and regulations promulgated by the state auditor and which shall substantially conform to the procedures provided in RCW 43.03.150 through 43.03.210. [1977 c 73 § 1; 1969 ex.s. c 26 § 2; 1969 ex.s. c 223 § 28A.58.310. Prior: 1961 c 268 § 15; prior: 1919 c 90 § 6, part; 1909 c 97 p 287 § 8, part; RRS § 4783, part. Formerly RCW 28A.58.310, 28.58.310.]

28A.320.060 Officers, employees or agents of school districts or educational service districts, insurance to protect and hold personally harmless. Any school district board of directors and educational service district board are authorized to purchase insurance to protect and hold personally harmless any director, officer, employee or agent of the respective school district or educational service district from any action, claim or proceeding instituted against him or her arising out of the performance or failure of performance of duties for or employment with such institution and to hold him or her harmless from any expenses connected with the defense, settlement or monetary judgments from such actions. [1990 c 33 § 330; 1975 1st ex.s. c 275 § 116; 1972 ex.s. c 142 § 2. Formerly RCW 28A.58.630.]

28A.320.070 School district as self-insurer—Authority. Any school district board of directors is authorized to enter into agreements with the board of directors of other school districts and/or educational service districts to form a self-insurance group for the purpose of qualifying as a self-insurer under chapter 51.14 RCW. [1982 c 191 § 10. Formerly RCW 28A.58.410.]

Effective date—Severability—1982 c 191: See notes following RCW 28A.315.270.

School districts as self-insurers: RCW 51.14.150 and 51.14.160.

28A.320.080 Commencement exercises—Lip reading instruction—Joint purchasing, including issuing interest bearing warrants and agreements with private schools—Budgets. Every board of directors, unless otherwise specifically provided by law, shall:

(1) Provide for the expenditure of a reasonable amount for suitable commencement exercises;

(2) In addition to providing free instruction in lip reading for children disabled by defective hearing, make arrangements for free instruction in lip reading to adults disabled by defective hearing whenever in its judgment such instruction appears to be in the best interests of the school district and adults concerned;

(3) Join with boards of directors of other school districts or an educational service district pursuant to RCW 28A.310.180(3), or both such school districts and educational service district in buying supplies, equipment and services by establishing and maintaining a joint purchasing agency, or otherwise, when deemed for the best interests of the district, any joint agency formed hereunder being herewith authorized and empowered to issue interest bearing warrants in payment of any obligation owed: **PROVIDED, HOWEVER,** That those agencies issuing interest bearing warrants shall assign accounts receivable in an amount equal to the amount of the outstanding interest bearing warrants to the county treasurer issuing such interest bearing warrants: **PROVIDED FURTHER,** That the joint purchasing agency shall consider the request of any one or more private schools requesting the agency to jointly buy supplies, equipment, and services including but not limited to school bus maintenance services, and, after considering such request, may cooperate with and jointly make purchases with private schools of supplies, equipment, and services, including but not limited to school bus maintenance services, so long as such private schools pay in advance their proportionate share of the costs or provide a surety bond to cover their proportionate share of the costs involved in such purchases;

(4) Consider the request of any one or more private schools requesting the board to jointly buy supplies, equipment and services including but not limited to school bus maintenance services, and, after considering such request, may provide such joint purchasing services: **PROVIDED,** That such private schools pay in advance their proportionate share of the costs or provide a surety bond to cover their proportionate share of the costs involved in such purchases; and

(5) Prepare budgets as provided for in chapter 28A.505 RCW. [1995 c 77 § 21; 1990 c 33 § 331; 1986 c 77 § 1; 1983 c 125 § 1; 1981 c 308 § 1; 1979 ex.s. c 66 § 2; 1971 c 26 § 1; 1969 c 53 § 2; 1969 ex.s. c 223 § 28A.58.107. Prior: 1969 c 53 § 1, part; 1967 ex.s. c 29 § 1, part; 1967 c 12 § 1, part; 1965 ex.s. c 49 § 1, part; 1963 c 104 § 1, part; 1963 c 5 § 1, part; 1961 c 305 § 1, part; 1961 c 237 § 1, part; 1961 c 66 § 1, part; 1955 c 68 § 2, part; prior: 1943 c 52 § 1, part; 1941 c 179 § 1, part; 1939 c 131 § 1, part; 1925 ex.s. c 57 § 1, part; 1919 c 89 § 3, part; 1915 c 44 § 1, part; 1909 c 97 p 285 § 2, part; 1907 c 240 § 5, part; 1903 c 104 § 17, part; 1901 c 41 § 3, part; 1897 c 118 § 40, part; 1890 p 364 § 26, part; Rem. Supp. 1943 § 4776, part. Formerly RCW 28A.58.107, 28.58.100(7), (13) and (14).]

Severability—1981 c 308: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the

remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 308 § 3.]

Severability—1979 ex.s. c 66: See note following RCW 28A.310.180.

28A.320.090 Preparing and distributing information on district's instructional program, operation and maintenance—Limitation. The board of directors of any school district shall have authority to authorize the expenditure of funds for the purpose of preparing and distributing information to the general public to explain the instructional program, operation and maintenance of the schools of the district: **PROVIDED,** That nothing contained herein shall be construed to authorize preparation and distribution of information to the general public for the purpose of influencing the outcome of a school district election. [1969 ex.s. c 283 § 11. Formerly RCW 28A.58.610, 28.58.610.]

Severability—1969 ex.s. c 283: See note following RCW 28A.150.050.

28A.320.100 Actions against officers, employees or agents of school districts and educational service districts—Defense, costs, fees—Payment of obligation. Whenever any action, claim or proceeding is instituted against any director, officer, employee or agent of a school district or educational service district arising out of the performance or failure of performance of duties for, or employment with any such district, the board of directors of the school district or educational service district board, as the case may be, may grant a request by such person that the prosecuting attorney and/or attorney of the district's choosing be authorized to defend said claim, suit or proceeding, and the costs of defense, attorney's fees, and any obligation for payment arising from such action may be paid from the school district's general fund, or in the case of an educational service district, from any appropriation made for the support of the educational service district, to which said person is attached: **PROVIDED,** That costs of defense and/or judgment against such person shall not be paid in any case where the court has found that such person was not acting in good faith or within the scope of his or her employment with or duties for the district. [1990 c 33 § 332; 1975 1st ex.s. c 275 § 115; 1972 ex.s. c 142 § 1. Formerly RCW 28A.58.620.]

28A.320.110 Information and research services. For the purpose of obtaining information on school organization, administration, operation, finance and instruction, school districts and educational service districts may contract for or purchase information and research services from public universities, colleges and other public bodies, or from private individuals or agencies. For the same purpose, school districts and educational service district superintendents may become members of any nonprofit organization whose principal purpose is to provide such services. Charges payable for such services and membership fees payable to such organizations may be based on the cost of providing such services, on the benefit received by the participating school districts measured by enrollment, or on any other reasonable basis, and may be paid before, during, or after the receipt of such services or the participation as members of such organizations. [1975 1st ex.s. c 275 § 112; 1971 ex.s.

c 93 § 4; 1969 ex.s. c 176 § 142; 1969 ex.s. c 223 § 28A.58.530. Prior: 1963 c 30 § 1. Formerly RCW 28A.58.530, 28.58.530.]

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.320.120 Cooperation with technical colleges—Jurisdiction over property—Administrative charges—Discrimination against employees of technical colleges prohibited—Dispute resolution. As of May 17, 1991, school districts shall not remove facilities, equipment, or property from the jurisdiction or use of the technical colleges. This shall include direct and indirect funds other than those indirect charges provided for in the 1990-91 appropriations act. School districts shall not increase direct or indirect charges for central district administrative support for technical college programs above the percentage rate charged in the 1990-91 school year. This provision on administrative charges for technical college programs shall apply to any state and federal grants, tuition, and other revenues generated by technical college programs. School districts and the superintendent of public instruction shall cooperate fully with the technical colleges and the state board for community and technical colleges with regard to the implementation of chapter 238, Laws of 1991. No employee of a technical college may be discriminated against based on actions or opinions expressed on issues surrounding chapter 238, Laws of 1991. Any dispute related to issues contained in this section shall be resolved under RCW 28B.50.302. [1991 c 238 § 142.]

Effective dates—Severability—1991 c 238: See RCW 28B.50.917 and 28B.50.918.

28A.320.130 Weapons incidents—Reporting. Each school district and each private school approved under chapter 28A.195 RCW shall report to the superintendent of public instruction by January 31st of each year all known incidents involving the possession of weapons on school premises, on transportation systems, or in areas of facilities while being used exclusively by public or private schools, in violation of RCW 9.41.280 in the year preceding the report. The superintendent shall compile the data and report it to the house of representatives, the senate, and the governor. [1993 c 347 § 2.]

28A.320.140 Schools with special standards. (1) School district boards of directors may establish schools or programs which parents may choose for their children to attend in which: (a) Students are required to conform to dress and grooming codes, including requiring that students wear uniforms; (b) parents are required to participate in the student's education; or (c) discipline requirements are more stringent than in other schools in the district.

(2) School district boards of directors may establish schools or programs in which: (a) Students are required to conform to dress and grooming codes, including requiring that students wear uniforms; (b) parents are regularly counseled and encouraged to participate in the student's education; or (c) discipline requirements are more stringent than in other schools in the district. School boards may require that students who are subject to suspension or

expulsion attend these schools or programs as a condition of continued enrollment in the school district.

(3) If students are required to wear uniforms in these programs or schools, school districts shall accommodate students so that the uniform requirement is not an unfair barrier to school attendance and participation.

(4) Nothing in this section impairs or reduces in any manner whatsoever the authority of a board under other law to impose a dress and appearance code. However, if a board requires uniforms under such other authority, it shall accommodate students so that the uniform requirement is not an unfair barrier to school attendance and participation. [1994 sp.s. c 7 § 612.]

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

28A.320.150 Voter approval of levies—Request consistent with limit. In seeking voter approval for levies that assume any portion of the revenues will be collected in calendar year 1998 and thereafter, the boards of directors of each school district shall only request voter approval for an amount consistent with levy limits in existing law at the time the levy approval is requested from the voters and reflecting in such calculations the 1993 rate for any amounts collected in calendar year 1998 and thereafter. [1995 1st sp.s. c 11 § 2.]

PROGRAM EVALUATION

28A.320.200 Self-study process by school districts—Requirements—Rules. (Contingent expiration date.) (1) Each school district board of directors shall develop a schedule and process by which each public school within its jurisdiction shall undertake self-study procedures on a regular basis: PROVIDED, That districts may allow two or more elementary school buildings in the district to undertake jointly the self-study process. Each school may follow the accreditation process developed by the state board of education under RCW 28A.305.130(6), although no school is required to file for actual accreditation, or the school may follow a self-study process developed locally. The initial self-study process within each district shall begin by September 1, 1986, and should be completed for all schools within a district by the end of the 1990-91 school year.

(2) Any self-study process must include the participation of staff, parents, members of the community, and students, where appropriate to their age.

(3) The self-study process that is used must focus upon the quality and appropriateness of the school's educational program and the results of its operational effort. The primary emphasis throughout the process shall be placed upon:

(a) Achieving educational excellence and equity;

(b) Building stronger links with the community; and

(c) Reaching consensus upon educational expectations through community involvement and corresponding school management.

(4) The state board of education shall adopt rules governing procedural criteria. Such rules should be flexible so as to accommodate local goals and circumstances. The rules may allow for waiver of the self-study for economic

reasons and may also allow for waiver of the initial self-study if a district or its schools have participated successfully in an official accreditation process or in a similar assessment of educational programs within the last three years. The self-study process shall be conducted on a cyclical basis every seven years following the initial 1990-91 period.

(5) The superintendent of public instruction shall provide training to assist districts in their self-studies. [1995 c 335 § 502; 1990 c 33 § 333; 1989 c 83 § 1; 1988 c 256 § 2; 1985 c 349 § 2. Formerly RCW 28A.58.085.]

Reviser's note: This section was repealed by 1992 c 141 § 506 with a contingent effective date. See note following RCW 28A.150.205.

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Severability—1985 c 349: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 349 § 9.]

28A.320.205 Annual school performance report—Model report form. (1) Beginning with the 1994-95 school year, to provide the local community and electorate with access to information on the educational programs in the schools in the district, each school shall publish annually a school performance report and deliver the report to each parent with children enrolled in the school and make the report available to the community served by the school. The annual performance report shall be in a form that can be easily understood and be used by parents, guardians, and other members of the community who are not professional educators to make informed educational decisions. As data from the assessments in RCW 28A.630.885 becomes available, the annual performance report should enable parents, educators, and school board members to determine whether students in the district's schools are attaining mastery of the student learning goals under RCW 28A.150.210, and other important facts about the schools' performance in assisting students to learn. The annual report shall make comparisons to a school's performance in preceding years and shall project goals in performance categories.

(2) The annual performance report shall include, but not be limited to: A brief statement of the mission of the school and the school district; enrollment statistics including student demographics; expenditures per pupil for the school year; a summary of student scores on all mandated tests; a concise annual budget report; student attendance, graduation, and dropout rates; information regarding the use and condition of the school building or buildings; a brief description of the restructuring plan for the school; and an invitation to all parents and citizens to participate in school activities.

(3) The superintendent of public instruction shall develop by June 30, 1994, a model report form, which shall also be adapted for computers, that schools may use to meet the requirements of subsections (1) and (2) of this section. [1993 c 336 § 1006.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

28A.320.230 Instructional materials—Instructional materials committee. Every board of directors, unless otherwise specifically provided by law, shall:

(1) Prepare, negotiate, set forth in writing and adopt, policy relative to the selection or deletion of instructional materials. Such policy shall:

(a) State the school district's goals and principles relative to instructional materials;

(b) Delegate responsibility for the preparation and recommendation of teachers' reading lists and specify the procedures to be followed in the selection of all instructional materials including text books;

(c) Establish an instructional materials committee to be appointed, with the approval of the school board, by the school district's chief administrative officer. This committee shall consist of representative members of the district's professional staff, including representation from the district's curriculum development committees, and, in the case of districts which operate elementary school(s) only, the educational service district superintendent, one of whose responsibilities shall be to assure the correlation of those elementary district adoptions with those of the high school district(s) which serve their children. The committee may include parents at the school board's discretion: PROVIDED, That parent members shall make up less than one-half of the total membership of the committee;

(d) Provide for reasonable notice to parents of the opportunity to serve on the committee and for terms of office for members of the instructional materials committee;

(e) Provide a system for receiving, considering and acting upon written complaints regarding instructional materials used by the school district;

(f) Provide free text books, supplies and other instructional materials to be loaned to the pupils of the school, when, in its judgment, the best interests of the district will be subserved thereby and prescribe rules and regulations to preserve such books, supplies and other instructional materials from unnecessary damage.

Recommendation of instructional materials shall be by the district's instructional materials committee in accordance with district policy. Approval or disapproval shall be by the local school district's board of directors.

Districts may pay the necessary travel and subsistence expenses for expert counsel from outside the district. In addition, the committee's expenses incidental to visits to observe other districts' selection procedures may be reimbursed by the school district.

Districts may, within limitations stated in board policy, use and experiment with instructional materials for a period of time before general adoption is formalized.

Within the limitations of board policy, a school district's chief administrator may purchase instructional materials to meet deviant needs or rapidly changing circumstances.

(2) Establish a depreciation scale for determining the value of texts which students wish to purchase. [1989 c 371 § 1; 1979 ex.s. c 134 § 2; 1975 1st ex.s. c 275 § 109; 1971 c 48 § 29; 1969 ex.s. c 223 § 28A.58.103. Prior: 1969 c 53 § 1, part; 1967 ex.s. c 29 § 1, part; 1967 c 12 § 1, part; 1965 ex.s. c 49 § 1, part; 1963 c 104 § 1, part; 1963 c 5 § 1, part; 1961 c 305 § 1, part; 1961 c 237 § 1, part; 1961 c 66 § 1, part; 1955 c 68 § 2, part. Formerly RCW 28A.58.103, 28.58.100(8) and (9).]

Severability—1971 c 48: See note following RCW 28A.305.040.

Disposal of obsolete or surplus reading materials by school districts and libraries: RCW 39.33.070.

Surplus texts and other educational aids, notice of availability—Student priority as to texts: RCW 28A.335.180.

28A.320.240 Operation and stocking of libraries.

Every board of directors shall provide for the operation and stocking of such libraries as the board deems necessary for the proper education of the district's students or as otherwise required by law or rule or regulation of the superintendent of public instruction or the state board of education. [1969 ex.s. c 223 § 28A.58.104. Prior: (i) 1909 c 97 p 299 § 7; RRS § 4817. Formerly RCW 28.63.040. (ii) 1909 c 97 p 302 § 7; RRS § 4829. Formerly RCW 28A.58.104, 28.63.042.]

DEPOSIT, INVESTMENT, AND USE OF PROCEEDS

28A.320.300 Investment of funds, including funds received by ESD—Authority—Procedure. Any common school district board of directors is empowered to direct and authorize, and to delegate authority to an employee, officer, or agent of the common school district or the educational service district to direct and authorize, the county treasurer to invest funds described in RCW 28A.320.310 and 28A.320.320 and funds from state and federal sources as are then or thereafter received by the educational service district, and such funds from county sources as are then or thereafter received by the county treasurer, for distribution to the common school districts. Funds from state, county and federal sources which are so invested may be invested only for the period the funds are not required for the immediate necessities of the common school district as determined by the school district board of directors or its delegatee, and shall be invested in behalf of the common school district pursuant to the terms of RCW 28A.320.310, 28A.320.320, or 36.29.020 as the nature of the funds shall dictate. A grant of authority by a common school district pursuant to this section shall be by resolution of the board of directors and shall specify the duration and extent of the authority so granted. Any authority delegated to an educational service district pursuant to this section may be redelegated pursuant to RCW 28A.310.220. [1990 c 33 § 335; 1982 c 191 § 5; 1975 c 47 § 1. Formerly RCW 28A.58.430.]

Effective date—Severability—1982 c 191: See notes following RCW 28A.315.270.

Transportation vehicle fund—Deposits in—Use—Rules for establishment and use: RCW 28A.160.130.

28A.320.310 Investment of idle building funds—Restrictions. The board of directors of any school district of the state of Washington which now has, or hereafter shall have, funds in the capital projects fund of the district in the office of the county treasurer which in the judgment of said board are not required for the immediate necessities of the district, may invest and reinvest all, or any part, of such funds in United States securities, as hereinafter specified after and pursuant to a resolution adopted by the board, authorizing and directing the county treasurer, as ex officio the treasurer of said district, to invest or reinvest, said

moneys or any designated amount thereof in United States securities and specifying the type or character of the United States securities in which said moneys shall be invested: PROVIDED, That nothing herein authorized, or the type and character of the securities thus specified, shall have in itself the effect of delaying any program of building for which said funds shall have been authorized. Said funds and said securities and the profit and interest thereon, and the proceeds thereof, shall be held by the county treasurer to the credit and benefit of the capital projects fund of the district in the county treasurer's office. If in the judgment of the board it shall be necessary to redeem or to sell any of the purchased securities before their ultimate maturity date, the board may, by resolution, direct the county treasurer to cause such redemption to be had at the "Redemption Value" of said securities or to sell said bonds and securities at not less than market value and accrued interest. The foregoing "securities" shall include United States bonds, federal treasury notes and treasury bonds and United States certificates of indebtedness and other federal securities which may, during the life of this statute, come within the terms of this section. [1990 c 33 § 336; 1985 c 7 § 95; 1971 c 8 § 4. Prior: 1945 c 29 § 1. Formerly RCW 28A.58.435.]

Severability—1971 c 8: "If any provision of this 1971 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 c 8 § 7.]

School funds enumerated—Deposits—Uses: RCW 28A.320.330.

28A.320.320 Investment of funds of district not needed for immediate necessities—Service fee. The county treasurer, or the trustee, guardian, or any other custodian of any school fund, when authorized to do so by the board of directors of any school district, shall invest or reinvest any school funds of such district in investment deposits in any qualified public depository, or any obligations, securities, certificates, notes, bonds, or short term securities or obligations, of the United States. The county treasurer shall have the power to select the particular investment in which said funds may be invested. All earnings and income from such investments shall inure to the benefit of any school fund designated by the board of directors of the school district which such board may lawfully designate: PROVIDED, That any interest or earnings being credited to a fund different from that which earned the interest or earnings shall only be expended for instructional supplies, equipment or capital outlay purposes. This section shall apply to all funds which may be lawfully so invested or reinvested which in the judgment of the school board are not required for the immediate necessities of the district.

Five percent of the interest or earnings, with an annual minimum of ten dollars or annual maximum of fifty dollars, on any transactions authorized by each resolution of the board of school directors shall be paid as an investment service fee to the office of county treasurer when the interest or earnings becomes available to the school district. [1983 c 66 § 1; 1969 ex.s. c 223 § 28A.58.440. Prior: 1965 c 111 § 1; 1961 c 123 § 1. Formerly RCW 28A.58.440, 28.58.440.]

Severability—1983 c 66: See note following RCW 39.58.010.

Investment of idle building funds—1945 act: 1945 c 29 § 1.

School funds enumerated—Deposits—Uses: RCW 28A.320.330.

28A.320.330 School funds enumerated—Deposits—Uses. School districts shall establish the following funds in addition to those provided elsewhere by law:

(1) A general fund for maintenance and operation of the school district to account for all financial operations of the school district except those required to be accounted for in another fund.

(2) A capital projects fund shall be established for major capital purposes. All statutory references to a "building fund" shall mean the capital projects fund so established. Money to be deposited into the capital projects fund shall include, but not be limited to, bond proceeds, proceeds from excess levies authorized by RCW 84.52.053, state apportionment proceeds as authorized by RCW 28A.150.270, and earnings from capital projects fund investments as authorized by RCW 28A.320.310 and 28A.320.320.

Money derived from the sale of bonds, including interest earnings thereof, may only be used for those purposes described in RCW 28A.530.010, except that accrued interest paid for bonds shall be deposited in the debt service fund.

Money to be deposited into the capital projects fund shall include but not be limited to rental and lease proceeds as authorized by RCW 28A.335.060, and proceeds from the sale of real property as authorized by RCW 28A.335.130.

Money legally deposited into the capital projects fund from other sources may be used for the purposes described in RCW 28A.530.010, and for the purposes of:

(a) Major renovation, including the replacement of facilities and systems where periodical repairs are no longer economical. Major renovation and replacement shall include, but shall not be limited to, roofing, heating and ventilating systems, floor covering, and electrical systems.

(b) Renovation and rehabilitation of playfields, athletic fields, and other district real property.

(c) The conduct of preliminary energy audits and energy audits of school district buildings. For the purpose of this section:

(i) "Preliminary energy audits" means a determination of the energy consumption characteristics of a building, including the size, type, rate of energy consumption, and major energy using systems of the building.

(ii) "Energy audit" means a survey of a building or complex which identifies the type, size, energy use level, and major energy using systems; which determines appropriate energy conservation maintenance or operating procedures and assesses any need for the acquisition and installation of energy conservation measures, including solar energy and renewable resource measures.

(iii) "Energy capital improvement" means the installation, or modification of the installation, of energy conservation measures in a building which measures are primarily intended to reduce energy consumption or allow the use of an alternative energy source.

(d) Those energy capital improvements which are identified as being cost-effective in the audits authorized by this section.

(e) Purchase or installation of additional major items of equipment and furniture: PROVIDED, That vehicles shall not be purchased with capital projects fund money.

(3) A debt service fund to provide for tax proceeds, other revenues, and disbursements as authorized in chapter 39.44 RCW.

(4) An associated student body fund as authorized by RCW 28A.325.030.

(5) Advance refunding bond funds and refunded bond funds to provide for the proceeds and disbursements as authorized in chapter 39.53 RCW. [1990 c 33 § 337; 1983 c 59 § 13; 1982 c 191 § 6; 1981 c 250 § 2. Formerly RCW 28A.58.441.]

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Effective date—Severability—1982 c 191: See notes following RCW 28A.315.270.

Effective date—1981 c 250: See note following RCW 28A.335.060.

ELECTORS—QUALIFICATIONS, VOTING PLACE, AND SPECIAL MEETINGS

28A.320.400 Elections—Qualifications of electors—Voting place. Qualifications of electors at all school elections shall be the same as at a general state or county election. Except as otherwise provided by law, only those electors residing within the district shall be entitled to vote, and an elector may vote only at the polling place designated by the proper election official. [1969 ex.s. c 223 § 28A.58.520. Prior: 1941 c 12 § 1; Rem. Supp. 1941 § 5025-1. Formerly RCW 28A.58.520, 28.58.520.]

28A.320.410 Elections—Elections to be conducted according to Title 29 RCW. All school district elections, regular or special, shall be conducted according to the election laws of the state as contained in Title 29 RCW, and in the event of a conflict as to the application of the laws of this title or Title 29 RCW, the latter shall prevail. [1969 ex.s. c 223 § 28A.58.521. Prior: 1965 c 123 § 8. Formerly RCW 28A.58.521, 28.58.521.]

28A.320.420 Special meetings of voters—Authorized—Purpose. Any board of directors at its discretion may, and, upon a petition of a majority of the legal voters of their district, shall call a special meeting of the voters of the district, to determine the length of time in excess of the minimum length of time prescribed by law that such school shall be maintained in the district during the year; to determine whether or not the district shall purchase any schoolhouse site or sites, and to determine the location thereof; or to determine whether or not the district shall build one or more schoolhouses or school facilities; or to determine whether or not the district shall sell any real or personal property belonging to the district, borrow money or establish and maintain a school district library. [1982 c 158 § 4; 1969 ex.s. c 223 § 28A.58.370. Prior: 1909 c 97 p 349 § 1; RRS § 5028; prior: 1901 c 177 § 18; 1897 c 118 § 156. Formerly RCW 28A.58.370, 28.58.370.]

Severability—1982 c 158: See note following RCW 28A.150.220.

28A.320.430 Special meetings of voters—Place, notice, procedure, record. All such special meetings shall be held at such schoolhouse or place as the board of directors may determine. The voting shall be by ballot, the ballots to be of white paper of uniform size and quality. At least ten days' notice of such special meeting shall be given by the school district superintendent, in the manner that no-

tice is required to be given of the annual school election, which notice shall state the object or objects for which the meeting is to be held, and no other business shall be transacted at such meeting than such as is specified in the notice. The school district superintendent shall be the secretary of the meeting, and the chairman of the board of directors or, in his absence, the senior director present, shall be chairman of the meeting: PROVIDED, That in the absence of one or all of said officials, the qualified electors present may elect a chairman or secretary, or both chairman and secretary, of said meeting as occasion may require, from among their number. The secretary of the meeting shall make a record of the proceedings of the meeting, and when the secretary of such meeting has been elected by the qualified voters present, he or she shall within ten days thereafter, file the record of the proceedings, duly certified, with the superintendent of the district, and said records shall become a part of the records of the district, and be preserved as other records. [1990 c 33 § 338; 1969 ex.s. c 223 § 28A.58.380. Prior: 1909 c 97 p 350 § 2; RRS § 5029; prior: 1897 c 118 § 157. Formerly RCW 28A.58.380, 28.58.380, 28.58.390, part.]

28A.320.440 Special meetings of voters—Directors to follow electors' decision. It shall be the duty of every board of directors to carry out the directions of the electors of their districts as expressed at any such meeting. [1969 ex.s. c 223 § 28A.58.390. Prior: 1909 c 97 p 350 § 3; RRS § 5030; prior: 1897 c 118 § 158. Formerly RCW 28A.58.390, 28.58.390.]

SUMMER SCHOOL, NIGHT SCHOOL, EXTRACURRICULAR ACTIVITIES, AND ATHLETICS

28A.320.500 Summer and/or other student vacation period programs—Authorized—Tuition and fees. Every school district board of directors is authorized to establish and operate summer and/or other student vacation period programs and to assess such tuition and special fees as it deems necessary to offset the maintenance and operation costs of such programs in whole or part. A summer and/or other student vacation period program may consist of such courses and activities as the school district board shall determine to be appropriate: PROVIDED, That such courses and activities shall not conflict with the provisions of RCW 28A.305.130. Attendance shall be voluntary. [1990 c 33 § 339; 1974 ex.s. c 161 § 1. Formerly RCW 28A.58.080.]

28A.320.510 Night schools, summer schools, meetings, use of facilities for. Every board of directors, unless otherwise specifically provided by law, shall:

(1) Authorize school facilities to be used for night schools and establish and maintain the same whenever deemed advisable;

(2) Authorize school facilities to be used for summer schools or for meetings, whether public, literary, scientific, religious, political, mechanical, agricultural or whatever, upon approval of the board under such rules or regulations as the board of directors may adopt, which rules or regulations may require a reasonable rental for the use of such facilities. [1969 ex.s. c 223 § 28A.58.105. Prior: 1969 c

53 § 1, part; 1967 ex.s. c 29 § 1, part; 1967 c 12 § 1, part; 1965 ex.s. c 49 § 1, part; 1963 c 104 § 1, part; 1963 c 5 § 1, part; 1961 c 305 § 1, part; 1961 c 237 § 1, part; 1961 c 66 § 1, part; 1955 c 68 § 2, part. Formerly RCW 28A.58.105, 28.58.100(10) and (12).]

Chapter 28A.325

ASSOCIATED STUDENT BODIES

Sections

28A.325.010	Fees for optional noncredit extracurricular events—Disposition.
28A.325.020	Associated student bodies—Powers and responsibilities affecting.
28A.325.030	Associated student body program fund—Created—Source of funds—Expenditures—Budgeting—Care of other moneys received by students for private purposes.

28A.325.010 Fees for optional noncredit extracurricular events—Disposition. The board of directors of any common school district may establish and collect a fee from students and nonstudents as a condition to their attendance at any optional noncredit extracurricular event of the district which is of a cultural, social, recreational, or athletic nature: PROVIDED, That in so establishing such fee or fees, the district shall adopt regulations for waiving and reducing such fees in the cases of those students whose families, by reason of their low income, would have difficulty in paying the entire amount of such fees and may likewise waive or reduce such fees for nonstudents of the age of sixty-five or over who, by reason of their low income, would have difficulty in paying the entire amount of such fees. An optional comprehensive fee may be established and collected for any combination or all of such events or, in the alternative, a fee may be established and collected as a condition to attendance at any single event. Fees collected pursuant to this section shall be deposited in the associated student body program fund of the school district, and may be expended to defray the costs of optional noncredit extracurricular events of such a cultural, social, recreational, or athletic nature, or to otherwise support the activities and programs of associated student bodies. [1977 ex.s. c 170 § 1; 1975 1st ex.s. c 284 § 1. Formerly RCW 28A.58.113.]

Severability—1975 1st ex.s. c 284: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of its provisions to other persons or circumstances is not affected." [1975 1st ex.s. c 284 § 4.]

28A.325.020 Associated student bodies—Powers and responsibilities affecting. As used in this section, an "associated student body" means the formal organization of the students of a school formed with the approval of and regulation by the board of directors of the school district in conformity to the rules and regulations promulgated by the superintendent of public instruction: PROVIDED, That the board of directors of a school district may act or delegate the authority to an employee of the district to act as the associated student body for any school plant facility within the district containing no grade higher than the sixth grade.

The superintendent of public instruction, after consultation with appropriate school organizations and students, shall

promulgate rules and regulations to designate the powers and responsibilities of the boards of directors of the school districts of the state of Washington in developing efficient administration, management, and control of moneys, records, and reports of the associated student bodies organized in the public schools of the state. [1984 c 98 § 1; 1975 1st ex.s. c 284 § 3; 1973 c 52 § 1. Formerly RCW 28A.58.115.]

Severability—1975 1st ex.s. c 284: See note following RCW 28A.325.010.

28A.325.030 Associated student body program fund—Created—Source of funds—Expenditures—Budgeting—Care of other moneys received by students for private purposes. There is hereby created a fund on deposit with each county treasurer for each school district of the county having an associated student body as defined in RCW 28A.325.020. Such fund shall be known as the associated student body program fund. Rules and regulations promulgated by the superintendent of public instruction under RCW 28A.325.020 shall require separate accounting for each associated student body's transactions in the school district's associated student body program fund.

All moneys generated through the programs and activities of any associated student body shall be deposited in the associated student body program fund. Such funds may be invested for the sole benefit of the associated student body program fund in items enumerated in RCW 28A.320.320 and the county treasurer may assess a fee as provided therein. Disbursements from such fund shall be under the control and supervision, and with the approval, of the board of directors of the school district, and shall be by warrant as provided in chapter 28A.350 RCW: PROVIDED, That in no case shall such warrants be issued in an amount greater than the funds on deposit with the county treasurer in the associated student body program fund. To facilitate the payment of obligations, an imprest bank account or accounts may be created and replenished from the associated student body program fund.

The associated student body program fund shall be budgeted by the associated student body, subject to approval by the board of directors of the school district. All disbursements from the associated student body program fund or any imprest bank account established thereunder shall have the prior approval of the appropriate governing body representing the associated student body. Notwithstanding the provisions of RCW 43.09.210, it shall not be mandatory that expenditures from the district's general fund in support of associated student body programs and activities be reimbursed by payments from the associated student body program fund.

Nothing in this section shall prevent those portions of student-generated moneys in the associated student body program fund, budgeted or otherwise, which constitute bona fide voluntary donations and are identified as donations at the time of collection from being used for such scholarship, student exchange and charitable purposes as the appropriate governing body representing the associated student body shall determine, and for such purposes, said moneys shall not be deemed public moneys under section 7, Article VIII, of the state Constitution.

Nonassociated student body program fund moneys generated and received by students for private purposes,

including but not limited to use for scholarship and/or charitable purposes, may, in the discretion of the board of directors of any school district, be held in trust in one or more separate accounts within an associated student body program fund and be disbursed for such purposes: PROVIDED, That the school district shall either withhold an amount from such moneys as will pay the district for its cost in providing the service or otherwise be compensated for its cost for such service. [1990 c 33 § 340; 1984 c 98 § 2; 1982 c 231 § 1; 1977 ex.s. c 160 § 1; 1975 1st ex.s. c 284 § 2. Formerly RCW 28A.58.120.]

Severability—1982 c 231: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 231 § 2.]

Severability—1975 1st ex.s. c 284: See note following RCW 28A.325.010.

Establishment of associated student body fund: RCW 28A.320.330.

Chapter 28A.330 PROVISIONS APPLICABLE TO SCHOOL DISTRICTS

Sections

PROVISIONS APPLICABLE ONLY TO FIRST CLASS DISTRICTS

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28A.330.240	Employment contracts.

Missing children, participation by local school districts in providing information: RCW 13.60.030.

PROVISIONS APPLICABLE ONLY TO FIRST CLASS DISTRICTS

28A.330.010 Board president, vice president or president pro tempore—Secretary. At the first meeting of the members of the board they shall elect a president and vice president from among their number who shall serve for a term of one year or until their successors are elected. In the event of the temporary absence or disability of both the president and vice president, the board of directors may elect a president pro tempore who shall discharge all the duties of president during such temporary absence or disability.

The superintendent of such school district shall act as secretary to the board in accordance with the provisions of RCW 28A.400.030. [1990 c 33 § 341; 1969 ex.s. c 223 § 28A.59.030. Prior: 1953 c 111 § 6; prior: 1909 c 97 p 290 § 3, part; RRS § 4792, part. Formerly RCW 28A.59.030, 28.62.030.]

28A.330.020 Certain board elections, manner and vote required—Selection of personnel, manner. The election of the officers of the board of directors or to fill any vacancy as provided in RCW 28A.315.530, and the selection of the school district superintendent shall be by oral call of the roll of all the members, and no person shall be declared elected or selected unless he or she receives a majority vote of all the members of the board. Selection of other certificated and noncertificated personnel shall be made in such manner as the board shall determine. [1990 c 33 § 342; 1969 ex.s. c 223 § 28A.59.040. Prior: 1909 c 97 p 290 § 4; RRS § 4793. Formerly RCW 28A.59.040, 28.62.040.]

28A.330.030 Duties of president. It shall be the duty of the president to preside at all meetings of the board, and to perform such other duties as the board may prescribe. [1969 ex.s. c 223 § 28A.59.050. Prior: 1909 c 97 p 290 § 5; RRS § 4794. Formerly RCW 28A.59.050, 28.62.050.]

28A.330.040 Duties of vice president. It shall be the duty of the vice president to perform all the duties of president in case of the president's absence or disability. [1990 c 33 § 343; 1969 ex.s. c 223 § 28A.59.060. Prior: 1909 c 97 p 291 § 6; RRS § 4795. Formerly RCW 28A.59.060, 28.62.060.]

28A.330.050 Duties of superintendent as secretary of the board. In addition to the duties as prescribed in RCW 28A.400.030, the school district superintendent, as secretary of the board, may be authorized by the board to act as business manager, purchasing agent, and/or superintendent of buildings and janitors, and charged with the special care of school buildings and other property of the district, and he or she shall perform other duties as the board may direct. [1990 c 33 § 344; 1969 ex.s. c 223 § 28A.59.070. Prior: 1919 c 90 § 8; 1909 c 97 p 291 § 7; RRS § 4796. Formerly RCW 28A.59.070, 28.62.070.]

28A.330.060 Superintendent's bond and oath. Before entering upon the discharge of the superintendent's duties, the superintendent as secretary of the board shall give bond in such sum as the board of directors may fix from time to time, but for not less than five thousand dollars, with good and sufficient sureties, and shall take and subscribe an oath or affirmation, before a proper officer that he or she will support the Constitution of the United States and of the state of Washington and faithfully perform the duties of the office, a copy of which oath or affirmation shall be filed with the educational service district superintendent. [1990 c 33 § 345; 1975 1st ex.s. c 275 § 117; 1971 c 48 § 33; 1969 ex.s. c 223 § 28A.59.080. Prior: 1909 c 97 p 291 § 8; RRS § 4797. Formerly RCW 28A.59.080, 28.62.080.]

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.330.070 Office of board—Records available for public inspection. The board of directors shall maintain an office where all records, vouchers and other important papers belonging to the board may be preserved. Such records, vouchers, and other important papers at all reasonable times shall be available for public inspection. The regular meetings shall be held within the district boundaries. [1989 c 232 § 1; 1969 ex.s. c 223 § 28A.59.100. Prior: 1909 c 97 p 291 § 10; RRS § 4799; prior: 1897 c 118 § 87; 1890 p 389 § 14. Formerly RCW 28A.59.100, 28.62.100.]

28A.330.080 Payment of claims—Signing of warrants. Moneys of such school districts shall be paid out only upon orders for warrants signed by the president, or a majority of the board of directors and countersigned by the secretary: PROVIDED, That when, in the judgment of the board of directors, the orders for warrants issued by the district monthly shall have reached such numbers that the signing of each warrant by the president personally imposes too great a task on the president, the board of directors, after auditing all payrolls and bills as provided by RCW 28A.330.090, may authorize the issuing of one general certificate to the county treasurer, to be signed by the president, authorizing said treasurer to pay all the warrants specified by date, number, name and amount, and the funds on which said warrants shall be drawn; thereupon the secretary of said board shall be authorized to draw and sign said orders for warrants. [1990 c 33 § 346; 1969 ex.s. c 223 § 28A.59.110. Prior: 1909 c 97 p 292 § 11; RRS § 4800. Formerly RCW 28A.59.110, 28.62.110.]

28A.330.090 Auditing committee and expenditures. All accounts shall be audited by a committee of board members chosen in such manner as the board so determines to be styled the "auditing committee," and, except as otherwise provided by law, no expenditure greater than three hundred dollars shall be voted by the board except in accordance with a written contract, nor shall any money or appropriation be paid out of the school fund except on a recorded affirmative vote of a majority of all members of the board: PROVIDED, That nothing herein shall be construed to prevent the board from making any repairs or improvements to the property of the district through their shop and repair department as otherwise provided in RCW 28A.335.190. [1990 c 33 § 347; 1983 c 56 § 9; 1975 1st ex.s. c 275 § 118; 1971 c 48 § 34; 1969 ex.s. c 223 § 28A.59.150. Prior: 1909 c 97 p 292 § 14; RRS § 4803. Formerly RCW 28A.59.150, 28.62.150, 28.62.160.]

Severability—1983 c 56: See note following RCW 28A.195.010.

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.330.100 Additional powers of board. Every board of directors of a school district of the first class, in addition to the general powers for directors enumerated in this title, shall have the power:

(1) To employ for a term of not exceeding three years a superintendent of schools of the district, and for cause to dismiss him or her; and to fix his or her duties and compensation.

(2) To employ, and for cause dismiss one or more assistant superintendents and to define their duties and fix their compensation.

(3) To employ a business manager, attorneys, architects, inspectors of construction, superintendents of buildings and a superintendent of supplies, all of whom shall serve at the board's pleasure, and to prescribe their duties and fix their compensation.

(4) To employ, and for cause dismiss, supervisors of instruction and to define their duties and fix their compensation.

(5) To prescribe a course of study and a program of exercises which shall be consistent with the course of study prepared by the state board of education for the use of the common schools of this state.

(6) To, in addition to the minimum requirements imposed by this title establish and maintain such grades and departments, including night, high, kindergarten, vocational training and, except as otherwise provided by law, industrial schools, and schools and departments for the education and training of any class or classes of youth with disabilities, as in the judgment of the board, best shall promote the interests of education in the district.

(7) To determine the length of time over and above one hundred eighty days that school shall be maintained: PROVIDED, That for purposes of apportionment no district shall be credited with more than one hundred and eighty-three days' attendance in any school year; and to fix the time for annual opening and closing of schools and for the daily dismissal of pupils before the regular time for closing schools.

(8) To maintain a shop and repair department, and to employ, and for cause dismiss, a foreman and the necessary help for the maintenance and conduct thereof.

(9) To provide free textbooks and supplies for all children attending school.

(10) To require of the officers or employees of the district to give a bond for the honest performance of their duties in such penal sum as may be fixed by the board with good and sufficient surety, and to cause the premium for all bonds required of all such officers or employees to be paid by the district: PROVIDED, That the board may, by written policy, allow that such bonds may include a deductible proviso not to exceed two percent of the officer's or employee's annual salary.

(11) To prohibit all secret fraternities and sororities among the students in any of the schools of the said districts.

(12) To appoint a practicing physician, resident of the school district, who shall be known as the school district medical inspector, and whose duty it shall be to decide for the board of directors all questions of sanitation and health affecting the safety and welfare of the public schools of the district who shall serve at the board's pleasure: PROVIDED, That children shall not be required to submit to vaccination against the will of their parents or guardian. [1995 c 335 § 503; 1995 c 77 § 22; 1991 c 116 § 17; 1990 c 33 § 348; 1983 c 2 § 7. Prior: 1982 c 191 § 11; 1982 c 158 § 6; 1969 ex.s. c 223 § 28A.59.180; prior: 1919 c 90 § 9; 1909 c 97 p 293 § 16; RRS § 4805. Formerly RCW 28A.59.180, 28.62.180, 28.31.070.]

Reviser's note: This section was amended by 1995 c 77 § 22 and by 1995 c 335 § 503, each without reference to the other. Both amendments

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

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Severability—1983 c 2: See note following RCW 18.71.030.

Effective date—Severability—1982 c 191: See notes following RCW 28A.315.270.

Severability—1982 c 158: See note following RCW 28A.150.220.

28A.330.110 Insurance reserve—Funds. School districts of the first class, when in the judgment of the board of directors it be deemed expedient, shall have power to create and maintain an insurance reserve for said districts, to be used to meet losses specified by the board of directors of the school districts.

Funds required for maintenance of such an insurance reserve shall be budgeted and allowed as are other moneys required for the support of the school district. [1983 c 59 § 16; 1982 c 191 § 12; 1969 ex.s. c 223 § 28A.59.185. Prior: (i) 1911 c 79 § 1; RRS § 4707. Formerly RCW 28.59.010. (ii) 1911 c 79 § 2; RRS § 4708. Formerly RCW 28.59.020. (iii) 1941 c 187 § 1; 1911 c 79 § 3; Rem. Supp. 1941 § 4709. Formerly RCW 28A.59.185, 28.59.030.]

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Effective date—Severability—1982 c 191: See notes following RCW 28A.315.270.

PROVISIONS APPLICABLE ONLY TO SECOND CLASS DISTRICTS

28A.330.200 Organization of board—Assumption of superintendent's duties by board member, when. The term of office of directors of districts of the second class shall begin, and the board shall organize, as provided in RCW 28A.315.500. At the first meeting of the members of the board they shall elect a chair from among their number who shall serve for a term of one year or until his or her successor is elected. The school district superintendent as defined in RCW 28A.150.080 shall serve as secretary to the board. Whenever a district shall be without the services of such a superintendent and the business of the district necessitates action thereby, the board shall appoint any member thereof to carry out the superintendent's powers and duties for the district. [1990 c 33 § 349; 1988 c 187 § 2; 1975 c 43 § 14; 1969 ex.s. c 223 § 28A.60.010. Prior: 1953 c 111 § 1; prior: (i) 1909 c 97 p 298 § 5; RRS § 4815. (ii) 1909 c 97 p 301 § 5; RRS § 4827. Formerly RCW 28A.60.010, 28.63.010.]

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

28A.330.210 Notice to ESD superintendent of change of chairman or superintendent. Every school district superintendent in districts of the second class shall within ten days after any change in the office of chair or superintendent, notify the educational service district superintendent of such change. [1990 c 33 § 350; 1975-'76 2nd ex.s. c 15 § 11. Prior: 1975 1st ex.s. c 275 § 119; 1975 c 43 § 15; 1971 c 48 § 35; 1969 ex.s. c 223 § 28A.60.070; prior: 1909 c 97 p 304 § 1; RRS § 4841; prior: 1903 c 104 § 19. Formerly RCW 28A.60.070, 28.63.070.]

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.330.220 Attorney may be employed. The board of directors of every second class district in addition to their other powers are authorized to employ an attorney and to prescribe the attorney's duties and fix the attorney's compensation. [1990 c 33 § 351; 1975 c 43 § 19; 1971 c 8 § 5. Prior: 1967 c 220 § 1. Formerly RCW 28A.60.310, 28.63.340.]

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

Severability—1971 c 8: See note following RCW 28A.320.310.

28A.330.230 Drawing and issuance of warrants. Second class school districts, subject to the approval of the superintendent of public instruction, may draw and issue warrants for the payment of moneys upon approval of a majority of the board of directors, such warrants to be signed by the chair of the board and countersigned by the secretary: PROVIDED, That when, in the judgment of the board of directors, the orders for warrants issued by the district monthly shall have reached such numbers that the signing of each warrant by the chair of the board personally imposes too great a task on the chair, the board of directors, after auditing all payrolls and bills, may authorize the issuing of one general certificate to the county treasurer, to be signed by the chair of the board, authorizing said treasurer to pay all the warrants specified by date, number, name and amount, and the funds on which said warrants shall be drawn; thereupon the secretary of said board shall be authorized to draw and sign said orders for warrants. [1990 c 33 § 352; 1983 c 56 § 10; 1975 c 43 § 21; 1973 c 111 § 1. Formerly RCW 28A.60.328.]

Severability—1983 c 56: See note following RCW 28A.195.010.

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

Severability—1973 c 111: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 111 § 6.]

28A.330.240 Employment contracts. The board of directors of each second class school district shall adopt a written policy governing procedures for the letting of any employment contract authorized under RCW 42.23.030. This policy shall include provisions to ensure fairness and the appearance of fairness in all matters pertaining to employment contracts so authorized. [1989 c 263 § 2. Formerly RCW 28A.60.360.]

Severability—1989 c 263: See note following RCW 42.23.030.

Chapter 28A.335

SCHOOL DISTRICTS' PROPERTY

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Interlocal cooperation act: Chapter 39.34 RCW.

School districts, purchase of leased lands with improvements: RCW 79.01.770 through 79.01.778.

Subcontractors to be identified by bidder, when: RCW 39.30.060.

28A.335.010 School buildings, maintenance, furnishing and insuring. Every board of directors, unless otherwise specifically provided by law, shall:

(1) Cause all school buildings to be properly heated, lighted and ventilated and maintained in a clean and sanitary condition; and

(2) Maintain and repair, furnish and insure such school buildings. [1969 ex.s. c 223 § 28A.58.102. Prior: 1969 c 53 § 1, part; 1967 ex.s. c 29 § 1, part; 1967 c 12 § 1, part; 1965 ex.s. c 49 § 1, part; 1963 c 104 § 1, part; 1963 c 5 § 1, part; 1961 c 305 § 1, part; 1961 c 237 § 1, part; 1961 c 66 § 1, part; 1955 c 68 § 2, part. Formerly RCW 28A.58.102, 28.58.100(3), part, and (4) part.]

Energy audits and energy capital improvements: RCW 28A.320.330.

28A.335.020 School closures—Policy of citizen involvement required—Summary of effects—Hearings—

Notice. Before any school closure, a school district board of directors shall adopt a policy regarding school closures which provides for citizen involvement before the school district board of directors considers the closure of any school for instructional purposes. The policy adopted shall include provisions for the development of a written summary containing an analysis as to the effects of the proposed school closure. The policy shall also include a requirement that during the ninety days before a school district's final decision upon any school closure, the school board of directors shall conduct hearings to receive testimony from the public on any issues related to the closure of any school for instructional purposes. The policy shall require separate hearings for each school which is proposed to be closed.

The policy adopted shall provide for reasonable notice to the residents affected by the proposed school closure. At a minimum, the notice of any hearing pertaining to a proposed school closure shall contain the date, time, place, and purpose of the hearing. Notice of each hearing shall be published once each week for two consecutive weeks in a newspaper of general circulation in the area where the school, subject to closure, is located. The last notice of hearing shall be published not later than seven days immediately before the final hearing. [1983 c 109 § 2. Formerly RCW 28A.58.031.]

Application of RCW 43.21C.030(2)(c) to school closures: RCW 43.21C.038.

28A.335.030 Emergency school closures exempt from RCW 28A.335.020. A school district may close a school for emergency reasons, as set forth in RCW 28A.150.290(2) (a) and (b), without complying with the requirements of RCW 28A.335.020. [1990 c 33 § 353; 1983 c 109 § 3. Formerly RCW 28A.58.032.]

28A.335.040 Surplus school property, rental, lease, or use of—Authorized—Limitations. (1) Every school district board of directors is authorized to permit the rental, lease, or occasional use of all or any portion of any surplus real property owned or lawfully held by the district to any person, corporation, or government entity for profit or nonprofit, commercial or noncommercial purposes: PROVIDED, That the leasing or renting or use of such property is for a lawful purpose and does not interfere with conduct of the district's educational program and related activities: PROVIDED FURTHER, That the lease or rental agreement entered into shall include provisions which permit the

recapture of the leased or rented surplus property of the district should such property be needed for school purposes in the future except in such cases where, due to proximity to an international airport, land use has been so permanently altered as to preclude the possible use of the property for a school housing students and the school property has been heavily impacted by surrounding land uses so that a school housing students would no longer be appropriate in that area.

(2) Authorization to rent, lease or permit the occasional use of surplus school property under this section, RCW 28A.335.050 and 28A.335.090 is conditioned on the establishment by each school district board of directors of a policy governing the use of surplus school property.

(3) The board of directors of any school district desiring to rent or lease any surplus real property owned by the school district shall publish a written notice in a newspaper of general circulation in the school district for rentals or leases totalling ten thousand dollars or more in value. School districts shall not rent or lease the property for at least forty-five days following the publication of the newspaper notice.

(4) Private schools shall have the same rights as any other person or entity to submit bids for the rental or lease of surplus real property and to have such bids considered along with all other bids: PROVIDED, That the school board may establish reasonable conditions for the use of such real property to assure the safe and proper operation of the property in a manner consistent with board policies. [1991 c 116 § 12. Prior: 1990 c 96 § 1; 1990 c 33 § 354; 1981 c 306 § 2; 1980 c 115 § 2. Formerly RCW 28A.58.033.]

Severability—1981 c 306: See note following RCW 28A.335.180.

Severability—1980 c 115: See note following RCW 28A.335.090.

28A.335.050 Surplus school property, rental, lease or use of—Joint use—Compensation—Conditions generally.

(1) Authorization to rent, lease, or permit the occasional use of surplus school property under RCW 28A.335.040 may include the joint use of school district property, which is in part used for school purposes, by any combination of persons, corporations or government entities for other than common school purposes: PROVIDED, That any such joint use shall comply with existing local zoning ordinances.

(2) Authorization to rent, lease, or permit the occasional use of surplus school property under RCW 28A.335.040 shall be conditioned on the payment by all users, lessees or tenants, assessed on a basis that is nondiscriminatory within classes of users, of such reasonable compensation and under such terms as regulations adopted by the board of directors shall provide.

(3) Nothing in RCW 28A.335.040 and 28A.335.090 shall prohibit a school board of directors and a lessee or tenant from agreeing to conditions to the lease otherwise lawful, including conditions of reimbursement or partial reimbursement of costs associated with the lease or rental of the property. [1990 c 33 § 355; 1980 c 115 § 3. Formerly RCW 28A.58.034.]

Severability—1980 c 115: See note following RCW 28A.335.090.

28A.335.060 Surplus school property—Rental, lease or use of—Disposition of moneys received from. Each school district's board of directors shall deposit moneys derived from the lease, rental or occasional use of surplus school property as follows:

(1) Moneys derived from real property shall be deposited into the district's debt service fund and/or capital projects fund except for moneys required to be expended for general maintenance, utility, insurance costs, and any other costs associated with the lease or rental of such property, which moneys shall be deposited in the district's general fund;

(2) Moneys derived from pupil transportation vehicles shall be deposited in the district's transportation vehicle fund;

(3) Moneys derived from other personal property shall be deposited in the district's general fund. [1989 c 86 § 2; 1983 c 59 § 15; 1982 c 191 § 4; 1981 c 250 § 4; 1980 c 115 § 4. Formerly RCW 28A.58.035.]

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Effective date—Severability—1982 c 191: See notes following RCW 28A.315.270.

Effective date—1981 c 250: "The effective date of this amendatory act shall be September 1, 1981." [1981 c 250 § 5.]

Severability—1980 c 115: See note following RCW 28A.335.090. *School funds enumerated—Deposits—Uses:* RCW 28A.320.330.

28A.335.070 Surplus school property, rental, lease or use of—Existing contracts not impaired. The provisions of contracts for the use, rental or lease of school district real property executed prior to June 12, 1980, which were lawful at the time of execution shall not be impaired by such new terms and conditions to the rental, lease or occasional use of school property as may now be established by RCW 28A.335.040, 28A.335.050, and 28A.335.090. [1990 c 33 § 356; 1980 c 115 § 5. Formerly RCW 28A.58.036.]

Severability—1980 c 115: See note following RCW 28A.335.090.

28A.335.080 Surplus school property, rental, lease or use of—Community use not impaired. Nothing in RCW 28A.335.040 through 28A.335.070 shall preclude school district boards of directors from making available school property for community use in accordance with the provisions of RCW 28A.335.150, 28A.320.510, or 28A.335.250, and school district administrative policy governing such use. [1990 c 33 § 357; 1980 c 115 § 6. Formerly RCW 28A.58.037.]

Severability—1980 c 115: See note following RCW 28A.335.090.

28A.335.090 Conveyance and acquisition of property—Management—Appraisal. (1) The board of directors of each school district shall have exclusive control of all school property, real or personal, belonging to the district; said board shall have power, subject to RCW 28A.335.120, in the name of the district, to convey by deed all the interest of their district in or to any real property of the district which is no longer required for school purposes. Except as otherwise specially provided by law, and RCW 28A.335.120, the board of directors of each school district may purchase, lease, receive and hold real and personal property in the

name of the district, and rent, lease or sell the same, and all conveyances of real estate made to the district shall vest title in the district.

(2) Any purchase of real property by a school district shall be preceded by a market value appraisal by a professionally designated real estate appraiser as defined in RCW 74.46.020 who was selected by the board of directors. [1995 c 358 § 1; 1990 c 33 § 358; 1981 c 306 § 3; 1980 c 115 § 1; 1969 ex.s. c 223 § 28A.58.040. Prior: (i) 1947 c 266 § 6, part; Rem. Supp. 1947 § 4693-25, part; prior: 1909 p 265 § 2, part. Formerly RCW 28.57.135, part. (ii) 1969 c 53 § 1, part; 1967 ex.s. c 29 § 1, part; 1967 c 12 § 1, part; 1965 ex.s. c 49 § 1, part; 1963 c 104 § 1, part; 1963 c 5 § 1, part; 1961 c 305 § 1, part; 1961 c 237 § 1, part; 1961 c 66 § 1, part; 1955 c 68 § 2, part. Formerly RCW 28.58.100(3) and (5), part. (iii) 1909 c 97 p 287 § 7, part; RRS § 4782, part; prior: 1897 c 118 § 44, part; 1891 c 127 § 11, part; 1890 p 366 § 30, part. Formerly RCW 28A.58.040, 28.58.040.]

Severability—1981 c 306: See note following RCW 28A.335.180.

Severability—1980 c 115: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 115 § 9.]

28A.335.100 School district associations, right to mortgage or convey money security interest in association property—Limitations. Any association established by school districts pursuant to the interlocal cooperation act, chapter 39.34 RCW for the purpose of jointly and cooperatively purchasing school supplies, materials and equipment, if otherwise authorized for school district purposes to purchase personal or real property, is hereby authorized, subject to rules and regulations of the state board of education, to mortgage, or convey a purchase money security interest in real or personal property of such association of every kind, character or description whatsoever, or any interest in such personal or real property: PROVIDED, That any such association shall be prohibited from causing any creditor of the association to acquire any rights against the property, properties or assets of any of its constituent school districts and any creditor of such association shall be entitled to look for payment of any obligation incurred by such association solely to the assets and properties of such association. [1975-'76 2nd ex.s. c 23 § 1. Formerly RCW 28A.58.0401.]

28A.335.110 Real property—Annexation to city or town. In addition to other powers and duties as provided by law, every board of directors, if seeking to have school property annexed to a city or town and if such school property constitutes the whole of such property in the annexation petition, shall be allowed to petition therefor under RCW 35.13.125 and 35.13.130. [1971 c 69 § 3. Formerly RCW 28A.58.044.]

Severability—1971 c 69: See note following RCW 35.13.125.

28A.335.120 Real property—Sale—Notice of and hearing on—Appraisal required—Broker or real estate appraiser services—Real estate sales contracts, limitation. (1) The board of directors of any school district of this state may:

(a) Sell for cash, at public or private sale, and convey by deed all interest of the district in or to any of the real property of the district which is no longer required for school purposes; and

(b) Purchase real property for the purpose of locating thereon and affixing thereto any house or houses and appurtenant buildings removed from school sites owned by the district and sell for cash, at public or private sale, and convey by deed all interest of the district in or to such acquired and improved real property.

(2) When the board of directors of any school district proposes a sale of school district real property pursuant to this section and the value of the property exceeds seventy thousand dollars, the board shall publish a notice of its intention to sell the property. The notice shall be published at least once each week during two consecutive weeks in a legal newspaper with a general circulation in the area in which the school district is located. The notice shall describe the property to be sold and designate the place where and the day and hour when a hearing will be held. The board shall hold a public hearing upon the proposal to dispose of the school district property at the place and the day and hour fixed in the notice and admit evidence offered for and against the propriety and advisability of the proposed sale.

(3) The board of directors of any school district desiring to sell surplus real property shall publish a notice in a newspaper of general circulation in the school district. School districts shall not sell the property for at least forty-five days following the publication of the newspaper notice.

(4) Private schools shall have the same rights as any other person or entity to submit bids for the purchase of surplus real property and to have such bids considered along with all other bids.

(5) Any sale of school district real property authorized pursuant to this section shall be preceded by a market value appraisal by a professionally designated real estate appraiser as defined in RCW 74.46.020 selected by the board of directors and no sale shall take place if the sale price would be less than ninety percent of the appraisal made by the professionally designated real estate appraiser: **PROVIDED**, That if the property has been on the market for one year or more the property may be reappraised and sold for not less than seventy-five percent of the reappraised value with the unanimous consent of the board.

(6) If in the judgment of the board of directors of any district the sale of real property of the district not needed for school purposes would be facilitated and greater value realized through use of the services of licensed real estate brokers, a contract for such services may be negotiated and concluded: **PROVIDED**, That the use of a licensed real estate broker will not eliminate the obligation of the board of directors to provide the notice described in this section: **PROVIDED FURTHER**, That the fee or commissions charged for any broker services shall not exceed seven percent of the resulting sale value for a single parcel: **PROVIDED FURTHER**, That any professionally designated real estate appraiser as defined in RCW 74.46.020 selected by the board to appraise the market value of a parcel of property to be sold may not be a party to any contract with the school district to sell such parcel of property for a period of three years after the appraisal.

(7) If in the judgment of the board of directors of any district the sale of real property of the district not needed for school purposes would be facilitated and greater value realized through sale on contract terms, a real estate sales contract may be executed between the district and buyer: **PROVIDED**, That the terms and conditions of any such sales contract must comply with rules and regulations of the state board of education, herein authorized, governing school district real property contract sales. [1995 c 358 § 2; 1991 c 116 § 13; 1984 c 103 § 1; 1981 c 306 § 4; 1979 ex.s. c 16 § 1; 1975 1st ex.s. c 243 § 1; 1969 ex.s. c 223 § 28A.58.045. Prior: 1963 c 67 § 1; 1953 c 225 § 1. Formerly RCW 28A.58.045, 28.58.045.]

Severability—1981 c 306: See note following RCW 28A.335.180.

28A.335.130 Real property—Sale—Use of proceeds.

The proceeds from any sale of school district real property by a board of directors shall be deposited to the debt service fund and/or the capital projects fund, except for amounts required to be expended for the costs associated with the sale of such property, which moneys may be deposited into the fund from which the expenditure was incurred. [1983 c 59 § 14; 1981 c 250 § 3; 1975-'76 2nd ex.s. c 80 § 1; 1975 1st ex.s. c 243 § 2. Formerly RCW 28A.58.0461.]

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Effective date—1981 c 250: See note following RCW 28A.335.060.

School funds enumerated—Deposits—Uses: RCW 28A.320.330.

28A.335.140 Expenditure of funds on county, city building authorized—Conditions. Notwithstanding any other provision of law, every school district board of directors may expend local funds held for capital projects or improvements for improvements on any building owned by a city or county in which the district or any part thereof is located if an agreement is entered into with such city or county whereby the school district receives a beneficial use of such building commensurate to the amount of funds expended thereon by the district. [1971 ex.s. c 238 § 3. Formerly RCW 28A.58.047.]

28A.335.150 Permitting use and rental of playgrounds, athletic fields or athletic facilities. Boards of directors of school districts are hereby authorized to permit the use of, and to rent school playgrounds, athletic fields, or athletic facilities, by, or to, any person or corporation for any athletic contests or athletic purposes.

Permission to use and/or rent said school playgrounds, athletic fields, or athletic facilities shall be for such compensation and under such terms as regulations of the board of directors adopted from time to time so provide. [1969 ex.s. c 223 § 28A.58.048. Prior: (i) 1935 c 99 § 1; Rem. Supp. § 4776-1. Formerly RCW 28.58.048. (ii) 1935 c 99 § 2; RRS § 4776-2. Formerly RCW 28A.58.048, 28.58.050.]

28A.335.160 Joint educational facilities, services or programs—Rules. Any school district may cooperate with one or more school districts in the joint financing, planning, construction, equipping and operating of any educational facility otherwise authorized by law: **PROVIDED**, That any cooperative financing plan involving the construction of

school plant facilities must be approved by the state board of education pursuant to such rules as may now or hereafter be promulgated relating to state approval of school construction. [1995 c 335 § 604; 1990 c 33 § 359; 1969 c 130 § 12. Formerly RCW 28A.58.075.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Conditional sales contracts for acquisition of property or property rights: RCW 28A.335.200.

Education of children with disabilities: RCW 28A.155.040.

28A.335.170 Contracts to provide pupil transportation services, lease building space and portable buildings, and lease or have maintained security systems, computers and other equipment. The board of directors of any school district may enter into contracts for their respective districts for periods not exceeding five years in duration with public and private persons, organizations, and entities for the following purposes:

(1) To rent or lease building space, portable buildings, security systems, computers and other equipment;

(2) To have maintained and repaired security systems, computers and other equipment; and

(3) To provide pupil transportation services.

No school district may enter into a contract for pupil transportation unless it has notified the superintendent of public instruction that, in the best judgment of the district, the cost of contracting will not exceed the projected cost of operating its own pupil transportation.

The budget of each school district shall identify that portion of each contractual liability incurred pursuant to this section extending beyond the fiscal year by amount, duration, and nature of the contracted service and/or item in accordance with rules and regulations of the superintendent of public instruction adopted pursuant to RCW 28A.505.140 and 28A.310.330.

The provisions of this section shall not have any effect on the length of contracts for school district employees specified by RCW 28A.400.300 and 28A.405.210. [1990 c 33 § 360; 1987 c 141 § 1; 1985 c 7 § 93; 1982 c 191 § 3; 1977 ex.s. c 210 § 1. Formerly RCW 28A.58.131.]

Severability—1987 c 141: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 141 § 3.]

Effective date—Severability—1982 c 191: See notes following RCW 28A.315.270.

Severability—1977 ex.s. c 210: "If any provision of this 1977 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 210 § 3.]

28A.335.180 Surplus texts and other educational aids, notice of availability—Student priority as to texts. Notwithstanding any other provision of law, school districts, educational service districts, or any other state or local governmental agency concerned with education, when declaring texts and other books, equipment, materials or relocatable facilities as surplus, shall, prior to other disposal thereof, serve notice in writing in a newspaper of general circulation in the school district and to any public school district or private school in Washington state annually requesting such a notice, that the same is available for sale,

rent, or lease to public school districts or private schools, at depreciated cost or fair market value, whichever is greater: PROVIDED, That students wishing to purchase texts pursuant to RCW 28A.320.230(2) shall have priority as to such texts. Such districts or agencies shall not otherwise sell, rent or lease such surplus property to any person, firm, organization, or nongovernmental agency for at least thirty days following publication of notice in a newspaper of general circulation in the school district. [1991 c 116 § 1; 1990 c 33 § 361; 1981 c 306 § 1; 1977 ex.s. c 303 § 1. Formerly RCW 28A.02.110.]

Severability—1981 c 306: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 306 § 5.]

Disposal of obsolete or surplus reading materials by school districts and libraries: RCW 39.33.070.

28A.335.190 Advertising for bids—Competitive bid procedures—Telephone or written quotation solicitation, limitations—Emergencies. (1) When, in the opinion of the board of directors of any school district, the cost of any furniture, supplies, equipment, building, improvements, or repairs, or other work or purchases, except books, will equal or exceed the sum of fifty thousand dollars, complete plans and specifications for such work or purchases shall be prepared and notice by publication given in at least one newspaper of general circulation within the district, once each week for two consecutive weeks, of the intention to receive bids therefor and that specifications and other information may be examined at the office of the board or any other officially designated location: PROVIDED, That the board without giving such notice may make improvements or repairs to the property of the district through the shop and repair department of such district when the total of such improvements or repair does not exceed the sum of (a) fifteen thousand dollars, for districts with fifteen thousand five hundred or more full-time equivalent students; or (b) for districts with fewer than fifteen thousand five hundred full-time equivalent students, fifteen thousand dollars if more than one craft or trade is involved with the school district improvement or repair, or ten thousand dollars if a single craft or trade is involved with the school district improvement or repair. The cost of any public work, improvement or repair for the purposes of this section shall be the aggregate of all amounts to be paid for labor, material, and equipment on one continuous or interrelated project where work is to be performed simultaneously or in close sequence. The bids shall be in writing and shall be opened and read in public on the date and in the place named in the notice and after being opened shall be filed for public inspection.

(2) Every purchase of furniture, equipment or supplies, except books, the cost of which is estimated to be in excess of fifteen thousand dollars, shall be on a competitive basis. The board of directors shall establish a procedure for securing telephone and/or written quotations for such purchases. Whenever the estimated cost is from fifteen thousand dollars up to fifty thousand dollars, the procedure shall require quotations from at least three different sources to be obtained in writing or by telephone, and recorded for public perusal. Whenever the estimated cost is in excess of fifty

thousand dollars, the public bidding process provided in subsection (1) of this section shall be followed.

(3) Every building, improvement, repair or other public works project, the cost of which is estimated to be in excess of (a) fifteen thousand dollars, for districts with fifteen thousand five hundred or more full-time equivalent students; or (b) for districts with fewer than fifteen thousand five hundred full-time equivalent students, fifteen thousand dollars if more than one craft or trade is involved with the school district improvement or repair, or ten thousand dollars if a single craft or trade is involved with the school district improvement or repair, shall be on a competitive bid process. All such projects estimated to be less than fifty thousand dollars may be awarded to a contractor on the small works roster. The small works roster shall be comprised of all responsible contractors who have requested to be on the list. The board of directors shall establish a procedure for securing telephone and/or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsible bidder. Such procedure shall require that a good faith effort be made to request quotations from all contractors on the small works roster who have indicated the capability of performing the kind of public works being contracted. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. The small works roster shall be revised at least once each year by publishing notice of such opportunity in at least one newspaper of general circulation in the district. Responsible contractors shall be added to the list at any time they submit a written request. Whenever the estimated cost of a public works project is fifty thousand dollars or more, the public bidding process provided in subsection (1) of this section shall be followed.

(4) The contract for the work or purchase shall be awarded to the lowest responsible bidder as defined in RCW 43.19.1911 but the board may by resolution reject any and all bids and make further calls for bids in the same manner as the original call. On any work or purchase the board shall provide bidding information to any qualified bidder or the bidder's agent, requesting it in person.

(5) In the event of any emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the board declaring the existence of such an emergency and reciting the facts constituting the same, the board may waive the requirements of this section with reference to any purchase or contract: PROVIDED, That an "emergency", for the purposes of this section, means a condition likely to result in immediate physical injury to persons or to property of the school district in the absence of prompt remedial action.

(6) This section does not apply to the direct purchase of school buses by school districts and educational services in accordance with RCW 28A.160.195. [1995 1st sp.s. c 10 § 3; 1994 c 212 § 1; 1990 c 33 § 362; 1985 c 324 § 1; 1980 c 61 § 1; 1975-'76 2nd ex.s. c 26 § 1; 1969 ex.s. c 49 § 2; 1969 ex.s. c 223 § 28A.58.135. Prior: 1961 c 224 § 1. Formerly RCW 28A.58.135, 28.58.135.]

28A.335.200 Conditional sales contracts for acquisition of property or property rights. Any school district may execute an executory conditional sales contract with any other municipal corporation, the state or any of its political subdivisions, the government of the United States or any private party for the purchase of any real or personal property, or property rights, in connection with the exercise of any powers or duties which they now or hereafter are authorized to exercise, if the entire amount of the purchase price specified in such contract does not result in a total indebtedness in excess of the limitation authorized by chapter 39.36 RCW, as now or hereafter amended, to be incurred without the assent of the voters: PROVIDED, That if such a proposed contract would result in a total indebtedness in excess of the limitation authorized by chapter 39.36 RCW, as now or hereafter amended, to be incurred without the assent of the voters, a proposition in regard to whether or not such a contract may be executed shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters: PROVIDED FURTHER, That any school district may jointly with another school district execute contracts authorized by this section. [1970 ex.s. c 42 § 11; 1969 ex.s. c 223 § 28A.58.550. Prior: 1965 c 62 § 1. Formerly RCW 28A.58.550, 28.58.550.]

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

Transportation vehicle fund—Deposits in—Use—Rules for establishment and use: RCW 28A.160.130.

28A.335.210 Purchase of works of art—Procedure. The state board of education and superintendent of public instruction shall allocate, as a nondeductible item, out of any moneys appropriated for state assistance to school districts for the original construction of any school plant facility the amount of one-half of one percent of the appropriation to be expended by the Washington state arts commission for the acquisition of works of art. The works of art may be placed in accordance with Article IX, sections 2 and 3 of the state Constitution on public lands, integral to or attached to a public building or structure, detached within or outside a public building or structure, part of a portable exhibition or collection, part of a temporary exhibition, or loaned or exhibited in other public facilities. The Washington state arts commission shall, in consultation with the superintendent of public instruction, determine the amount to be made available for the purchase of works of art under this section, and payments therefor shall be made in accordance with law. The designation of projects and sites, selection, contracting, purchase, commissioning, reviewing of design, execution and placement, acceptance, maintenance, and sale, exchange, or disposition of works of art shall be the responsibility of the Washington state arts commission in consultation with the superintendent of public instruction and representatives of school district boards of directors. However, the costs to carry out the Washington state arts commission's responsibility for maintenance shall not be funded from the moneys referred to under this section, RCW 43.17.200, 43.19.455, or 28B.10.025, but shall be contingent upon adequate appropriations being made for that purpose: PROVIDED, That the superintendent of public instruction and the school district

board of directors of the districts where the sites are selected shall have the right to:

(1) Waive its use of the one-half of one percent of the appropriation for the acquisition of works of art before the selection process by the Washington state arts commission;

(2) Appoint a representative to the body established by the Washington state arts commission to be part of the selection process with full voting rights;

(3) Reject the results of the selection process;

(4) Reject the placement of a completed work or works of art on school district premises if such works are portable.

Rejection at any point before or after the selection process shall not cause the loss of or otherwise endanger state construction funds available to the local school district. Any works of art rejected under this section shall be applied to the provision of works of art under this chapter, at the discretion of the Washington state arts commission, notwithstanding any contract or agreement between the affected school district and the artist involved. In addition to the cost of the works of art the one-half of one percent of the appropriation as provided herein shall be used to provide for the administration by the Washington state arts commission and all costs for installation of the work of art. For the purpose of this section building shall not include sheds, warehouses or other buildings of a temporary nature.

The executive director of the arts commission, the superintendent of public instruction and the Washington state school directors association shall appoint a study group to review the operations of the one-half of one percent for works of art under this section. [1983 c 204 § 7; 1982 c 191 § 2; 1974 ex.s. c 176 § 5. Formerly RCW 28A.58.055.]

Implementation—1983 c 204: "Implementation of section 7 of this 1983 act shall become effective upon approval by the arts commission, the superintendent of public instruction and the Washington state school directors association." [1983 c 204 § 10.] "Section 7 of this 1983 act," was the 1983 c 204 amendment to RCW 28A.58.055, now recodified as RCW 28A.335.210.

Severability—1983 c 204: See note following RCW 43.46.090.

Effective date—Severability—1982 c 191: See notes following RCW 28A.315.270.

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

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

Purchase of works of art—Interagency reimbursement for expenditure by visual arts program: RCW 43.17.205.

State art collection: RCW 43.46.095.

28A.335.220 Eminent domain. The board of directors of any school district may proceed to condemn and appropriate not more than fifteen acres of land for any elementary school purpose; not more than twenty-five acres for any junior high school purpose; not more than forty acres for any senior high school purpose; except as otherwise provided by law, not more than seventy-five acres for any vocational technical school purpose; and not more than fifteen acres for any other school district purpose. Such condemnation proceedings shall be in accordance with chapters 8.16 and 8.25 RCW and such other laws of this state providing for appropriating private property for public use by school districts. [1969 ex.s. c 223 § 28A.58.070. Prior: 1963 c 41 § 1; 1957 c 155 § 1; 1949 c 54 § 1; 1909

c 97 p 289 § 13; Rem. Supp. 1949 § 4788. Formerly RCW 28A.58.070, 28.58.070.]

28A.335.230 Vacant school plant facilities—Lease by contiguous district, when required—Eligibility for matching funds. School districts shall be required to lease for a reasonable fee vacant school plant facilities from a contiguous school district wherever possible.

No school district with unhoused students may be eligible for the state matching funds for the construction of school plant facilities if:

(1) The school district contiguous to the school district applying for the state matching percentage has vacant school plant facilities;

(2) The superintendent of public instruction and the state board of education have determined the vacant school plant facilities available in the contiguous district will fulfill the needs of the applicant district in housing unhoused students. In determining whether the contiguous district school plant facilities meet the needs of the applicant district, consideration shall be given, but not limited to the geographic location of the vacant facilities as they relate to the applicant district; and

(3) A lease of the vacant school plant facilities can be negotiated. [1987 c 112 § 1. Formerly RCW 28A.47.105.]

Surplus school property: RCW 28A.335.040 through 28A.335.080.

28A.335.240 Schoolhouses, teachers' cottages—Purchase of realty for district purposes. The board of directors of a second class school district shall build schoolhouses and teachers' cottages when directed by a vote of the district to do so. The board of directors of a second class school district may purchase real property for any school district purpose. [1969 ex.s. c 223 § 28A.60.181. Prior: 1963 c 61 § 1; 1959 c 169 § 1. Formerly RCW 28A.60.181, 28.63.181.]

Borrowing money, issuing bonds, for schoolhouse sites, playgrounds, erecting buildings and equipping same: RCW 28A.530.010.

Real property—Sale—Purchase to relocate and sell buildings: RCW 28A.335.120.

28A.335.250 School property used for public purposes. School boards in each district of the second class may provide for the free, comfortable and convenient use of the school property to promote and facilitate frequent meetings and association of the people in discussion, study, improvement, recreation and other community purposes, and may acquire, assemble and house material for the dissemination of information of use and interest to the farm, the home and the community, and facilities for experiment and study, especially in matters pertaining to the growing of crops, the improvement and handling of livestock, the marketing of farm products, the planning and construction of farm buildings, the subjects of household economies, home industries, good roads, and community vocations and industries; and may call meetings for the consideration and discussion of any such matters, employ a special supervisor, or leader, if need be, and provide suitable dwellings and accommodations for teachers, supervisors and necessary assistants. [1975 c 43 § 16; 1969 ex.s. c 223 § 28A.60.190.

Prior: 1913 c 129 § 1; RRS § 4837. Formerly RCW 28A.60.190, 28.63.190.]

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

28A.335.260 School property used for public purposes—Community buildings. Each school district of the second class, by itself or in combination with any other district or districts, shall have power, when in the judgment of the school board it shall be deemed expedient, to reconstruct, remodel, or build schoolhouses, and to erect, purchase, lease or otherwise acquire other improvements and real and personal property, and establish a communal assembly place and appurtenances, and supply the same with suitable and convenient furnishings and facilities for the uses mentioned in RCW 28A.335.250. [1990 c 33 § 363; 1975 c 43 § 17; 1969 ex.s. c 223 § 28A.60.200. Prior: 1913 c 129 § 2; RRS § 4838. Formerly RCW 28A.60.200, 28.63.200.]

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

28A.335.270 School property used for public purposes—Special state commission to pass on plans. Plans of any second class district or combination of districts for the carrying out of the powers granted by RCW 28A.335.250 through 28A.335.280 shall be submitted to and approved by a board of supervisors composed of members, as follows: The superintendent of public instruction; the head of the extension department of Washington State University; the head of the extension department of the University of Washington; and the educational service district superintendent; these to choose one member from such county in which the facilities are proposed to be located, and two members, from the district or districts concerned. [1990 c 33 § 364; 1975-'76 2nd ex.s. c 15 § 12. Prior: 1975 1st ex.s. c 275 § 121; 1975 c 43 § 18; 1973 1st ex.s. c 154 § 46; 1971 c 48 § 37; 1969 ex.s. c 223 § 28A.60.210; prior: 1913 c 129 § 3; RRS § 4839. Formerly RCW 28A.60.210, 28.63.210.]

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

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

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.335.280 School property used for public purposes—Limit on expenditures. No real or personal property or improvements shall be purchased, leased, exchanged, acquired or sold, nor any schoolhouses built, remodeled or removed, nor any indebtedness incurred or money expended for any of the purposes of RCW 28A.335.250 through 28A.335.280 except in the manner otherwise provided by law for the purchase, lease, exchange, acquisition and sale of school property, the building, remodeling and removing of schoolhouses and the incurring of indebtedness and expenditure of money for school purposes. [1990 c 33 § 365; 1969 ex.s. c 223 § 28A.60.220. Prior: 1913 c 129 § 4; RRS § 4840. Formerly RCW 28A.60.220, 28.63.220.]

28A.335.290 Housing for superintendent—Authorized—Limitation. Notwithstanding any other provision of law, any second class school district with an enrollment of three hundred students or less may provide housing for the superintendent of the school district, or any person acting in the capacity of superintendent, by such means and with such moneys as the school district shall determine: PROVIDED, That any second class school district presently providing such housing may continue to provide the same: PROVIDED FURTHER, That if such housing is exempt from real property taxation by virtue of school district ownership, the school district shall charge for such housing, rent at least equal to the amount of real property tax for which such housing would be liable were it not so owned. [1984 c 40 § 10; 1975 1st ex.s. c 41 § 1. Formerly RCW 28A.60.350.]

Severability—1984 c 40: See note following RCW 28A.195.050.

*Classes of districts—Change of classification
delay of authorized: RCW 28A.315.240.
generally: RCW 28A.315.230.*

28A.335.300 Playground matting. Every school board of directors shall consider the purchase of playground matting manufactured from shredded waste tires in undertaking construction or maintenance of playgrounds. The department of general administration shall upon request assist in the development of product specifications and vendor identification. [1991 c 297 § 18.]

Captions not law—1991 c 297: See RCW 43.19A.900.

28A.335.320 Enhanced 911 service—Common and public school service required. By January 1, 1997, or one year after enhanced 911 service becomes available or a private switch automatic location identification service approved by the Washington utilities and transportation commission is available from the serving local exchange telecommunications company, whichever is later, all common and public schools located in counties that provide enhanced 911 service shall provide persons using school facilities direct access to telephones that are connected to the public switched network such that calls to 911 result in automatic location identification for each telephone in a format that is compatible with the existing and planned county enhanced 911 system during all times that the facility is in use. Any school district acquiring a private telecommunications system that allows connection to the public switched network after January 1, 1997, shall assure that the telecommunications system is connected to the public switched network such that calls to 911 result in automatic location identification for each telephone in a format that is compatible with the existing or planned county enhanced 911 system. [1995 c 243 § 4.]

Reviser's note: 1995 c 243 directed that this section be added to chapter 28A.150 RCW. This section has been codified in chapter 28A.335 RCW, which relates more directly to school district facilities.

Findings—Severability—1995 c 243: See notes following RCW 80.36.555.

Chapter 28A.340
SMALL HIGH SCHOOL COOPERATIVE
PROJECTS

Sections

28A.340.010	Increased curriculum programs and opportunities.
28A.340.020	Eligibility—Participation.
28A.340.030	Application—Review by the superintendent of public instruction.
28A.340.040	Adoption of salary schedules—Computation of fringe benefits.
28A.340.060	Rules.
28A.340.070	Allocation of state funds for technical assistance—Contracting with agencies for technical assistance.

28A.340.010 Increased curriculum programs and opportunities. Eligible school districts as defined under RCW 28A.340.020 are encouraged to establish cooperative projects with a primary purpose to increase curriculum programs and opportunities among the participating districts, by expanding the opportunity for students in the participating districts to take vocational and academic courses as may be generally more available in larger school districts, and to enhance student learning. [1990 c 33 § 366; 1988 c 268 § 2. Formerly RCW 28A.100.080.]

Findings—1988 c 268: "The legislature finds that partnerships among school districts can: Increase curriculum offerings for students, encourage creative educational programming and staffing, and result in the cost-effective delivery of educational programs. It is the intent of the legislature to establish a program to facilitate and encourage such partnerships among small school districts." [1988 c 268 § 1.]

Severability—1988 c 268: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 268 § 12.]

28A.340.020 Eligibility—Participation. School districts eligible for funding as a small high school district pursuant to the state operating appropriations act shall be eligible to participate in a cooperative project. **PROVIDED,** That the superintendent of public instruction may adopt rules permitting second class school districts that are not eligible for funding as a small high school district in the state operating appropriations act to participate in a cooperative project.

Two or more school districts may participate in a cooperative project pursuant to RCW 28A.340.020 through 28A.340.070. [1990 c 33 § 367; 1988 c 268 § 3. Formerly RCW 28A.100.082.]

Findings—Severability—1988 c 268: See notes following RCW 28A.340.010.

28A.340.030 Application—Review by the superintendent of public instruction. (1) Eligible school districts desiring to form a cooperative project pursuant to RCW 28A.340.020 through 28A.340.070 shall submit to the superintendent of public instruction an application for review as a cooperative project. The application shall include, but not be limited to, the following information:

(a) A description of the cooperative project, including the programs, services, and administrative activities that will be operated jointly;

(b) The improvements in curriculum offerings and educational opportunities expected to result from the establishment of the proposed cooperative project;

(c) A list of any statutory requirements or administrative rules which are considered financial disincentives to the establishment of cooperative projects and which would impede the operation of the proposed cooperative project; and the financial impact to the school districts and the state expected to result by the granting of a waiver from such statutory requirements or administrative rules;

(d) An assessment of community support for the proposed cooperative project, which assessment shall include each community affected by the proposed cooperative project; and

(e) A plan for evaluating the educational and cost-effectiveness of the proposed cooperative project, including curriculum offerings and staffing patterns.

(2) The superintendent of public instruction shall review the application before the applicant school districts may commence the proposed cooperative project.

In reviewing applications, the superintendent shall be limited to: (a) The granting of waivers from statutory requirements, for which the superintendent of public instruction has the express power to implement pursuant to the adoption of rules, or administrative rules that need to be waived in order for the proposed cooperative project to be implemented: **PROVIDED,** That no statutory requirement or administrative rule dealing with health, safety, or civil rights may be waived; and (b) ensuring the technical accuracy of the application.

Any waiver granted by the superintendent of public instruction shall be reviewed and may be renewed by the superintendent every five years subject to the participating districts submitting a new application pursuant to this section.

(3) If additional eligible school districts wish to participate in an existing cooperative project the cooperative project as a whole shall reapply for review by the superintendent of public instruction. [1990 c 33 § 368; 1988 c 268 § 4. Formerly RCW 28A.100.084.]

Findings—Severability—1988 c 268: See notes following RCW 28A.340.010.

28A.340.040 Adoption of salary schedules—Computation of fringe benefits. (1) School districts participating in a cooperative project pursuant to RCW 28A.340.030 may adopt identical salary schedules following compliance with chapter 41.59 RCW: **PROVIDED,** That if the districts participating in a cooperative project adopt identical salary schedules, the participating districts shall be considered a single school district for purposes of establishing compliance with the salary limitations of RCW 28A.400.200(3) but not for the purposes of allocation of state funds.

(2) For purposes of computing fringe benefit contributions for purposes of establishing compliance with RCW 28A.400.200(3)(b), the districts participating in a cooperative project pursuant to RCW 28A.340.030 may use the greater of: (a) The highest amount provided in the 1986-87 school year by a district participating in the cooperative project; or (b) the amount authorized for such purposes in the state

operating appropriations act in effect at the time. [1990 c 33 § 369; 1988 c 268 § 5. Formerly RCW 28A.100.086.]

Findings—Severability—1988 c 268: See notes following RCW 28A.340.010.

28A.340.060 Rules. (1) The superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW to carry out the provisions of RCW 28A.340.010 through 28A.340.070.

(2) When the joint operation of programs or services includes the teaching of all or substantially all of the curriculum for a particular grade or grades in only one local school district, the rules shall provide that the affected students are attending school in the district in which they reside for the purposes of RCW 28A.150.250 and 28A.150.260 and chapter 28A.545 RCW. [1990 c 33 § 371; 1988 c 268 § 8. Formerly RCW 28A.100.090.]

Findings—Severability—1988 c 268: See notes following RCW 28A.340.010.

28A.340.070 Allocation of state funds for technical assistance—Contracting with agencies for technical assistance. (1) The superintendent of public instruction may allocate state funds, as may be appropriated, to provide technical assistance to eligible school districts interested in developing and implementing a cooperative project.

(2) The superintendent of public instruction may contract with other agencies to provide some or all of the technical assistance under subsection (1) of this section. [1988 c 268 § 9. Formerly RCW 28A.100.092.]

Findings—Severability—1988 c 268: See notes following RCW 28A.340.010.

Chapter 28A.345

WASHINGTON STATE SCHOOL DIRECTORS' ASSOCIATION

Sections

28A.345.010	Association created.
28A.345.020	Membership.
28A.345.030	Powers of association.
28A.345.040	Coordination of policies—Report.
28A.345.050	Association dues—Payment.
28A.345.060	Audit of staff classifications and employees' salaries— Contract with department of personnel—Copies.
28A.345.902	Effective date—1983 c 187.

Motor vehicle transportation services—Washington state school directors' association defined as state agency for purposes of: RCW 43.19.560.

28A.345.010 Association created. The public necessity for the coordination of programs and procedures pertaining to policymaking and to control and management among the school districts of the state is hereby recognized, and in the furtherance of such coordination there is hereby created for said purpose an agency of the state to be known as the Washington state school directors' association, hereinafter designated as the school directors' association. [1969 ex.s. c 223 § 28A.61.010. Prior: 1947 c 169 § 1; Rem. Supp. 1947 § 4709-20. Formerly RCW 28A.61.010, 28.58.320.]

28A.345.020 Membership. The membership of the school directors' association shall comprise the members of the boards of directors of the school districts of the state. [1969 ex.s. c 223 § 28A.61.020. Prior: 1947 c 169 § 2; Rem. Supp. 1947 § 4709-21. Formerly RCW 28A.61.020, 28.58.330.]

28A.345.030 Powers of association. The school directors' association shall have the power:

(1) To prepare and adopt, amend and repeal a constitution and rules and regulations, and bylaws for its own organization including county or regional units and for its government and guidance: PROVIDED, That action taken with respect thereto is consistent with the provisions of this chapter or with other provisions of law;

(2) To arrange for and call such meetings of the association or of the officers and committees thereof as are deemed essential to the performance of its duties;

(3) To provide for the compensation of members of the board of directors in accordance with RCW 43.03.240, and for payment of travel and subsistence expenses incurred by members and/or officers of the association and association staff while engaged in the performance of duties under direction of the association in the manner provided by RCW 28A.320.050;

(4) To employ an executive director and other staff and pay such employees out of the funds of the association;

(5) To conduct studies and disseminate information therefrom relative to increased efficiency in local school board administration;

(6) To buy, lease, sell, or exchange such personal and real property as necessary for the efficient operation of the association and to borrow money, issue deeds of trust or other evidence of indebtedness, or enter into contracts for the purchase, lease, remodeling, or equipping of office facilities or the acquisition of sites for such facilities;

(7) To purchase liability insurance for school directors, which insurance may indemnify said directors against any or all liabilities for personal or bodily injuries and property damage arising from their acts or omissions while performing or while in good faith purporting to perform their official duties as school directors;

(8) To provide advice and assistance to local boards to promote their primary duty of representing the public interest;

(9) Upon request by a local school district board(s) of directors, to make available on a cost reimbursable contract basis (a) specialized services, (b) research information, and (c) consultants to advise and assist district board(s) in particular problem areas: PROVIDED, That such services, information, and consultants are not already available from other state agencies, educational service districts, or from the information and research services authorized by RCW 28A.320.110. [1991 c 66 § 1; 1990 c 33 § 372; 1989 c 325 § 1; 1983 c 187 § 1; 1979 c 151 § 13; 1974 ex.s. c 101 § 1; 1969 ex.s. c 184 § 4; 1969 ex.s. c 223 § 28A.61.030. Prior: 1947 c 169 § 3; Rem. Supp. 1947 § 4709-22. Formerly RCW 28A.61.030, 28.58.340.]

Effective date—1989 c 325: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1989." [1989 c 325 § 3.]

28A.345.040 Coordination of policies—Report. It shall be the duty of the school directors' association (1) to take such action as the association deems advisable to effect a coordination of policymaking, control, and management of the school districts of the state; and (2) to prepare and submit to the superintendent of public instruction annually, and oftener if deemed advisable by the association, reports and recommendations respecting the aforesaid matters and any other matters which in the judgment of the association pertain to an increase in the efficiency of the common school system. [1969 ex.s. c 223 § 28A.61.040. Prior: 1947 c 169 § 4; Rem. Supp. 1947 § 4709-23. Formerly RCW 28A.61.040, 28.58.350.]

28A.345.050 Association dues—Payment. The school directors' association may establish a graduated schedule of dues for members of the association based upon the number of certificated personnel in each district. Dues shall be established for the directors of each district as a group. The total of all dues assessed shall not exceed twenty-seven cents for each one thousand dollars of the state-wide total of all school districts' general fund receipts. The board of directors of a school district shall make provision for payment out of the general fund of the district of the dues of association members resident in the district, which payment shall be made in the manner provided by law for the payment of other claims against the general fund of the district. The dues for each school district shall be due and payable on the first day of January of each year. [1983 c 187 § 2; 1969 c 125 § 2; 1969 ex.s. c 223 § 28A.61.050. Prior: 1967 ex.s. c 8 § 76; 1965 c 103 § 1; 1957 c 281 § 1; 1953 c 226 § 1; 1947 c 169 § 5; Rem. Supp. 1947 § 4709-24. Formerly RCW 28A.61.050, 28.58.360.]

28A.345.060 Audit of staff classifications and employees' salaries—Contract with department of personnel—Copies. The association shall contract with the department of personnel for the department of personnel to audit in odd-numbered years the association's staff classifications and employees' salaries. The association shall give copies of the audit reports to the office of financial management and the committees of each house of the legislature dealing with common schools. [1986 c 158 § 3; 1983 c 187 § 4. Formerly RCW 28A.61.070.]

28A.345.902 Effective date—1983 c 187. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1983. [1983 c 187 § 8. Formerly RCW 28A.61.910.]

Chapter 28A.350

SCHOOL DISTRICT WARRANTS—AUDITOR'S DUTIES

Sections

28A.350.010	Registering warrants—All districts.
28A.350.020	Registering warrants—Second class districts.
28A.350.030	Auditing accounts—All districts.
28A.350.040	Auditor to draw and issue warrants—Second class districts.

28A.350.050	Teacher must qualify before warrant drawn and issued or registered—All districts.
28A.350.060	Liability of auditor for warrants exceeding budget—All districts.
28A.350.070	Orders for warrants not transferable—Second class districts.

28A.350.010 Registering warrants—All districts. The county auditor shall register in the auditor's own office, and present to the treasurer for registration in the office of the county treasurer, all warrants of first class districts, and all warrants of second class districts electing to draw and issue their own warrants under RCW 28A.330.230 received from school district superintendents or district secretaries before delivery of the same to claimants. [1990 c 33 § 373; 1975 c 43 § 27; 1973 c 111 § 2; 1969 ex.s. c 223 § 28A.66.010. Prior: 1911 c 78 § 1, part; RRS § 4864. Formerly RCW 28A.66.010, 28.66.010.]

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

Severability—1973 c 111: See note following RCW 28A.330.230.

28A.350.020 Registering warrants—Second class districts. The county auditor shall cause all school warrants of second class districts issued by the auditor to be registered in the treasurer's office and shall retain the vouchers on file in the auditor's office. [1990 c 33 § 374; 1975 c 43 § 28; 1969 ex.s. c 223 § 28A.66.020. Prior: 1911 c 78 § 1, part; RRS § 4863. Formerly RCW 28A.66.020, 28.66.020.]

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

28A.350.030 Auditing accounts—All districts. The county auditors of the several counties of this state shall audit all accounts of the several school districts of their respective counties, the same as other accounts are audited with the other departments of the county. [1969 ex.s. c 223 § 28A.66.030. Prior: 1909 c 97 p 308 § 2; RRS § 4858. Formerly RCW 28A.66.030, 28.66.030.]

28A.350.040 Auditor to draw and issue warrants—Second class districts. The county auditor shall draw and issue warrants for the payment of all salaries, expenses and accounts against second class districts, except those who draw and issue their own warrants pursuant to RCW 28A.330.230 upon the written order of the majority of the members of the school board of each district. [1990 c 33 § 375; 1975 c 43 § 29; 1973 c 111 § 3; 1969 ex.s. c 223 § 28A.66.040. Prior: 1909 c 97 p 308 § 3; RRS § 4859. Formerly RCW 28A.66.040, 28.66.040.]

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

Severability—1973 c 111: See note following RCW 28A.330.230.

28A.350.050 Teacher must qualify before warrant drawn and issued or registered—All districts. No warrant shall be drawn and issued or registered by the county auditor for the payment of any teacher who is not qualified within

the meaning of the law of this state. [1973 c 72 § 1; 1971 c 48 § 45; 1969 ex.s. c 223 § 28A.66.050. Prior: 1909 c 97 p 308 § 4; RRS § 4860. Formerly RCW 28A.66.050, 28.66.050.]

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.350.060 Liability of auditor for warrants exceeding budget—All districts. Any county auditor issuing or causing to be issued a district warrant for any sum in excess of total disbursements of a district's annual budget shall be personally liable therefor, and shall reimburse the district in double the amount of any such sum. [1975-'76 2nd ex.s. c 118 § 31; 1969 ex.s. c 223 § 28A.66.070. Prior: 1959 c 216 § 22; prior: 1933 c 28 § 2, part; 1909 c 97 p 288 § 9, part; 1897 c 118 § 46, part; 1893 c 107 § 3, part; RRS § 4784, part. Formerly RCW 28A.66.070, 28.66.070.]

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.350.070 Orders for warrants not transferable—Second class districts. An order for a warrant issued by any board of directors of second class school districts shall not be transferable, and the county auditor shall issue no warrant except to individuals or firms designated in original district orders. [1975 c 43 § 30; 1969 ex.s. c 223 § 28A.66.080. Prior: 1959 c 216 § 23; prior: 1933 c 28 § 2, part; 1909 c 97 p 288 § 9, part; 1897 c 118 § 46, part; 1893 c 107 § 3, part; RRS § 4784, part. Formerly RCW 28A.66.080, 28.66.080.]

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

**Chapter 28A.400
EMPLOYEES**

Sections

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- 28A.400.010 Employment of superintendent—Superintendent's qualifications, general powers, term, contract renewal.
- 28A.400.020 Directors' and superintendents' signatures filed with auditor.
- 28A.400.030 Superintendent's duties.

PRINCIPALS

- 28A.400.100 Principals and vice principals—Employment of—Qualifications—Duties.
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- 28A.400.200 Salaries and compensation for employees—Minimum amounts—Limitations—Supplemental contracts.
- 28A.400.210 Employee attendance incentive program—Remuneration or benefit plan for unused sick leave.
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INSURANCE

- 28A.400.350 Liability, life, health, health care, accident, disability, and salary insurance authorized—When required—Premiums.
- 28A.400.360 Liability insurance for officials and employees authorized.
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- 28A.400.395 Insurance for retired employees and their dependents—Method of payment of premium.
- 28A.400.400 District contributions to the public employees' and retirees' insurance account.
- 28A.400.410 Payment to the public employees' and retirees' insurance account.

Educational employment relations act: Chapter 41.59 RCW.

SUPERINTENDENTS

28A.400.010 Employment of superintendent—Superintendent's qualifications, general powers, term, contract renewal. In all districts the board of directors shall elect a superintendent who shall have such qualification as the local school board alone shall determine. The superintendent shall have supervision over the several departments of the schools thereof and carry out such other powers and duties as prescribed by law. Notwithstanding the provisions of RCW 28A.400.300(1), the board may contract with such superintendent for a term not to exceed three years when deemed in the best interest of the district. The right to renew a contract of employment with any school superintendent shall rest solely with the discretion of the school board employing such school superintendent. Regarding such renewal of contracts of school superintendents the provisions of RCW 28A.405.210, 28A.405.240, and 28A.645.010 shall be inapplicable. [1990 c 33 § 376; 1985 c 7 § 94; 1975-'76 2nd ex.s. c 114 § 10; 1975-'76 2nd ex.s.

c 15 § 10. Prior: 1975 1st ex.s. c 254 § 2; 1975-'76 1st ex.s. c 137 § 1; 1969 ex.s. c 223 § 28A.58.137; prior: (i) 1909 c 97 p 300 § 11; RRS § 4821. Formerly RCW 28.63.060. (ii) 1909 c 97 p 302 § 8; RRS § 4830. Formerly RCW 28.63.062. (iii) 1909 c 97 p 302 § 9; RRS § 4831. Formerly RCW 28.63.064. (iv) 1909 c 97 p 290 § 4, part; RRS § 4793, part. Formerly RCW 28A.58.137, 28.62.040, part.]

Savings—1975-'76 2nd ex.s. c 114: "Nothing in this 1976 amendatory act shall be construed to annul or to modify or to preclude the continuation of any lawful agreement entered into prior to the effective date of this 1976 amendatory act." [1975-'76 2nd ex.s. c 114 § 11.]

Severability—1975-'76 2nd ex.s. c 114: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 114 § 12.]

Reimbursement of expenses of directors, other school representatives, and superintendent candidates—Advancing anticipated expenses: RCW 28A.320.050.

28A.400.020 Directors' and superintendents' signatures filed with auditor. Every school district director and school district superintendent, on assuming the duties of his or her office, shall place his or her signature, certified to by some school district official, on file in the office of the county auditor. [1990 c 33 § 377; 1969 ex.s. c 223 § 28A.58.140. Prior: 1909 c 97 p 289 § 12; RRS § 4787; prior: 1897 c 118 § 61; 1890 p 380 § 70. Formerly RCW 28A.58.140, 28.58.140.]

28A.400.030 Superintendent's duties. In addition to such other duties as a district school board shall prescribe the school district superintendent shall:

(1) Attend all meetings of the board of directors and cause to have made a record as to the proceedings thereof.

(2) Keep such records and reports and in such form as the district board of directors require or as otherwise required by law or rule or regulation of higher administrative agencies and turn the same over to his or her successor.

(3) Keep accurate and detailed accounts of all receipts and expenditures of school money. At each annual school meeting the superintendent must present his or her record book of board proceedings for public inspection, and shall make a statement of the financial condition of the district and such record book must always be open for public inspection.

(4) Give such notice of all annual or special elections as otherwise required by law; also give notice of the regular and special meetings of the board of directors.

(5) Sign all orders for warrants ordered to be issued by the board of directors.

(6) Carry out all orders of the board of directors made at any regular or special meeting. [1991 c 116 § 14; 1990 c 33 § 378; 1983 c 56 § 8; 1977 ex.s. c 80 § 30; 1975-'76 2nd ex.s. c 118 § 30; 1975 1st ex.s. c 275 § 110; 1971 c 48 § 30; 1969 ex.s. c 223 § 28A.58.150. Prior: 1909 c 97 p 304 § 2; RRS § 4842; prior: 1907 c 163 § 3; 1899 c 142 § 10; 1897 c 118 § 49; 1893 c 107 § 5; 1891 c 127 § 12; 1890 p 367 § 34; Code 1881 §§ 3194, 3195, 3196, 3197; 1873 p 428 §§ 10, 11, 12, 13. Formerly RCW 28A.58.150, 28.58.150.]

Severability—1983 c 56: See note following RCW 28A.195.010.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

Severability—1971 c 48: See note following RCW 28A.305.040.

PRINCIPALS

28A.400.100 Principals and vice principals—Employment of—Qualifications—Duties. School districts may employ public school principals and/or vice principals to supervise the operation and management of the school to which they are assigned. Such persons shall hold valid teacher and administrative certificates. In addition to such other duties as shall be prescribed by law and by the job description adopted by the board of directors, each principal shall:

(1) Assume administrative authority, responsibility and instructional leadership, under the supervision of the school district superintendent, and in accordance with the policies of the school district board of directors, for the planning, management, supervision and evaluation of the educational program of the attendance area for which he or she is responsible.

(2) Submit recommendations to the school district superintendent regarding appointment, assignment, promotion, transfer and dismissal of all personnel assigned to the attendance area for which he or she is responsible.

(3) Submit recommendations to the school district superintendent regarding the fiscal needs to maintain and improve the instructional program of the attendance area for which he or she is responsible.

(4) Assume administrative authority and responsibility for the supervision, counseling and discipline of pupils in the attendance area for which he or she is responsible. [1977 ex.s. c 272 § 1. Formerly RCW 28A.58.160.]

Severability—1977 ex.s. c 272: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 272 § 2.]

28A.400.110 Principal to assure appropriate student discipline—Building discipline standards, conferences on. Within each school the school principal shall determine that appropriate student discipline is established and enforced. In order to assist the principal in carrying out the intent of this section, the principal and the certificated employees in a school building shall confer at least annually in order to develop and/or review building disciplinary standards and uniform enforcement of those standards. Such building standards shall be consistent with the provisions of RCW 28A.600.020(3). [1990 c 33 § 379; 1980 c 171 § 2; 1975-'76 2nd ex.s. c 97 § 3. Formerly RCW 28A.58.201.]

SALARY AND COMPENSATION

28A.400.200 Salaries and compensation for employees—Minimum amounts—Limitations—Supplemental contracts. (1) Every school district board of directors shall fix, alter, allow, and order paid salaries and compensation for all district employees in conformance with this section.

(2)(a) Salaries for certificated instructional staff shall not be less than the salary provided in the appropriations act in the state-wide salary allocation schedule for an employee with a baccalaureate degree and zero years of service; and

(b) Salaries for certificated instructional staff with a masters degree shall not be less than the salary provided in the appropriations act in the state-wide salary allocation schedule for an employee with a masters degree and zero years of service;

(3)(a) The actual average salary paid to basic education certificated instructional staff shall not exceed the district's average basic education certificated instructional staff salary used for the state basic education allocations for that school year as determined pursuant to RCW 28A.150.410.

(b) Fringe benefit contributions for basic education certificated instructional staff shall be included as salary under (a) of this subsection only to the extent that the district's actual average benefit contribution exceeds the amount of the insurance benefits allocation provided per certificated instructional staff unit in the state operating appropriations act in effect at the time the compensation is payable. For purposes of this section, fringe benefits shall not include payment for unused leave for illness or injury under RCW 28A.400.210; employer contributions for old age survivors insurance, workers' compensation, unemployment compensation, and retirement benefits under the Washington state retirement system; or employer contributions for health benefits in excess of the insurance benefits allocation provided per certificated instructional staff unit in the state operating appropriations act in effect at the time the compensation is payable. A school district may not use state funds to provide employer contributions for such excess health benefits.

(c) Salary and benefits for certificated instructional staff in programs other than basic education shall be consistent with the salary and benefits paid to certificated instructional staff in the basic education program.

(4) Salaries and benefits for certificated instructional staff may exceed the limitations in subsection (3) of this section only by separate contract for additional time, additional responsibilities, or incentives. Supplemental contracts shall not cause the state to incur any present or future funding obligation. Supplemental contracts shall be subject to the collective bargaining provisions of chapter 41.59 RCW and the provisions of RCW 28A.405.240, shall not exceed one year, and if not renewed shall not constitute adverse change in accordance with RCW 28A.405.300 through 28A.405.380. No district may enter into a supplemental contract under this subsection for the provision of services which are a part of the basic education program required by Article IX, section 3 of the state Constitution.

(5) Employee benefit plans offered by any district shall comply with RCW 28A.400.350 and 28A.400.275 and 28A.400.280. [1993 c 492 § 225. Prior: 1990 1st ex.s. c 11 § 2; 1990 c 33 § 381; 1987 1st ex.s. c 2 § 205. Formerly RCW 28A.58.0951.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Intent—1990 1st ex.s. c 11: "The legislature recognizes the rising costs of health insurance premiums for school employees, and the increasing

need to ensure effective use of state benefit dollars to obtain basic coverage for employees and their dependents. In school districts that do not pool benefit allocations among employees, increases in premium rates create particular hardships for employees with families. For many of these employees, the increases translate directly into larger payroll deductions simply to maintain basic benefits.

The goal of this act is to provide access for school employees to basic coverage, including coverage for dependents, while minimizing employees' out-of-pocket premium costs. Unnecessary utilization of medical services can contribute to rising health insurance costs. Therefore, the legislature intends to encourage plans that promote appropriate utilization without creating major barriers to access to care. The legislature also intends that school districts pool state benefit allocations so as to eliminate major differences in out-of-pocket premium expenses for employees who do and do not need coverage for dependents." [1990 1st ex.s. c 11 § 1.]

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

28A.400.210 Employee attendance incentive program—Remuneration or benefit plan for unused sick leave. Every school district board of directors may, in accordance with chapters 41.56 and 41.59 RCW, establish an attendance incentive program for all certificated and noncertificated employees in the following manner, including covering persons who were employed during the 1982-'83 school year:

(1) In January of the year following any year in which a minimum of sixty days of leave for illness or injury is accrued, and each January thereafter, any eligible employee may exercise an option to receive remuneration for unused leave for illness or injury accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each four full days of accrued leave for illness or injury in excess of sixty days. Leave for illness or injury for which compensation has been received shall be deducted from accrued leave for illness or injury at the rate of four days for every one day's monetary compensation. No employee may receive compensation under this section for any portion of leave for illness or injury accumulated at a rate in excess of one day per month.

(2) Except as provided in RCW 28A.400.212, at the time of separation from school district employment due to retirement or death an eligible employee or the employee's estate shall receive remuneration at a rate equal to one day's current monetary compensation of the employee for each four full days accrued leave for illness or injury.

(3) In lieu of remuneration for unused leave for illness or injury as provided in subsections (1) and (2) of this section, a school district board of directors may, with equivalent funds, provide eligible employees a benefit plan that provides reimbursement for medical expenses. Any benefit plan adopted after July 28, 1991, shall require, as a condition of participation under the plan, that the employee sign an agreement with the district to hold the district harmless should the United States government find that the district or the employee is in debt to the United States as a result of the employee not paying income taxes due on the equivalent funds placed into the plan, or as a result of the district not withholding or deducting any tax, assessment, or other payment on such funds as required under federal law.

Moneys or benefits received under this section shall not be included for the purposes of computing a retirement allowance under any public retirement system in this state.

The superintendent of public instruction in its administration hereof, shall promulgate uniform rules and regulations to carry out the purposes of this section.

Should the legislature revoke any benefits granted under this section, no affected employee shall be entitled thereafter to receive such benefits as a matter of contractual right. [1992 c 234 § 12; 1991 c 92 § 2; 1989 c 69 § 2; 1983 c 275 § 2. Formerly RCW 28A.58.096.]

Intent—Construction—1983 c 275: "This act is intended to effectuate the legislature's intent in the original enactment of chapter 182, Laws of 1980 and constitutes a re adoption of the relevant portions of that law. This act shall be construed as being in effect since June 12, 1980." [1983 c 275 § 5.]

28A.400.212 Employee attendance incentive program—Effect of early retirement. An employee of a school district that has established an attendance incentive program under RCW 28A.400.210 who retires under section 1 or 3, chapter 234, Laws of 1992, section 1 or 3, chapter 86, Laws of 1993, or section 4 or 6, chapter 519, Laws of 1993, shall receive, at the time of his or her separation from school district employment, not less than one-half of the remuneration for accrued leave for illness or injury payable to him or her under the district's incentive program. The school district board of directors may, at its discretion, pay the remainder of such an employee's remuneration for accrued leave for illness or injury after the time of the employee's separation from school district employment, but the employee or the employee's estate is entitled to receive the remainder of the remuneration no later than the date the employee would have been eligible to retire under the provisions of RCW 41.40.180 or 41.32.480 had the employee continued to work for the district until eligible to retire, or three years following the date of the employee's separation from school district employment, whichever occurs first. A district exercising its discretion under this section to pay the remainder of the remuneration after the time of the employee's separation from school district employment shall establish a policy and procedure for paying the remaining remuneration that applies to all affected employees equally and without discrimination. Any remuneration paid shall be based on the number of days of leave the employee had accrued and the compensation the employee received at the time he or she retired under section 1 or 3, chapter 234, Laws of 1992, section 1 or 3, chapter 86, Laws of 1993, or section 4 or 6, chapter 519, Laws of 1993. [1993 c 519 § 14; 1993 c 86 § 8; 1992 c 234 § 13.]

Reviser's note: This section was amended by 1993 c 86 § 8 and by 1993 c 519 § 14, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings not law—1993 c 519: "Part headings as used in this act do not constitute any part of the law." [1993 c 519 § 24.]

Effective date—1993 c 519: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 18, 1993]." [1993 c 519 § 25.]

Effective date—1993 c 86: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 21, 1993]." [1993 c 86 § 9.]

28A.400.220 Employee salary or compensation—Limitations respecting. (1) No school district board of directors or administrators may:

(a) Increase an employee's salary or compensation to include a payment in lieu of providing a fringe benefit; or

(b) Allow any payment to an employee which is partially or fully conditioned on the termination or retirement of the employee, except as provided in subsection (2) of this section.

(2) A school district board of directors may compensate an employee for termination of the employee's contract in accordance with the termination provisions of the contract. If no such provisions exist the compensation must be reasonable based on the proportion of the uncompleted contract. Compensation received under this subsection shall not be included for the purposes of computing a retirement allowance under any public retirement system in this state.

(3) Provisions of any contract in force on March 27, 1982, which conflict with the requirements of this section shall continue in effect until contract expiration. After expiration, any new contract including any renewal, extension, amendment or modification of an existing contract executed between the parties shall be consistent with this section. [1989 c 11 § 5; 1982 1st ex.s. c 10 § 1. Formerly RCW 28A.58.098.]

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

Severability—1982 1st ex.s. c 10: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 10 § 3.]

28A.400.230 Deposit of cumulative total of earnings of group of employees—Authorized—Conditions. Any school district authorized to draw and issue their own warrants may deposit the cumulative total of the net earnings of any group of employees in one or more banks within the state such group or groups may designate, to be credited to the individuals composing such groups, by a single warrant to each bank so designated or by other commercially acceptable methods: PROVIDED, That any such collective authorization shall be made in writing by a minimum of twenty-five employees or ten percent of the employees, whichever is less. [1973 c 111 § 5. Formerly RCW 28A.58.730.]

Severability—1973 c 111: See note following RCW 28A.330.230.

28A.400.240 Deferred compensation plan for district employees—Limitations. In addition to any other powers and duties, any school district may contract with any classified or certificated employee to defer a portion of that employee's income, which deferred portion shall in no event exceed the appropriate internal revenue service exclusion allowance for such plans, and shall subsequently with the consent of the employee, deposit or invest in a credit union, savings and loan association, bank, mutual savings bank, or purchase life insurance, shares of an investment company, or a fixed and/or variable annuity contract, for the purpose of funding a deferred compensation program for the employee, from any life underwriter or registered representative duly licensed by this state who represents an insurance company or an investment company licensed to contract business in this state. In no event shall the total investments or pay-

ments, and the employee's nondeferred income for any year exceed the total annual salary, or compensation under the existing salary schedule or classification plan applicable to such employee in such year. Any income deferred under such a plan shall continue to be included as regular compensation, for the purpose of computing the retirement and pension benefits earned by any employee, but any sum so deducted shall not be included in the computation of any taxes withheld on behalf of any such employee. [1975 1st ex.s. c 205 § 1; 1974 ex.s. c 11 § 1. Formerly RCW 28A.58.740.]

28A.400.250 Tax deferred annuities. The board of directors of any school district, the Washington state teachers' retirement system, the superintendent of public instruction, and educational service district superintendents are authorized to provide and pay for tax deferred annuities for their respective employees in lieu of a portion of salary or wages as authorized under the provisions of 26 U.S.C., section 403(b), as amended by Public Law 87-370, 75 Stat. 796, as now or hereafter amended. The superintendent of public instruction and educational service district superintendents, if eligible, may also be provided with such annuities.

At the request of at least five employees, the employees' employer shall arrange for the purchase of tax deferred annuity contracts which meet the requirements of 26 U.S.C., section 403(b), as now or hereafter amended, for the employees from any company the employees may choose that is authorized to do business in this state through a Washington-licensed insurance agent that the employees may select. Payroll deductions shall be made in accordance with the arrangements for the purpose of paying the entire premium due and to become due under the contracts. Employees' rights under the annuity contract are nonforfeitable except for the failure to pay premiums.

The board of directors of any school district, the Washington state teachers' retirement system, the superintendent of public instruction, and educational service district superintendents shall not restrict, except as provided in this section, employees' right to select the tax deferred annuity of their choice or the agent, broker, or company licensed by the state of Washington through which the tax deferred annuity is placed or purchased, and shall not place limitations on the time or place that the employees make the selection.

The board of directors of any school district, the Washington state teachers' retirement system, the superintendent of public instruction, and educational service district superintendents may each adopt rules regulating the sale of tax deferred annuities which: (1) Prohibit solicitation of employees for the purposes of selling tax deferred annuities on school premises during normal school hours; (2) only permit the solicitation of tax deferred annuities by agents, brokers, and companies licensed by the state of Washington; and (3) require participating companies to execute reasonable agreements protecting the respective employers from any liability attendant to procuring tax deferred annuities. [1984 c 228 § 1; 1975 1st ex.s. c 275 § 113; 1971 c 48 § 31; 1969 c 97 § 2; 1969 ex.s. c 223 § 28A.58.560. Prior: 1965 c 54 § 1, part. Formerly RCW 28A.58.560, 28.02.120, part.]

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.400.260 Pension benefits or annuity benefits for certain classifications of employees—Procedure. Notwithstanding any other provision of law, any school district shall have the authority to provide for all employees within an employment classification pension benefits or annuity benefits as may already be established and in effect by other employers of a similar classification of employees, and payment therefor may be made by making contributions to such pension plans or funds already established and in effect by the other employers and in which the school district is permitted to participate for such particular classifications of its employees by the trustees or other persons responsible for the administration of such established plans or funds.

Notwithstanding provisions of RCW 41.40.023(4), the coverage under such private plan shall not exclude such employees from simultaneous coverage under the Washington public employees' retirement system. [1972 ex.s. c 27 § 1. Formerly RCW 28A.58.565.]

28A.400.270 Employee benefit—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28A.400.275 and 28A.400.280.

(1) "School district employee benefit plan" means the overall plan used by the district for distributing fringe benefit subsidies to employees, including the method of determining employee coverage and the amount of employer contributions, as well as the characteristics of benefit providers and the specific benefits or coverage offered. It shall not include coverage offered to district employees for which there is no contribution from public funds.

(2) "Fringe benefit" does not include liability coverage, old-age survivors' insurance, workers' compensation, unemployment compensation, retirement benefits under the Washington state retirement system, or payment for unused leave for illness or injury under RCW 28A.400.210.

(3) "Basic benefits" are determined through local bargaining and are limited to medical, dental, vision, group term life, and group long-term disability insurance coverage.

(4) "Benefit providers" include insurers, third party claims administrators, direct providers of employee fringe benefits, health maintenance organizations, health care service contractors, and the Washington state health care authority or any plan offered by the authority.

(5) "Group term life insurance coverage" means term life insurance coverage provided for, at a minimum, all full-time employees in a bargaining unit or all full-time nonbargaining group employees.

(6) "Group long-term disability insurance coverage" means long-term disability insurance coverage provided for, at a minimum, all full-time employees in a bargaining unit or all full-time nonbargaining group employees. [1990 1st ex.s. c 11 § 4.]

Intent—1990 1st ex.s. c 11: See note following RCW 28A.400.200.

28A.400.275 Employee benefits—Contracts. (1) Any contract for employee benefits executed after April 13, 1990, between a school district and a benefit provider or employee bargaining unit is null and void unless it contains

an agreement to abide by state laws relating to school district employee benefits. The term of the contract may not exceed one year.

(2) School districts shall annually submit to the Washington state health care authority summary descriptions of all benefits offered under the district's employee benefit plan. The districts shall also submit data to the health care authority specifying the total number of employees and, for each employee, types of coverage or benefits received including numbers of covered dependents, the number of eligible dependents, the amount of the district's contribution, additional premium costs paid by the employee through payroll deductions, and the age and sex of the employee and each dependent. The plan descriptions and the data shall be submitted in a format and according to a schedule established by the health care authority.

(3) Any benefit provider offering a benefit plan by contract with a school district under subsection (1) of this section shall agree to make available to the school district the benefit plan descriptions and, where available, the demographic information on plan subscribers that the district is required to report to the Washington state health care authority under this section.

(4) This section shall not apply to benefit plans offered in the 1989-90 school year. [1990 1st ex.s. c 11 § 5.]

Intent—1990 1st ex.s. c 11: See note following RCW 28A.400.200.

28A.400.280 Employee benefits—Employer contributions. (1) Except as provided in subsection (2) of this section, school districts may provide employer fringe benefit contributions after October 1, 1990, only for basic benefits. However, school districts may continue payments under contracts with employees or benefit providers in effect on April 13, 1990, until the contract expires.

(2) School districts may provide employer contributions after October 1, 1990, for optional benefit plans, in addition to basic benefits, only for employees included in pooling arrangements under this subsection. Optional benefit plans may not include employee beneficiary accounts that can be liquidated by the employee on termination of employment. Optional benefit plans may be offered only if:

(a) The school district pools benefit allocations among employees using a pooling arrangement that includes at least one employee bargaining unit and/or all nonbargaining group employees;

(b) Each full-time employee included in the pooling arrangement is offered basic benefits, including coverage for dependents, without a payroll deduction for premium charges;

(c) Each full-time employee included in the pooling arrangement, regardless of the number of dependents receiving basic coverage, receives the same additional employer contribution for other coverage or optional benefits; and

(d) For part-time employees included in the pooling arrangement, participation in optional benefit plans shall be governed by the same eligibility criteria and/or proration of employer contributions used for allocations for basic benefits.

(3) Savings accruing to school districts due to limitations on benefit options under this section shall be pooled

and made available by the districts to reduce out-of-pocket premium expenses for employees needing basic coverage for dependents. School districts are not intended to divert state benefit allocations for other purposes. [1990 1st ex.s. c 11 § 6.]

Intent—1990 1st ex.s. c 11: See note following RCW 28A.400.200.

28A.400.285 Contracts for services previously performed by classified employees. (1) When a school district or educational service district enters into a contract for services that had been previously performed by classified school employees, the contract shall contain a specific clause requiring the contractor to provide for persons performing such services under the contract, health benefits that are similar to those provided for school employees who would otherwise perform the work, but in no case are such health benefits required to be greater than the benefits provided for basic health care services under chapter 70.47 RCW.

(2) Decisions to enter into contracts for services by a school district or educational service district may only be made: (a) After the affected district has conducted a feasibility study determining the potential costs and benefits, including the impact on district employees who would otherwise perform the work, that would result from contracting for the services; (b) after the decision to contract for the services has been reviewed and approved by the superintendent of public instruction; and (c) subject to any applicable requirements for collective bargaining. The factors to be considered in the feasibility study shall be developed in consultation with representatives of the affected employees and may include both long-term and short-term effects of the proposal to contract for services.

(3) This section applies only if the contract would be for services that are being performed by classified school employees as of July 25, 1993.

(4) This section does not apply to:

(a) Temporary, nonongoing, or nonrecurring service contracts; or

(b) Contracts for services previously performed by employees in director/supervisor, professional, and technical positions.

(5) For the purposes of subsection (4) of this section:

(a) "Director/supervisor position" means a position in which an employee directs staff members and manages a function, a program, or a support service.

(b) "Professional position" means a position for which an employee is required to have a high degree of knowledge and skills acquired through a baccalaureate degree or its equivalent.

(c) "Technical position" means a position for which an employee is required to have a combination of knowledge and skills that can be obtained through approximately two years of posthigh school education, such as from a community or technical college, or by on-the-job training. [1993 c 349 § 1.]

HIRING AND DISCHARGE

28A.400.300 Hiring and discharging of employees—Seniority and leave benefits, transfers between school

districts. Every board of directors, unless otherwise specially provided by law, shall:

(1) Employ for not more than one year, and for sufficient cause discharge all certificated and noncertificated employees;

(2) Adopt written policies granting leaves to persons under contracts of employment with the school district(s) in positions requiring either certification or noncertification qualifications, including but not limited to leaves for attendance at official or private institutes and conferences and sabbatical leaves for employees in positions requiring certification qualification, and leaves for illness, injury, bereavement and, emergencies for both certificated and noncertificated employees, and with such compensation as the board of directors prescribe: PROVIDED, That the board of directors shall adopt written policies granting to such persons annual leave with compensation for illness, injury and emergencies as follows:

(a) For such persons under contract with the school district for a full year, at least ten days;

(b) For such persons under contract with the school district as part time employees, at least that portion of ten days as the total number of days contracted for bears to one hundred eighty days;

(c) For certificated and noncertificated employees, annual leave with compensation for illness, injury, and emergencies shall be granted and accrue at a rate not to exceed twelve days per year; provisions of any contract in force on June 12, 1980, which conflict with requirements of this subsection shall continue in effect until contract expiration; after expiration, any new contract executed between the parties shall be consistent with this subsection;

(d) Compensation for leave for illness or injury actually taken shall be the same as the compensation such person would have received had such person not taken the leave provided in this proviso;

(e) Leave provided in this proviso not taken shall accumulate from year to year up to a maximum of one hundred eighty days for the purposes of RCW 28A.400.210 and 28A.400.220, and for leave purposes up to a maximum of the number of contract days agreed to in a given contract, but not greater than one year. Such accumulated time may be taken at any time during the school year or up to twelve days per year may be used for the purpose of payments for unused sick leave.

(f) Sick leave heretofore accumulated under section 1, chapter 195, Laws of 1959 (former RCW 28.58.430) and sick leave accumulated under administrative practice of school districts prior to the effective date of section 1, chapter 195, Laws of 1959 (former RCW 28.58.430) is hereby declared valid, and shall be added to leave for illness or injury accumulated under this proviso;

(g) Any leave for injury or illness accumulated up to a maximum of forty-five days shall be creditable as service rendered for the purpose of determining the time at which an employee is eligible to retire, if such leave is taken it may not be compensated under the provisions of RCW 28A.400.210 and 28A.310.490;

(h) Accumulated leave under this proviso shall be transferred to and from one district to another, the office of superintendent of public instruction and offices of education-

al service district superintendents and boards, to and from such districts and such offices;

(i) Leave accumulated by a person in a district prior to leaving said district may, under rules and regulations of the board, be granted to such person when the person returns to the employment of the district.

When any certificated or classified employee leaves one school district within the state and commences employment with another school district within the state, the employee shall retain the same seniority, leave benefits and other benefits that the employee had in his or her previous position: PROVIDED, That classified employees who transfer between districts after July 28, 1985, shall not retain any seniority rights other than longevity when leaving one school district and beginning employment with another. If the school district to which the person transfers has a different system for computing seniority, leave benefits, and other benefits, then the employee shall be granted the same seniority, leave benefits and other benefits as a person in that district who has similar occupational status and total years of service. [1990 c 33 § 382. Prior: 1985 c 210 § 1; 1985 c 46 § 1; 1983 c 275 § 3. Formerly RCW 28A.58.099.]

Intent—Construction—1983 c 275: See note following RCW 28A.400.210.

28A.400.303 Record checks for employees. School districts, educational service districts, and their contractors hiring employees who will have regularly scheduled unsupervised access to children shall require a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of investigation before hiring an employee. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. The requesting entity shall provide a copy of the record report to the applicant. When necessary, applicants may be employed on a conditional basis pending completion of the investigation. If the applicant has had a record check within the previous two years, the district or contractor may waive the requirement. The district, pursuant to chapter 41.59 or 41.56 RCW, or contractor hiring the employee shall determine who shall pay costs associated with the record check. [1992 c 159 § 2.]

Findings—1992 c 159: "The legislature finds that additional safeguards are necessary to ensure the safety of Washington's school children. The legislature further finds that the results from state patrol record checks are more complete when fingerprints of individuals are provided, and that information from the federal bureau of investigation also is necessary to obtain information on out-of-state criminal records. The legislature further finds that confidentiality safeguards in state law are in place to ensure that the rights of applicants for certification or jobs and newly hired employees are protected." [1992 c 159 § 1.]

28A.400.304 Record checks for employees hired before June 11, 1992—Expiration of section. (1) By June 30, 1997, school districts, educational service districts, and their contractors shall require that all employees who have regularly scheduled unsupervised access to children and were hired before June 11, 1992, undergo a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.838, 10.97.030, and 10.97.050 and through the federal bureau of investigation. The record check shall include a fingerprint check using a

complete Washington state criminal identification fingerprint card. The superintendent of public instruction shall provide a copy of the record report to the employee. Once an employee has a record check as required under this section, additional record checks shall not be required of the employee unless required by other provisions of law.

(2) Employees, school districts, and educational service districts shall not be required by the state patrol or superintendent of public instruction to pay for the record check required in subsection (1) of this section.

(3) The record checks required in this section shall be in process no later than June 30, 1997.

(4) This section expires March 31, 1998. [1996 c 126 § 1.]

Effective date—1996 c 126: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1996]." [1996 c 126 § 7.]

28A.400.3041 Employment decisions regarding classified employees convicted of crimes—Expiration of section. (1) When a record check required under RCW 28A.400.304 indicates that a classified employee has been convicted of a crime, the employer shall consider the following when making employment decisions pertaining to the individual:

(a) The age and maturity of the individual at the time the crime was committed;

(b) The seriousness of the crime and any mitigating factors;

(c) The likelihood that the crime will be repeated;

(d) The proximity in time of the crime;

(e) Evidence that would support good moral character and personal fitness; and

(f) Other appropriate factors.

(2) This section expires March 31, 1998. [1996 c 126 § 3.]

Effective date—1996 c 126: See note following RCW 28A.400.304.

28A.400.3042 Appeal from adverse employment decision based on record check—Expiration of section. (1) Any classified employee or certificated employee dismissed or otherwise adversely affected as a result of a conviction identified in the record check required under RCW 28A.400.304 shall be allowed to appeal under the appropriate statutes, including, but not limited to, RCW 28A.400.320 and 28A.400.340 and chapters 28A.645 and 28A.405 RCW.

(2) This section expires March 31, 1998. [1996 c 126 § 4.]

Effective date—1996 c 126: See note following RCW 28A.400.304.

28A.400.305 Record check information—Access—Rules. The superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW on record check information. The rules shall include, but not be limited to the following:

(1) Written procedures providing a school district employee or applicant for certification or employment access to and review of information obtained based on the record

check required under RCW 28A.400.303 and 28A.400.304; and

(2) Written procedures limiting access to the superintendent of public instruction record check data base to only those individuals processing record check information at the office of the superintendent of public instruction, the appropriate school district or districts, and the appropriate educational service district or districts. [1996 c 126 § 5.]

Effective date—1996 c 126: See note following RCW 28A.400.304.

28A.400.306 Fingerprints accepted by the state patrol—Fingerprints forwarded to the federal bureau of investigation—Conditions. The state patrol shall accept fingerprints obtained under this chapter only if it can ensure that the patrol will not retain a record of the fingerprints after the check is complete. It shall not forward fingerprints obtained under this chapter to the federal bureau of investigation unless it can ensure that the federal bureau of investigation will not retain a record of the fingerprints after the check is complete. [1995 c 335 § 504; 1992 c 159 § 9.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Findings—1992 c 159: See note following RCW 28A.400.303.

28A.400.310 Law against discrimination applicable to districts' employment practices. The provisions of chapter 49.60 RCW as now or hereafter amended shall be applicable to the employment of any certificated or noncertificated employee by any school district organized in this state. [1969 ex.s. c 223 § 28A.02.050. Prior: (i) 1937 c 52 § 1; RRS § 4693-1. Formerly RCW 28.02.050. (ii) 1937 c 52 § 2; RRS § 4693-2. Formerly RCW 28A.02.050, 28.02.051.]

28A.400.315 Employment contracts. Employment contracts entered into between an employer and a superintendent, or administrator as defined in RCW 28A.405.230, under RCW 28A.400.010, 28A.400.300, or 28A.405.210:

(1) Shall end no later than June 30th of the calendar year that the contract expires except that, a contract entered into after June 30th of a given year may expire during that same calendar year; and

(2) Shall not be revised or entered into retroactively. [1990 c 8 § 6.]

Findings—1990 c 8: See note following RCW 41.50.065.

28A.400.320 Crimes against children—Mandatory termination of classified employees—Appeal. (1) The school district board of directors shall immediately terminate the employment of any classified employee who has contact with children during the course of his or her employment upon a guilty plea or conviction of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction.

(2) The employee shall have a right of appeal under chapter 28A.645 RCW including any right of appeal under a collective bargaining agreement. [1990 c 33 § 383; 1989 c 320 § 3. Formerly RCW 28A.58.1001.]

Severability—1989 c 320: See note following RCW 28A.410.090.

Crimes against children—Notification of conviction or guilty plea of school employee: RCW 43.43.845.

28A.400.330 Crimes against children—Contractor employees—Termination of contract. The school district board of directors shall include in any contract for services with an entity or individual other than an employee of the school district a provision requiring the contractor to prohibit any employee of the contractor from working at a public school who has contact with children at a public school during the course of his or her employment and who has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction. The contract shall also contain a provision that any failure to comply with this section shall be grounds for the school district immediately terminating the contract. [1989 c 320 § 4. Formerly RCW 28A.58.1002.]

Severability—1989 c 320: See note following RCW 28A.410.090.

28A.400.340 Notice of discharge to contain notice of right to appeal if available. Any notice of discharge given to a classified or certificated employee, if that employee has a right to appeal the discharge, shall contain notice of that right, notice that a description of the appeal process is available, and how the description of the appeal process may be obtained. [1991 c 102 § 1.]

INSURANCE

28A.400.350 Liability, life, health, health care, accident, disability, and salary insurance authorized—When required—Premiums. (1) The board of directors of any of the state's school districts may make available liability, life, health, health care, accident, disability and salary protection or insurance or any one of, or a combination of the enumerated types of insurance, or any other type of insurance or protection, for the members of the boards of directors, the students, and employees of the school district, and their dependents. Such coverage may be provided by contracts with private carriers, with the state health care authority after July 1, 1990, pursuant to the approval of the authority administrator, or through self-insurance or self-funding pursuant to chapter 48.62 RCW, or in any other manner authorized by law.

(2) Whenever funds are available for these purposes the board of directors of the school district may contribute all or a part of the cost of such protection or insurance for the employees of their respective school districts and their

dependents. The premiums on such liability insurance shall be borne by the school district.

After October 1, 1990, school districts may not contribute to any employee protection or insurance other than liability insurance unless the district's employee benefit plan conforms to RCW 28A.400.275 and 28A.400.280.

(3) For school board members and students, the premiums due on such protection or insurance shall be borne by the assenting school board member or student. The school district may contribute all or part of the costs, including the premiums, of life, health, health care, accident or disability insurance which shall be offered to all students participating in interschool activities on the behalf of or as representative of their school or school district. The school district board of directors may require any student participating in extracurricular interschool activities to, as a condition of participation, document evidence of insurance or purchase insurance that will provide adequate coverage, as determined by the school district board of directors, for medical expenses incurred as a result of injury sustained while participating in the extracurricular activity. In establishing such a requirement, the district shall adopt regulations for waiving or reducing the premiums of such coverage as may be offered through the school district to students participating in extracurricular activities, for those students whose families, by reason of their low income, would have difficulty paying the entire amount of such insurance premiums. The district board shall adopt regulations for waiving or reducing the insurance coverage requirements for low-income students in order to assure such students are not prohibited from participating in extracurricular interschool activities.

(4) All contracts for insurance or protection written to take advantage of the provisions of this section shall provide that the beneficiaries of such contracts may utilize on an equal participation basis the services of those practitioners licensed pursuant to chapters 18.22, 18.25, 18.53, 18.57, and 18.71 RCW. [1995 1st sp.s. c 6 § 18; 1995 c 126 § 1; 1993 c 492 § 226. Prior: 1990 1st ex.s. c 11 § 3; 1990 c 74 § 1; 1988 c 107 § 16; 1985 c 277 § 8; 1977 ex.s. c 255 § 1; 1973 1st ex.s. c 9 § 1; 1971 ex.s. c 269 § 2; 1971 c 8 § 3; 1969 ex.s. c 237 § 3; 1969 ex.s. c 223 § 28A.58.420; prior: 1967 c 135 § 2, part; 1959 c 187 § 1, part. Formerly RCW 28A.58.420, 28.76.410, part.]

Reviser's note: This section was amended by 1995 c 126 § 1 and by 1995 1st sp.s. c 6 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

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

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Intent—1990 1st ex.s. c 11: See note following RCW 28A.400.200.

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

Retrospective application—1985 c 277: See note following RCW 48.01.050.

Severability—1971 ex.s. c 269: "If any provision of this 1971 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 269 § 4.]

Hospitalization and medical insurance authorized: RCW 41.04.180.

Operation of student transportation program responsibility of local district—Scope—Transporting of elderly—Insurance: RCW 28A.160.010.

Retirement allowance deductions for health care benefit plans: RCW 41.04.235.

28A.400.360 Liability insurance for officials and employees authorized. The board of directors of each school district may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 1. Formerly RCW 28A.58.423.]

28A.400.370 Mandatory insurance protection for employees. Notwithstanding any other provision of law, after August 9, 1971 boards of directors of all school districts shall provide their employees with insurance protection covering those employees while engaged in the maintenance of order and discipline and the protection of school personnel and students and the property thereof when that is deemed necessary by such employees. Such insurance protection must include as a minimum, liability insurance covering injury to persons and property, and insurance protecting those employees from loss or damage of their personal property incurred while so engaged. [1971 ex.s. c 269 § 1. Formerly RCW 28A.58.425.]

Severability—1971 ex.s. c 269: See note following RCW 28A.400.350.

28A.400.380 Leave sharing program. Every school district board of directors and educational service district superintendent may, in accordance with RCW 41.04.650 through 41.04.665, establish and administer a leave sharing program for their certificated and noncertificated employees. For employees of school districts and educational service districts, the superintendent of public instruction shall adopt standards: (1) Establishing appropriate parameters for the program which are consistent with the provisions of RCW 41.04.650 through 41.04.665; and (2) establishing procedures to ensure that the program does not significantly increase the cost of providing leave. [1990 c 23 § 4; 1989 c 93 § 6. Formerly RCW 28A.58.0991.]

Severability—1989 c 93: See note following RCW 41.04.650.

28A.400.391 Insurance for retired and disabled employees—Application—Rules. (1) Every group disability insurance policy, health care service contract, health maintenance agreement, and health and welfare benefit plan obtained or created to provide benefits to employees of school districts and their dependents shall contain provisions that permit retired and disabled employees to continue medical, dental, or vision coverage under the group policy, contract, agreement, or plan until September 30, 1993, or until the employee becomes eligible for federal medicare coverage, whichever occurs first. The terms and conditions for election and maintenance of such continued coverage shall conform to the standards established under the federal consolidated omnibus budget reconciliation act of 1985, as amended. The period of continued coverage provided under

this section shall run concurrently with any period of coverage guaranteed under the federal consolidated omnibus budget reconciliation act of 1985, as amended.

(2) This section applies to:

(a) School district employees who retired or lost insurance coverage due to disability after July 28, 1991;

(b) School district employees who retired or lost insurance coverage due to disability within the eighteen-month period ending on July 28, 1991; and

(c) School district employees who retired or lost insurance coverage due to disability prior to January 28, 1990, and who were covered by their employing district's insurance plan on January 1, 1991.

(3) For the purposes of this section "retired employee" means an employee who separates from district service and is eligible at the time of separation from service to receive, immediately following separation from service, a retirement allowance under chapter 41.32 or 41.40 RCW.

(4) The superintendent of public instruction shall adopt administrative rules to implement this section. [1993 c 386 § 2; 1992 c 152 § 1.]

Intent—1993 c 386: "It is the legislature's intent to increase access to health insurance for retired and disabled school employees and also to improve equity between state employees and school employees by providing for the reduction of health insurance premiums charged to retired school employees through a subsidy charged against health insurance allocations for active employees. It is further the legislature's intent to improve the cost-effectiveness of state-purchased health care by managing programs for public employees, in this case retired school employees, through the state health care authority." [1993 c 386 § 1.]

Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16: "Sections 1, 2, 4 through 6, 8 through 10, and 12 through 16 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 386 § 18.]

28A.400.395 Insurance for retired employees and their dependents—Method of payment of premium. A group disability insurance policy, health care service contract, health maintenance agreement, or health and welfare benefit plan that provides benefits to retired school district employees and eligible dependents shall not require the beneficiary to make payment by monthly deduction from the beneficiary's state retirement allowance if the payment exceeds the retirement allowance. In such cases, the payment may be made directly by the individual beneficiary. [1992 c 152 § 3.]

28A.400.400 District contributions to the public employees' and retirees' insurance account.

Reviser's note: RCW 28A.400.400 was amended by 1994 c 153 § 11 without reference to its repeal by 1994 c 153 § 15, effective October 1, 1995. It has been decodified for publication purposes pursuant to RCW 1.12.025.

28A.400.410 Payment to the public employees' and retirees' insurance account. (1) In a manner prescribed by the state health care authority, school districts and educational service districts shall remit to the health care authority for deposit in the public employees' and retirees' insurance account established in RCW 41.05.120 the amount specified for remittance in the omnibus appropriations act.

(2) The remittance requirements specified in this section shall not apply to employees of a school district or educa-

tional service district who receive insurance benefits through contracts with the health care authority. [1995 1st sp.s. c 6 § 1.]

Effective date—1995 1st sp.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 6 § 23.]

**Chapter 28A.405
CERTIFICATED EMPLOYEES**

Sections

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QUALIFICATIONS

28A.405.030 Must teach morality and patriotism.

It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice, temperance, humanity and patriotism; to teach them to avoid idleness, profanity and falsehood; to instruct them in the principles of free government, and to train them up to the true comprehension of the rights, duty and dignity of American citizenship. [1969 ex.s. c 223 § 28A.67.110. Prior: 1909 c 97 p 308 § 8; RRS § 4855; prior: 1897 c 118 § 58; 1890 p 371 § 42; 1886 p 19 § 50; Code 1881 § 3203. Formerly RCW 28A.67.110, 28.67.110.]

28A.405.040 Disqualification for failure to emphasize patriotism. No person, whose certificate or permit authorizing him or her to teach in the common schools of this state has been revoked due to his or her failure to endeavor to impress on the minds of his or her pupils the principles of patriotism, or to train them up to the true comprehension of the rights, duty and dignity of American citizenship, shall be permitted to teach in any common school in this state. [1990 c 33 § 384; 1969 ex.s. c 223 § 28A.67.030. Prior: 1919 c 38 § 2; RRS § 4846. Formerly RCW 28A.67.030, 28.67.030.]

28A.405.050 Noncompliance with RCW 28A.405.040—Penalties. Any person teaching in any school in violation of RCW 28A.405.040, and any school director knowingly permitting any person to teach in any school in violation of RCW 28A.405.040, shall be guilty of a misdemeanor. [1991 c 115 § 1; 1990 c 33 § 385; 1969 ex.s. c 223 § 28A.67.035. Prior: 1919 c 38 § 3; RRS § 4847. Formerly RCW 28A.67.035, 28.67.035, 28.67.120.]

28A.405.060 Course of study and regulations—Enforcement—Withholding salary warrant for failure.

Certificated employees shall faithfully enforce in the common schools the course of study and regulations prescribed, whether regulations of the district, the superintendent of public instruction, or the state board of education, and shall furnish promptly all information relating to the common schools which may be requested by the educational service district superintendent.

Any certificated employee who wilfully refuses or neglects to enforce the course of study or the rules and regulations as above in this section required, shall not be allowed by the directors any warrant for salary due until said person shall have complied with said requirements. [1975 1st ex.s. c 275 § 132; 1971 c 48 § 49; 1969 ex.s. c 223 § 28A.67.060. Prior: (i) 1909 c 97 p 307 § 4; RRS § 4850; prior: 1899 c 142 § 11; 1897 c 118 § 54; 1886 p 18 § 47. Formerly RCW 28.67.060. (ii) 1909 c 97 p 360 § 8; RRS § 5051; prior: 1903 c 156 § 8; 1897 c 118 § 166. Formerly RCW 28A.67.060, 28.87.150.]

28A.405.070 Job sharing. Effective December 31, 1995, school and educational service districts shall have a policy on the sharing of jobs by district employees. [1995 c 335 § 701; 1989 c 206 § 1. Formerly RCW 28A.58.580.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

CRITERIA FOR EVALUATION AND MODEL PROGRAMS

28A.405.100 Minimum criteria for the evaluation of certificated employees, including administrators—Procedure—Scope—Penalty. (1) The superintendent of public instruction shall establish and may amend from time to time minimum criteria for the evaluation of the professional performance capabilities and development of certificated classroom teachers and certificated support personnel. For classroom teachers the criteria shall be developed in the following categories: instructional skill; classroom management, professional preparation and scholarship; effort toward improvement when needed; the handling of student discipline and attendant problems; and interest in teaching pupils and knowledge of subject matter.

Every board of directors shall, in accordance with procedure provided in RCW 41.59.010 through 41.59.170, 41.59.910 and 41.59.920, establish evaluative criteria and procedures for all certificated classroom teachers and certificated support personnel. The evaluative criteria must contain as a minimum the criteria established by the superintendent of public instruction pursuant to this section and must be prepared within six months following adoption of the superintendent of public instruction's minimum criteria. The district must certify to the superintendent of public instruction that evaluative criteria have been so prepared by the district.

Except as provided in subsection (5) of this section, it shall be the responsibility of a principal or his or her designee to evaluate all certificated personnel in his or her school. During each school year all classroom teachers and certificated support personnel, hereinafter referred to as "employees" in this section, shall be observed for the purposes of evaluation at least twice in the performance of

their assigned duties. Total observation time for each employee for each school year shall be not less than sixty minutes. Following each observation, or series of observations, the principal or other evaluator shall promptly document the results of the observation in writing, and shall provide the employee with a copy thereof within three days after such report is prepared. New employees shall be observed at least once for a total observation time of thirty minutes during the first ninety calendar days of their employment period.

Every employee whose work is judged unsatisfactory based on district evaluation criteria shall be notified in writing of stated specific areas of deficiencies along with a suggested specific and reasonable program for improvement on or before February 1st of each year. A probationary period shall be established beginning on or before February 1st and ending no later than May 1st. The purpose of the probationary period is to give the employee opportunity to demonstrate improvements in his or her areas of deficiency. The establishment of the probationary period and the giving of the notice to the employee of deficiency shall be by the school district superintendent and need not be submitted to the board of directors for approval. During the probationary period the evaluator shall meet with the employee at least twice monthly to supervise and make a written evaluation of the progress, if any, made by the employee. The evaluator may authorize one additional certificated employee to evaluate the probationer and to aid the employee in improving his or her areas of deficiency; such additional certificated employee shall be immune from any civil liability that might otherwise be incurred or imposed with regard to the good faith performance of such evaluation. The probationer may be removed from probation if he or she has demonstrated improvement to the satisfaction of the principal in those areas specifically detailed in his or her initial notice of deficiency and subsequently detailed in his or her improvement program. Lack of necessary improvement shall be specifically documented in writing with notification to the probationer and shall constitute grounds for a finding of probable cause under RCW 28A.405.300 or 28A.405.210.

The establishment of a probationary period shall not be deemed to adversely affect the contract status of an employee within the meaning of RCW 28A.405.300.

(2) Every board of directors shall establish evaluative criteria and procedures for all superintendents, principals, and other administrators. It shall be the responsibility of the district superintendent or his or her designee to evaluate all administrators. Such evaluation shall be based on the administrative position job description. Such criteria, when applicable, shall include at least the following categories: Knowledge of, experience in, and training in recognizing good professional performance, capabilities and development; school administration and management; school finance; professional preparation and scholarship; effort toward improvement when needed; interest in pupils, employees, patrons and subjects taught in school; leadership; and ability and performance of evaluation of school personnel.

(3) Each certificated employee shall have the opportunity for confidential conferences with his or her immediate supervisor on no less than two occasions in each school year. Such confidential conference shall have as its sole

purpose the aiding of the administrator in his or her assessment of the employee's professional performance.

(4) The failure of any evaluator to evaluate or supervise or cause the evaluation or supervision of certificated employees or administrators in accordance with this section, as now or hereafter amended, when it is his or her specific assigned or delegated responsibility to do so, shall be sufficient cause for the nonrenewal of any such evaluator's contract under RCW 28A.405.210, or the discharge of such evaluator under RCW 28A.405.300.

(5) After an employee has four years of satisfactory evaluations under subsection (1) of this section, a school district may use a short form of evaluation, a locally bargained evaluation emphasizing professional growth, an evaluation under subsection (1) of this section, or any combination thereof. The short form of evaluation shall include either a thirty minute observation during the school year with a written summary or a final annual written evaluation based on the criteria in subsection (1) of this section and based on at least two observation periods during the school year totaling at least sixty minutes without a written summary of such observations being prepared. However, the evaluation process set forth in subsection (1) of this section shall be followed at least once every three years unless this time is extended by a local school district under the bargaining process set forth in chapter 41.59 RCW. The employee or evaluator may require that the evaluation process set forth in subsection (1) of this section be conducted in any given school year. No evaluation other than the evaluation authorized under subsection (1) of this section may be used as a basis for determining that an employee's work is unsatisfactory under subsection (1) of this section or as probable cause for the nonrenewal of an employee's contract under RCW 28A.405.210 unless an evaluation process developed under chapter 41.59 RCW determines otherwise. [1994 c 115 § 1; 1990 c 33 § 386; 1985 c 420 § 6; 1975-'76 2nd ex.s. c 114 § 3; 1975 1st ex.s. c 288 § 22; 1969 ex.s. c 34 § 22. Formerly RCW 28A.67.065.]

Effective date—1994 c 115: "This act shall take effect September 1, 1994." [1994 c 115 § 2.]

Severability—1985 c 420: See note following RCW 28A.405.110.

Savings—Severability—1975-'76 2nd ex.s. c 114: See notes following RCW 28A.400.010.

Effective date—1975 1st ex.s. c 288: See RCW 41.59.940.

Severability—1975 1st ex.s. c 288: See RCW 41.59.950.

Construction of chapter—Employee's rights preserved: See RCW 41.59.920.

Construction of chapter—Employer's responsibilities and rights preserved: See RCW 41.59.930.

Criteria used for evaluation of staff members to be included in guide: RCW 28A.150.230.

RCW 28A.405.100 not applicable to contract renewal of school superintendent: RCW 28A.400.010.

28A.405.110 Evaluations—Legislative findings. The legislature recognizes the importance of teachers in the educational system. Teachers are the fundamental element in assuring a quality education for the state's and the nation's children. Teachers, through their direct contact with children, have a great impact on the development of the child. The legislature finds that this important role of the

teacher requires an assurance that teachers are as successful as possible in attaining the goal of a well-educated society. The legislature finds, therefore, that the evaluation of those persons seeking to enter the teaching profession is no less important than the evaluation of those persons currently teaching. The evaluation of persons seeking teaching credentials should be strenuous while making accommodations uniquely appropriate to the applicants. Strenuous teacher training and preparation should be complemented by examinations of prospective teachers prior to candidates being granted official certification by the state board of education. Teacher preparation program entrance evaluations, teacher training, teacher preparation program exit examinations, official certification, in-service training, and ongoing evaluations of individual progress and professional growth are all part of developing and maintaining a strong precertification and postcertification professional education system.

The legislature further finds that an evaluation system for teachers has the following elements, goals, and objectives: (1) An evaluation system must be meaningful, helpful, and objective; (2) an evaluation system must encourage improvements in teaching skills, techniques, and abilities by identifying areas needing improvement; (3) an evaluation system must provide a mechanism to make meaningful distinctions among teachers and to acknowledge, recognize, and encourage superior teaching performance; and (4) an evaluation system must encourage respect in the evaluation process by the persons conducting the evaluations and the persons subject to the evaluations through recognizing the importance of objective standards and minimizing subjectivity. [1985 c 420 § 1. Formerly RCW 28A.67.205.]

Contingency—Effective date—1985 c 420: "If specific funding for the purposes of this act, referencing this act by bill number, is not provided by the legislature by July 1, 1987, sections 1 through 5 and 7 through 10 of this act shall be null and void. This act shall be of no effect unless such specific funding is so provided. If such funding is so provided, this act shall take effect when the legislation providing the funding takes effect." [1985 c 420 § 11.]

Reviser's note: (1) 1985 ex.s. c 6 § 501 provides specific funding for the purposes of this act.

(2) 1985 ex.s. c 6 took effect June 27, 1985.

Severability—1985 c 420: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 420 § 12.]

28A.405.120 Training for evaluators. School districts shall require each administrator, each principal, or other supervisory personnel who has responsibility for evaluating classroom teachers to have training in evaluation procedures. [1995 c 335 § 401; 1985 c 420 § 3. Formerly RCW 28A.67.210.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Contingency—Effective date—Severability—1985 c 420: See notes following RCW 28A.405.110.

28A.405.130 Training in evaluation procedures required. No administrator, principal, or other supervisory personnel may evaluate a teacher without having received training in evaluation procedures. [1985 c 420 § 4. Formerly RCW 28A.67.215.]

Effective date—1985 c 420 § 4: "Section 4 of this act shall take effect September 1, 1986." [1985 c 420 § 10.]

Contingency—Effective date—Severability—1985 c 420: See notes following RCW 28A.405.110.

28A.405.140 Assistance for teacher may be required after evaluation. After an evaluation conducted pursuant to RCW 28A.405.100, the principal or the evaluator may require the teacher to take in-service training provided by the district in the area of teaching skills needing improvement, and may require the teacher to have a mentor for purposes of achieving such improvement. [1993 c 336 § 403; 1990 c 33 § 387; 1985 c 420 § 5. Formerly RCW 28A.67.220.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

Contingency—Effective date—Severability—1985 c 420: See notes following RCW 28A.405.110.

CONDITIONS AND CONTRACTS OF EMPLOYMENT

28A.405.200 Annual salary schedules as basis for salaries of certificated employees. Every school district by action of its board of directors shall adopt annual salary schedules and reproduce the same by printing, mimeographing or other reasonable method, which shall be the basis for salaries for all certificated employees in the district. [1969 ex.s. c 283 § 1. Formerly RCW 28A.67.066, 28.67.066.]

Severability—1969 ex.s. c 283: See note following RCW 28A.150.050.

28A.405.210 Conditions and contracts of employment—Determination of probable cause for nonrenewal of contracts—Nonrenewal due to enrollment decline or revenue loss—Notice—Opportunity for hearing. No teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with a school district, hereinafter referred to as "employee", shall be employed except by written order of a majority of the directors of the district at a regular or special meeting thereof, nor unless he or she is the holder of an effective teacher's certificate or other certificate required by law or the state board of education for the position for which the employee is employed.

The board shall make with each employee employed by it a written contract, which shall be in conformity with the laws of this state, and except as otherwise provided by law, limited to a term of not more than one year. Every such contract shall be made in duplicate, one copy to be retained by the school district superintendent or secretary and one copy to be delivered to the employee. No contract shall be offered by any board for the employment of any employee who has previously signed an employment contract for that same term in another school district of the state of Washington unless such employee shall have been released from his or her obligations under such previous contract by the board of directors of the school district to which he or she was obligated. Any contract signed in violation of this provision shall be void.

In the event it is determined that there is probable cause or causes that the employment contract of an employee

should not be renewed by the district for the next ensuing term such employee shall be notified in writing on or before May 15th preceding the commencement of such term of that determination, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 1st, which notification shall specify the cause or causes for nonrenewal of contract. Such determination of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notice shall be served upon the employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chair or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for hearing pursuant to RCW 28A.405.310 to determine whether there is sufficient cause or causes for nonrenewal of contract: PROVIDED, That any employee receiving notice of nonrenewal of contract due to an enrollment decline or loss of revenue may, in his or her request for a hearing, stipulate that initiation of the arrangements for a hearing officer as provided for by RCW 28A.405.310(4) shall occur within ten days following July 15 rather than the day that the employee submits the request for a hearing. If any such notification or opportunity for hearing is not timely given, the employee entitled thereto shall be conclusively presumed to have been reemployed by the district for the next ensuing term upon contractual terms identical with those which would have prevailed if his or her employment had actually been renewed by the board of directors for such ensuing term.

This section shall not be applicable to "provisional employees" as so designated in RCW 28A.405.220; transfer to a subordinate certificated position as that procedure is set forth in RCW 28A.405.230 shall not be construed as a nonrenewal of contract for the purposes of this section. [1996 c 201 § 1; 1990 c 33 § 390. Prior: 1983 c 83 § 1; 1983 c 56 § 11; 1975-'76 2nd ex.s. c 114 § 4; 1975 1st ex.s. c 275 § 133; 1973 c 49 § 2; 1970 ex.s. c 15 § 16; prior: 1969 ex.s. c 176 § 143; 1969 ex.s. c 34 § 12; 1969 ex.s. c 15 § 2; 1969 ex.s. c 223 § 28A.67.070; prior: 1961 c 241 § 1; 1955 c 68 § 3; prior: (i) 1909 c 97 p 307 § 5; 1897 c 118 § 55; 1891 c 127 § 14; 1890 p 369 § 37; 1886 p 18 § 47; Code 1881 § 3200; RRS § 4851. (ii) 1943 c 52 § 1, part; 1941 c 179 § 1, part; 1939 c 131 § 1, part; 1925 ex.s. c 57 § 1, part; 1919 c 89 § 3, part; 1915 c 44 § 1, part; 1909 c 97 p 285 § 2, part; 1907 c 240 § 5, part; 1903 c 104 § 17, part; 1901 c 41 § 3, part; 1897 c 118 § 40, part; 1890 p 364 § 26, part; Rem. Supp. 1943 § 4776, part. Formerly RCW 28A.67.070, 28.67.070.]

Severability—1983 c 56: See note following RCW 28A.195.010.

Savings—Severability—1975-'76 2nd ex.s. c 114: See notes following RCW 28A.400.010.

Severability—1970 ex.s. c 15: See note following RCW 28A.230.160.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

Minimum criteria for the evaluation of certificated employees, including administrators—Procedure—Scope—Penalty: RCW 28A.405.100.

School superintendent—RCW 28A.405.210 not applicable to contract renewal: RCW 28A.400.010.

28A.405.220 Conditions and contracts of employment—Nonrenewal of provisional employees—Notice—Procedure. Notwithstanding the provisions of RCW 28A.405.210, every person employed by a school district in a teaching or other nonsupervisory certificated position shall be subject to nonrenewal of employment contract as provided in this section during the first two years of employment by such district, unless the employee has previously completed at least two years of certificated employment in another school district in the state of Washington, in which case the employee shall be subject to nonrenewal of employment contract pursuant to this section during the first year of employment with the new district. Employees as defined in this section shall hereinafter be referred to as "provisional employees".

In the event the superintendent of the school district determines that the employment contract of any provisional employee should not be renewed by the district for the next ensuing term such provisional employee shall be notified thereof in writing on or before May 15th preceding the commencement of such school term, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 1st, which notification shall state the reason or reasons for such determination. Such notice shall be served upon the provisional employee personally, or by certified or registered mail, or by leaving a copy of the notice at the place of his or her usual abode with some person of suitable age and discretion then resident therein. The determination of the superintendent shall be subject to the evaluation requirements of RCW 28A.405.100.

Every such provisional employee so notified, at his or her request made in writing and filed with the superintendent of the district within ten days after receiving such notice, shall be given the opportunity to meet informally with the superintendent for the purpose of requesting the superintendent to reconsider his or her decision. Such meeting shall be held no later than ten days following the receipt of such request, and the provisional employee shall be given written notice of the date, time and place of meeting at least three days prior thereto. At such meeting the provisional employee shall be given the opportunity to refute any facts upon which the superintendent's determination was based and to make any argument in support of his or her request for reconsideration.

Within ten days following the meeting with the provisional employee, the superintendent shall either reinstate the provisional employee or shall submit to the school district board of directors for consideration at its next regular meeting a written report recommending that the employment contract of the provisional employee be nonrenewed and stating the reason or reasons therefor. A copy of such report shall be delivered to the provisional employee at least three days prior to the scheduled meeting of the board of directors. In taking action upon the recommendation of the superintendent, the board of directors shall consider any written communication which the provisional employee may file with the secretary of the board at any time prior to that meeting.

The board of directors shall notify the provisional employee in writing of its final decision within ten days following the meeting at which the superintendent's rec-

ommendation was considered. The decision of the board of directors to nonrenew the contract of a provisional employee shall be final and not subject to appeal.

This section applies to any person employed by a school district in a teaching or other nonsupervisory certificated position after June 25, 1976. This section provides the exclusive means for nonrenewing the employment contract of a provisional employee and no other provision of law shall be applicable thereto, including, without limitation, RCW 28A.405.210 and chapter 28A.645 RCW. [1996 c 201 § 2; 1992 c 141 § 103; 1990 c 33 § 391; 1975-'76 2nd ex.s. c 114 § 1. Formerly RCW 28A.67.072.]

Effective date—1992 c 141 § 103: "Section 103 of this act shall take effect July 1, 1992." [1992 c 141 § 105.]

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Savings—Severability—1975-'76 2nd ex.s. c 114: See notes following RCW 28A.400.010.

28A.405.230 Conditions and contracts of employment—Transfer of administrator to subordinate certificated position—Notice—Procedure. Any certificated employee of a school district employed as an assistant superintendent, director, principal, assistant principal, coordinator, or in any other supervisory or administrative position, hereinafter in this section referred to as "administrator", shall be subject to transfer, at the expiration of the term of his or her employment contract, to any subordinate certificated position within the school district. "Subordinate certificated position" as used in this section, shall mean any administrative or nonadministrative certificated position for which the annual compensation is less than the position currently held by the administrator.

Every superintendent determining that the best interests of the school district would be served by transferring any administrator to a subordinate certificated position shall notify that administrator in writing on or before May 15th preceding the commencement of such school term of that determination, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 1st, which notification shall state the reason or reasons for the transfer, and shall identify the subordinate certificated position to which the administrator will be transferred. Such notice shall be served upon the administrator personally, or by certified or registered mail, or by leaving a copy of the notice at the place of his or her usual abode with some person of suitable age and discretion then resident therein.

Every such administrator so notified, at his or her request made in writing and filed with the president or chair, or secretary of the board of directors of the district within ten days after receiving such notice, shall be given the opportunity to meet informally with the board of directors in an executive session thereof for the purpose of requesting the board to reconsider the decision of the superintendent. Such board, upon receipt of such request, shall schedule the meeting for no later than the next regularly scheduled meeting of the board, and shall notify the administrator in writing of the date, time and place of the meeting at least three days prior thereto. At such meeting the administrator shall be given the opportunity to refute any facts upon which the determination was based and to make any argument in

support of his or her request for reconsideration. The administrator and the board may invite their respective legal counsel to be present and to participate at the meeting. The board shall notify the administrator in writing of its final decision within ten days following its meeting with the administrator. No appeal to the courts shall lie from the final decision of the board of directors to transfer an administrator to a subordinate certificated position: PROVIDED, That in the case of principals such transfer shall be made at the expiration of the contract year and only during the first three consecutive school years of employment as a principal by a school district; except that if any such principal has been previously employed as a principal by another school district in the state of Washington for three or more consecutive school years the provisions of this section shall apply only to the first full school year of such employment.

This section applies to any person employed as an administrator by a school district on June 25, 1976 and to all persons so employed at any time thereafter. This section provides the exclusive means for transferring an administrator to a subordinate certificated position at the expiration of the term of his or her employment contract. [1996 c 201 § 3; 1990 c 33 § 392; 1975-'76 2nd ex.s. c 114 § 9. Formerly RCW 28A.67.073.]

Savings—Severability—1975-'76 2nd ex.s. c 114: See notes following RCW 28A.400.010.

28A.405.240 Conditions and contracts of employment—Supplemental contracts, when—Continuing contract provisions not applicable to. No certificated employee shall be required to perform duties not described in the contract unless a new or supplemental contract is made, except that in an unexpected emergency the board of directors or school district administration may require the employee to perform other reasonable duties on a temporary basis.

No supplemental contract shall be subject to the continuing contract provisions of this title. [1990 c 33 § 393; 1985 c 341 § 15; 1969 ex.s. c 283 § 2. Formerly RCW 28A.67.074, 28.67.074.]

Severability—1969 ex.s. c 283: See note following RCW 28A.150.050.

RCW 28A.405.240 not applicable to contract renewal of school superintendent: RCW 28A.400.010.

28A.405.250 Certificated employees, applicants for certificated position, not to be discriminated against—Right to inspect personnel file. The board of directors of any school district, its employees or agents shall not discriminate in any way against any applicant for a certificated position or any certificated employee

- (1) On account of his or her membership in any lawful organization, or
- (2) For the orderly exercise during off-school hours of any rights guaranteed under the law to citizens generally, or
- (3) For family relationship, except where covered by chapter 42.23 RCW.

The school district personnel file on any certificated employee in the possession of the district, its employees, or agents shall not be withheld at any time from the inspection of that employee. [1990 c 33 § 394; 1969 ex.s. c 34 § 21. Formerly RCW 28A.58.445.]

HIRING AND DISCHARGE

28A.405.300 Adverse change in contract status of certificated employee—Determination of probable cause—Notice—Opportunity for hearing. In the event it is determined that there is probable cause or causes for a teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with the school district, hereinafter referred to as "employee", to be discharged or otherwise adversely affected in his or her contract status, such employee shall be notified in writing of that decision, which notification shall specify the probable cause or causes for such action. Such determinations of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notices shall be served upon that employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chair of the board or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for a hearing pursuant to RCW 28A.405.310 to determine whether or not there is sufficient cause or causes for his or her discharge or other adverse action against his or her contract status.

In the event any such notice or opportunity for hearing is not timely given, or in the event cause for discharge or other adverse action is not established by a preponderance of the evidence at the hearing, such employee shall not be discharged or otherwise adversely affected in his or her contract status for the causes stated in the original notice for the duration of his or her contract.

If such employee does not request a hearing as provided herein, such employee may be discharged or otherwise adversely affected as provided in the notice served upon the employee.

Transfer to a subordinate certificated position as that procedure is set forth in RCW 28A.405.230 shall not be construed as a discharge or other adverse action against contract status for the purposes of this section. [1990 c 33 § 395; 1975-'76 2nd ex.s. c 114 § 2; 1973 c 49 § 1; 1969 ex.s. c 34 § 13; 1969 ex.s. c 223 § 28A.58.450. Prior: 1961 c 241 § 2. Formerly RCW 28A.58.450, 28.58.450.]

Savings—Severability—1975-'76 2nd ex.s. c 114: See notes following RCW 28A.400.010.

Minimum criteria for the evaluation of certificated employees, including administrators—Procedure—Scope—Penalty: RCW 28A.405.100.

RCW 28A.405.300 not applicable to contract renewal of school superintendent: RCW 28A.400.010.

Transfer of administrator to subordinate certificated position—Procedure: RCW 28A.405.230.

28A.405.310 Adverse change in contract status of certificated employee, including nonrenewal of contract—Hearings—Procedure. (1) Any employee receiving a notice of probable cause for discharge or adverse effect in contract status pursuant to RCW 28A.405.300, or any

employee, with the exception of provisional employees as defined in RCW 28A.405.220, receiving a notice of probable cause for nonrenewal of contract pursuant to RCW 28A.405.210, shall be granted the opportunity for a hearing pursuant to this section.

(2) In any request for a hearing pursuant to RCW 28A.405.300 or 28A.405.210, the employee may request either an open or closed hearing. The hearing shall be open or closed as requested by the employee, but if the employee fails to make such a request, the hearing officer may determine whether the hearing shall be open or closed.

(3) The employee may engage counsel who shall be entitled to represent the employee at the prehearing conference held pursuant to subsection (5) of this section and at all subsequent proceedings pursuant to this section. At the hearing provided for by this section, the employee may produce such witnesses as he or she may desire.

(4) In the event that an employee requests a hearing pursuant to RCW 28A.405.300 or 28A.405.210, a hearing officer shall be appointed in the following manner: Within fifteen days following the receipt of any such request the board of directors of the district or its designee and the employee or employee's designee shall each appoint one nominee. The two nominees shall jointly appoint a hearing officer who shall be a member in good standing of the Washington state bar association or a person adhering to the arbitration standards established by the public employment relations commission and listed on its current roster of arbitrators. Should said nominees fail to agree as to who should be appointed as the hearing officer, either the board of directors or the employee, upon appropriate notice to the other party, may apply to the presiding judge of the superior court for the county in which the district is located for the appointment of such hearing officer, whereupon such presiding judge shall have the duty to appoint a hearing officer who shall, in the judgment of such presiding judge, be qualified to fairly and impartially discharge his or her duties. Nothing herein shall preclude the board of directors and the employee from stipulating as to the identity of the hearing officer in which event the foregoing procedures for the selection of the hearing officer shall be inapplicable. The district shall pay all fees and expenses of any hearing officer selected pursuant to this subsection.

(5) Within five days following the selection of a hearing officer pursuant to subsection (4) of this section, the hearing officer shall schedule a prehearing conference to be held within such five day period, unless the board of directors and employee agree on another date convenient with the hearing officer. The employee shall be given written notice of the date, time, and place of such prehearing conference at least three days prior to the date established for such conference.

(6) The hearing officer shall preside at any prehearing conference scheduled pursuant to subsection (5) of this section and in connection therewith shall:

(a) Issue such subpoenas or subpoenas duces tecum as either party may request at that time or thereafter; and

(b) Authorize the taking of prehearing depositions at the request of either party at that time or thereafter; and

(c) Provide for such additional methods of discovery as may be authorized by the civil rules applicable in the superior courts of the state of Washington; and

(d) Establish the date for the commencement of the hearing, to be within ten days following the date of the prehearing conference, unless the employee requests a continuance, in which event the hearing officer shall give due consideration to such request.

(7) The hearing officer shall preside at any hearing and in connection therewith shall:

(a) Make rulings as to the admissibility of evidence pursuant to the rules of evidence applicable in the superior court of the state of Washington.

(b) Make other appropriate rulings of law and procedure.

(c) Within ten days following the conclusion of the hearing transmit in writing to the board and to the employee, findings of fact and conclusions of law and final decision. If the final decision is in favor of the employee, the employee shall be restored to his or her employment position and shall be awarded reasonable attorneys' fees.

(8) Any final decision by the hearing officer to nonrenew the employment contract of the employee, or to discharge the employee, or to take other action adverse to the employee's contract status, as the case may be, shall be based solely upon the cause or causes specified in the notice of probable cause to the employee and shall be established by a preponderance of the evidence at the hearing to be sufficient cause or causes for such action.

(9) All subpoenas and prehearing discovery orders shall be enforceable by and subject to the contempt and other equity powers of the superior court of the county in which the school district is located upon petition of any aggrieved party.

(10) A complete record shall be made of the hearing and all orders and rulings of the hearing officer and school board. [1990 c 33 § 396; 1987 c 375 § 1; 1977 ex.s. c 7 § 1; 1975-'76 2nd ex.s. c 114 § 5. Formerly RCW 28A.58.455.]

Severability—1977 ex.s. c 7: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 7 § 2.]

Savings—Severability—1975-'76 2nd ex.s. c 114: See notes following RCW 28A.400.010.

28A.405.320 Adverse change in contract status of certificated employee, including nonrenewal of contract—Appeal from—Notice—Service—Filing—Contents. Any teacher, principal, supervisor, superintendent, or other certificated employee, desiring to appeal from any action or failure to act upon the part of a school board relating to the discharge or other action adversely affecting his or her contract status, or failure to renew that employee's contract for the next ensuing term, within thirty days after his or her receipt of such decision or order, may serve upon the chair of the school board and file with the clerk of the superior court in the county in which the school district is located a notice of appeal which shall set forth also in a clear and concise manner the errors complained of. [1990 c 33 § 397; 1969 ex.s. c 34 § 14; 1969 ex.s. c 223 § 28A.58.460. Prior: 1961 c 241 § 3. Formerly RCW 28A.58.460, 28.58.460.]

RCW 28A.405.320 not applicable to contract renewal of school superintendent: RCW 28A.400.010.

28A.405.330 Adverse change in contract status of certificated employee, including nonrenewal of contract—Appeal from—Certification and filing with court of transcript. The clerk of the superior court, within ten days of receipt of the notice of appeal shall notify in writing the chair of the school board of the taking of the appeal, and within twenty days thereafter the school board shall at its expense file the complete transcript of the evidence and the papers and exhibits relating to the decision complained of, all properly certified to be correct. [1990 c 33 § 398; 1969 ex.s. c 223 § 28A.58.470. Prior: 1961 c 241 § 4. Formerly RCW 28A.58.470, 28.58.470.]

RCW 28A.405.330 not applicable to contract renewal of school superintendent: RCW 28A.400.010.

28A.405.340 Adverse change in contract status of certificated employee, including nonrenewal of contract—Appeal from—Scope. Any appeal to the superior court by an employee shall be heard by the superior court without a jury. Such appeal shall be heard expeditiously. The superior court's review shall be confined to the verbatim transcript of the hearing and the papers and exhibits admitted into evidence at the hearing, except that in cases of alleged irregularities in procedure not shown in the transcript or exhibits and in cases of alleged abridgment of the employee's constitutional free speech rights, the court may take additional testimony on the alleged procedural irregularities or abridgment of free speech rights. The court shall hear oral argument and receive written briefs offered by the parties.

The court may affirm the decision of the board or hearing officer or remand the case for further proceedings; or it may reverse the decision if the substantial rights of the employee may have been prejudiced because the decision was:

- (1) In violation of constitutional provisions; or
- (2) In excess of the statutory authority or jurisdiction of the board or hearing officer; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order; or
- (6) Arbitrary or capricious. [1975-'76 2nd ex.s. c 114 § 6; 1969 ex.s. c 34 § 15; 1969 ex.s. c 223 § 28A.58.480. Prior: 1961 c 241 § 5. Formerly RCW 28A.58.480, 28.58.480.]

Savings—Severability—1975-'76 2nd ex.s. c 114: See notes following RCW 28A.400.010.

RCW 28A.405.340 not applicable to contract renewal of school superintendent: RCW 28A.400.010.

28A.405.350 Adverse change in contract status of certificated employee, including nonrenewal of contract—Appeal from—Costs, attorney's fee and damages. If the court enters judgment for the employee, and if the court finds that the probable cause determination was made in bad faith or upon insufficient legal grounds, the court in its discretion may award to the employee a reasonable attorneys' fee for the preparation and trial of his or her appeal, together with his or her taxable costs in the superior court. If the court enters judgment for the employee, in

addition to ordering the school board to reinstate or issue a new contract to the employee, the court may award damages for loss of compensation incurred by the employee by reason of the action of the school district. [1990 c 33 § 399; 1975-'76 2nd ex.s. c 114 § 7; 1969 ex.s. c 34 § 16; 1969 ex.s. c 223 § 28A.58.490. Prior: 1961 c 241 § 6. Formerly RCW 28A.58.490, 28.58.490.]

Savings—Severability—1975-'76 2nd ex.s. c 114: See notes following RCW 28A.400.010.

RCW 28A.405.350 not applicable to contract renewal of school superintendent: RCW 28A.400.010.

28A.405.360 Adverse change in contract status of certificated employee, including nonrenewal of contract—Appellate review. Either party to the proceedings in the superior court may seek appellate review of the decision as any other civil action. [1988 c 202 § 26; 1971 c 81 § 71; 1969 ex.s. c 223 § 28A.58.500. Prior: 1961 c 241 § 7. Formerly RCW 28A.58.500, 28.58.500.]

Severability—1988 c 202: See note following RCW 2.24.050.

RCW 28A.405.360 not applicable to contract renewal of school superintendent: RCW 28A.400.010.

28A.405.370 Adverse change in contract status of certificated employee, including nonrenewal of contract—Appeal from—Other statutes not applicable. The provisions of chapter 28A.645 RCW shall not be applicable to RCW 28A.405.300 through 28A.405.360. [1990 c 33 § 400; 1969 ex.s. c 223 § 28A.58.510. Prior: 1961 c 241 § 8. Formerly RCW 28A.58.510, 28.58.510.]

RCW 28A.405.370 not applicable to contract renewal of school superintendent: RCW 28A.400.010.

28A.405.380 Adverse change in contract status of certificated employee, including nonrenewal of contract—Appeal from—Direct judicial appeal, when. In the event that an employee, with the exception of a provisional employee as defined in RCW 28A.405.220, receives a notice of probable cause pursuant to RCW 28A.405.300 or 28A.405.210 stating that by reason of a lack of sufficient funds or loss of levy election the employment contract of such employee should not be renewed for the next ensuing school term or that the same should be adversely affected, the employee may appeal any said probable cause determination directly to the superior court of the county in which the school district is located. Such appeal shall be perfected by serving upon the secretary of the school board and filing with the clerk of the superior court a notice of appeal within ten days after receiving the probable cause notice. The notice of appeal shall set forth in a clear and concise manner the action appealed from. The superior court shall determine whether or not there was sufficient cause for the action as specified in the probable cause notice, which cause must be proven by a preponderance of the evidence, and shall base its determination solely upon the cause or causes stated in the notice of the employee. The appeal provided in this section shall be tried as an ordinary civil action: PROVIDED, That the board of directors' determination of priorities for the expenditure of funds shall be subject to superior court review pursuant to the standards set forth in RCW 28A.405.340: PROVIDED FURTHER, That the provisions

of RCW 28A.405.350 and 28A.405.360 shall be applicable thereto. [1990 c 33 § 401; 1975-'76 2nd ex.s. c 114 § 8; 1973 c 49 § 3; 1969 ex.s. c 34 § 18. Formerly RCW 28A.58.515.]

Savings—Severability—1975-'76 2nd ex.s. c 114: See notes following RCW 28A.400.010.

RCW 28A.405.380 not applicable to contract renewal of school superintendent: RCW 28A.400.010.

SALARY AND COMPENSATION

28A.405.400 Payroll deductions authorized for employees. In addition to other deductions permitted by law, any person authorized to disburse funds in payment of salaries or wages to employees of school districts, upon written request of at least ten percent of the employees, shall make deductions as they authorize, subject to the limitations of district equipment or personnel. Any person authorized to disburse funds shall not be required to make other deductions for employees if fewer than ten percent of the employees make the request for the same payee. Moneys so deducted shall be paid or applied monthly by the school district for the purposes specified by the employee. The employer may not derive any financial benefit from such deductions. A deduction authorized before July 28, 1991, shall be subject to the law in effect at the time the deduction was authorized. [1991 c 116 § 18; 1972 ex.s. c 39 § 1. Formerly RCW 28A.67.095.]

28A.405.410 Payroll deductions authorized for certificated employees—Savings. Nothing in RCW 28A.405.400 shall be construed to annul or modify any lawful agreement heretofore entered into between any school district and any representative of its employees or other existing lawful agreements and obligations in effect on May 23, 1972. [1990 c 33 § 402; 1972 ex.s. c 39 § 2. Formerly RCW 28A.67.096.]

MISCELLANEOUS PROVISIONS

28A.405.460 Lunch period for certificated employees. All certificated employees of school districts shall be allowed a reasonable lunch period of not less than thirty continuous minutes per day during the regular school lunch periods and during which they shall have no assigned duties: PROVIDED, That local districts may work out other arrangements with the consent of all affected parties. [1995 c 335 § 702; 1991 c 116 § 15; 1969 ex.s. c 223 § 28A.58.275. Prior: 1965 c 18 § 1. Formerly RCW 28A.58.275, 28.58.275.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

28A.405.465 Use of noncertificated personnel to supervise in noninstructional activities. Any school district may employ noncertificated personnel to supervise school children in noninstructional activities, and in instructional activities while under the supervision of a certificated employee. [1991 c 116 § 16.]

TERMINATION OF CERTIFICATED STAFF

28A.405.470 Crimes against children—Mandatory termination of certified employees—Appeal. The school district shall immediately terminate the employment of any person whose certificate or permit authorized under chapter 28A.405 or 28A.410 RCW is subject to revocation under RCW 28A.410.090(2) upon a guilty plea or conviction of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction. Employment shall remain terminated unless the employee successfully prevails on appeal. This section shall only apply to employees holding a certificate or permit who have contact with children during the course of their employment. [1990 c 33 § 405; 1989 c 320 § 5. Formerly RCW 28A.58.1003.]

Severability—1989 c 320: See note following RCW 28A.410.090.

28A.405.900 Certain certificated employees exempt from chapter provisions. Certificated employees subject to the provisions of RCW *28A.405.010 through 28A.405.240, 28A.405.400 through 28A.405.410, 28A.415.250, and 28A.405.900 shall not include those certificated employees hired to replace certificated employees who have been granted sabbatical, regular, or other leave by school districts.

It is not the intention of the legislature that this section apply to any regularly hired certificated employee or that the legal or constitutional rights of such employee be limited, abridged, or abrogated. [1990 c 33 § 404; 1972 ex.s. c 142 § 3. Formerly RCW 28A.67.900.]

***Reviser's note:** RCW 28A.405.010 was recodified as RCW 28A.410.025 pursuant to 1995 c 335 § 305.

**Chapter 28A.410
CERTIFICATION**

Sections	
28A.410.010	Certification—State board duty—Rules and regulations—Record check—Superintendent of public instruction as administrator.
28A.410.013	Teacher assessment for certification—Study—Report to the legislature.
28A.410.020	Requirements for admission to teacher preparation programs—Rules.
28A.410.025	Qualifications—Certificate or permit required.
28A.410.032	Qualifications—Teachers of visually impaired—Rules.
28A.410.035	Qualifications—Coursework on issues of abuse.
28A.410.040	Initial-level certificates.
28A.410.050	Baccalaureate and masters degree equivalency requirements for vocational instructors—Rules.
28A.410.060	Fee for certification—Disposition.
28A.410.070	Registration of certificates.
28A.410.080	School year—For certification or qualification purposes.
28A.410.090	Revocation or suspension of certificate or permit to teach—Investigation by superintendent of public

	instruction—Mandatory revocation for crimes against children.
28A.410.095	Violation or noncompliance—Investigatory powers of superintendent of public instruction—Court orders—Contempt.
28A.410.100	Revocation of authority to teach—Hearings and appeals.
28A.410.105	Certificate or permit suspension—Nonpayment or default on educational loan or scholarship.
28A.410.110	Limitation on reinstatement after revocation—Reinstatement prohibited for crimes against children.
28A.410.120	Professional certification not to be required of superintendents, deputy or assistant superintendents.

28A.410.010 Certification—State board duty—Rules and regulations—Record check—Superintendent of public instruction as administrator. The state board of education shall establish, publish, and enforce rules and regulations determining eligibility for and certification of personnel employed in the common schools of this state, including certification for emergency or temporary, substitute or provisional duty and under such certificates or permits as the board shall deem proper or as otherwise prescribed by law. The rules shall require that the initial application for certification shall require a record check of the applicant through the Washington state patrol criminal identification system and through the federal bureau of investigation at the applicant's expense. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. The superintendent of public instruction may waive the record check for any applicant who has had a record check within the two years before application.

In establishing rules pertaining to the qualifications of instructors of American sign language the state board shall consult with the national association of the deaf, "sign instructors guidance network" (s.i.g.n.), and the Washington state association of the deaf for evaluation and certification of sign language instructors.

The superintendent of public instruction shall act as the administrator of any such rules and regulations and have the power to issue any certificates or permits and revoke the same in accordance with board rules and regulations. [1992 c 159 § 3; 1992 c 60 § 2. Prior: 1988 c 172 § 3; 1988 c 97 § 1; 1987 c 486 § 8; 1975-'76 2nd ex.s. c 92 § 2; 1969 ex.s. c 223 § 28A.70.005. Formerly RCW 28A.70.005.]

Reviser's note: This section was amended by 1992 c 60 § 2 and by 1992 c 159 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—1992 c 159: See note following RCW 28A.400.303.

Severability—1988 c 97: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 97 § 3.]

Severability—1975-'76 2nd ex.s. c 92: See note following RCW 28A.305.130.

28A.410.013 Teacher assessment for certification—Study—Report to the legislature. Not later than January 1, 1997, the state board of education shall study, report, and make recommendations to the legislature on the following issues regarding teacher assessment for initial or residency certification:

(1) How an individual assessment would be linked to state board-adopted, performance-based program approval standards;

(2) How an individual assessment would be linked to the performance-based public education system under RCW 28A.630.885; and

(3) Whether, in lieu of requiring the assessment for initial or residency certification, the assessment should be required as a diagnostic tool and the results used for professional growth purposes while the teacher holds the residency certificate.

In conducting this study, the state board shall take into consideration any recommendations from the board's professional education advisory committee and the Washington advisory council for professional teaching standards.

Any recommendation to implement a teacher assessment system, including funding support, must be approved by the legislature before such implementation occurs. [1995 c 222 § 1.]

28A.410.020 Requirements for admission to teacher preparation programs—Rules. (1) No person may be admitted to a professional teacher preparation program within Washington state without first demonstrating by one of the following options that he or she is competent in the basic skills required for oral and written communication, reading, and computation:

(a) Successful completion of an examination in the basic skills required for oral and written communication, reading, and computation; or

(b) Completion of a baccalaureate degree program; or

(c) Completion of a graduate degree program; or

(d) Completion of two or more years of college level course work and demonstrated basic skills competency through college level course work and a written essay; or

(e) Earning a combined score of more than the state-wide median score for the prior school year scored by all persons taking tests of general achievement selected by the state board of education.

(2) The state board of education shall adopt rules to implement this section. [1996 c 309 § 1; 1991 c 116 § 20; 1988 c 251 § 4; 1987 c 525 § 202. Formerly RCW 28A.04.122.]

Intent—1987 c 525 §§ 201-233: "The legislature intends to enhance the education of the state's youth by improving the quality of teaching. The legislature intends to establish a framework for teacher and principal preparation programs and to recognize teaching as a profession.

The legislature finds that the quality of teacher preparation programs is enhanced when a planned, sequenced approach is used that provides for the application of practice to academic course work.

The legislature supports better integration of the elements of teacher preparation programs including knowledge of subject matter, teaching methods, and actual teaching experiences.

The legislature finds that establishing: (1) A teaching internship program; (2) a post-baccalaureate program resulting in a masters degree; (3) stronger requirements for earning principal credentials; and (4) a review of the preparation standards for school principals and educational staff associates are appropriate next steps in enhancing the quality of educational personnel in Washington." [1987 c 525 § 201.]

Short title—1987 c 525 §§ 202-233: "Sections 202 through 233 of this act shall be known as the professional educator excellence act of 1987." [1987 c 525 § 234.] For codification of sections 202 through 233, [1987 c 525], see Codification Tables, Volume 0.

28A.410.025 Qualifications—Certificate or permit required. No person shall be accounted as a qualified teacher within the meaning of the school law who is not the holder of a valid teacher's certificate or permit issued by lawful authority of this state. [1969 ex.s. c 223 § 28A.67.010. Prior: 1909 c 97 p 306 § 1; RRS § 4844; prior: 1907 c 240 § 6; 1897 c 118 § 51; 1891 c 127 § 14; 1890 p 369 § 37; 1886 p 18 § 47; 1873 p 430 § 15. Formerly RCW 28A.405.010, 28A.67.010, 28.67.010.]

28A.410.032 Qualifications—Teachers of visually impaired—Rules. Teachers of visually impaired students shall be qualified according to rules adopted by the state board of education. [1996 c 135 § 4.]

Reviser's note: 1996 c 135 directed that this section be added to chapter 28A.405 RCW. However, the code reviser has determined that it is more appropriate to codify this section as part of chapter 28A.410 RCW.

Findings—1996 c 135: See note following RCW 28A.155.105.

28A.410.035 Qualifications—Coursework on issues of abuse. To receive initial certification as a teacher in this state after August 31, 1991, an applicant shall have successfully completed a course on issues of abuse. The content of the course shall discuss the identification of physical, emotional, sexual, and substance abuse, information on the impact of abuse on the behavior and learning abilities of students, discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are the victims of abuse, and methods for teaching students about abuse of all types and their prevention. [1990 c 90 § 1. Formerly RCW 28A.405.025.]

28A.410.040 Initial-level certificates. The state board of education shall adopt rules providing that, except as provided in this section, all individuals qualifying for an initial-level teaching certificate after August 31, 1992, shall possess a baccalaureate degree in the arts, sciences, and/or humanities and have fulfilled the requirements for teacher certification pursuant to RCW 28A.305.130 (1) and (2). However, candidates for grades preschool through eight certificates shall have fulfilled the requirements for a major as part of their baccalaureate degree. If the major is in early childhood education, elementary education, or special education, the candidate must have at least thirty quarter hours or twenty semester hours in one academic field. [1992 c 141 § 101; 1990 c 33 § 406. Prior: 1989 c 402 § 1; 1989 c 29 § 1; 1987 c 525 § 212. Formerly RCW 28A.70.040.]

Findings—1992 c 141: "The legislature finds that the educational needs of students when they leave the public school system has [have] increased dramatically in the past two decades. If young people are to prosper in our democracy and if our nation is to grow economically, it is imperative that the overall level of learning achieved by students be significantly increased.

To achieve this higher level of learning, the legislature finds that the state of Washington needs to develop a performance-based school system. Instead of maintaining burdensome state accountability laws and rules that dictate educational offerings, the state needs to hold schools accountable for their performance based on what their students learn.

The legislature further finds moving toward a performance-based accountability system will require repealing state laws and rules that inhibit the freedom of school boards and professional educators to carry out their work, and also will require that significantly more decisions be made at the school district and school building levels. In addition, it will be necessary to set high expectations for students, to identify what is expected of all

students, and to develop a rigorous academic assessment system to determine if these expectations have been achieved.

The legislature further finds that the governor's council on education reform and funding will, by December 1992, identify broad student learning goals. Subject to decisions made by the 1993 legislature, the legislature finds that it is critical that an organization be established to continue the council's work in identifying necessary student skills and knowledge, to develop student assessment and school accountability systems, and to take other steps necessary to develop a performance-based education system.

The legislature further finds that there is a need for high quality professional development as the state implements a performance-based system. Professional development must be available to schools and school districts to maintain quality control and to assure access to proven research on effective teaching." [1992 c 141 § 1.]

Part Headings—1992 c 141: "Part headings as used in this act constitute no part of the law." [1992 c 141 § 601.]

Severability—1992 c 141: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 141 § 602.]

Intent—Short title—1987 c 525 §§ 202-233: See notes following RCW 28A.410.020.

Severability—1987 c 525: See note following RCW 28A.300.050.

28A.410.050 Baccalaureate and masters degree equivalency requirements for vocational instructors—Rules. The state board of education shall develop and adopt rules establishing baccalaureate and masters degree equivalency standards for vocational instructors performing instructional duties and acquiring certification after August 31, 1992. [1992 c 141 § 102; 1989 c 29 § 2; 1987 c 525 § 215. Formerly RCW 28A.70.042.]

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

Intent—Short title—1987 c 525 §§ 202-233: See notes following RCW 28A.410.020.

Severability—1987 c 525: See note following RCW 28A.300.050.

28A.410.060 Fee for certification—Disposition. The fee for any certificate, or any renewal thereof, issued by the authority of the state of Washington, and authorizing the holder to teach or perform other professional duties in the public schools of the state shall be not less than one dollar or such reasonable fee therefor as the state board of education by rule or regulation shall deem necessary therefor. The fee must accompany the application and cannot be refunded unless the application is withdrawn before it is finally considered. The educational service district superintendent, or other official authorized to receive such fee, shall within thirty days transmit the same to the treasurer of the county in which the office of the educational service district superintendent is located, to be by him or her placed to the credit of said school district or educational service district: PROVIDED, That if any school district collecting fees for the certification of professional staff does not hold a professional training institute separate from the educational service district then all such moneys shall be placed to the credit of the educational service district.

Such fees shall be used solely for the purpose of precertification professional preparation, program evaluation, and professional in-service training programs in accord with rules and regulations of the state board of education herein authorized. [1990 c 33 § 407; 1975-'76 2nd ex.s. c 92 § 3; 1975-'76 2nd ex.s. c 15 § 17. Prior: 1975 1st ex.s. c 275 § 134; 1975 1st ex.s. c 192 § 1; 1969 ex.s. c 176 § 144;

1969 ex.s. c 223 § 28A.70.110; prior: 1965 c 139 § 20; 1909 c 97 p 336 § 3; RRS § 4968; prior: 1897 c 118 § 142. Formerly RCW 28A.70.110, 28.70.110, 28.70.120.]

Severability—1975-'76 2nd ex.s. c 92: See note following RCW 28A.305.130.

Severability—1975 1st ex.s. c 192: "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 192 § 3.]

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.410.070 Registration of certificates. All certificates issued by the superintendent of public instruction shall be valid and entitle the holder thereof to employment in any school district of the state upon being registered by the school district if designated to do so by the school district, which fact shall be evidenced on the certificate in the words, "Registered for use in district," together with the date of registry, and an official signature of the person registering the same: PROVIDED, That a copy of the original certificate duly certified by the superintendent of public instruction may be used for the purpose of registry and endorsement in lieu of the original. [1983 c 56 § 12; 1975-'76 2nd ex.s. c 92 § 4; 1975 1st ex.s. c 275 § 135; 1971 c 48 § 50; 1969 ex.s. c 223 § 28A.70.130. Prior: 1909 c 97 p 338 § 11; RRS § 4976; prior: 1897 c 118 § 147. Formerly RCW 28A.70.130, 28.70.130.]

Severability—1983 c 56: See note following RCW 28A.195.010.

Severability—1975-'76 2nd ex.s. c 92: See note following RCW 28A.305.130.

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.410.080 School year—For certification or qualification purposes. The school year for all matters pertaining to teacher certification or for computing experience in teaching shall consist of not fewer than one hundred eighty school days. [1969 ex.s. c 223 § 28A.01.025. Prior: 1909 c 97 p 262 § 3, part; RRS § 4687, part; prior: 1903 c 104 § 22, part. Formerly RCW 28A.01.025, 28.01.010, part.]

28A.410.090 Revocation or suspension of certificate or permit to teach—Investigation by superintendent of public instruction—Mandatory revocation for crimes against children. (1) Any certificate or permit authorized under the provisions of this chapter, chapter 28A.405 RCW, or rules promulgated thereunder may be revoked or suspended by the authority authorized to grant the same based upon a criminal records report authorized by law, or upon the complaint of any school district superintendent, educational service district superintendent, or private school administrator for immorality, violation of written contract, unprofessional conduct, intemperance, or crime against the law of the state.

If the superintendent of public instruction has reasonable cause to believe that an alleged violation of this chapter or rules adopted under it has occurred, but no complaint has been filed pursuant to this chapter, and that a school district superintendent, educational service district superintendent, or private school administrator has sufficient notice of the alleged violation and opportunity to file a complaint, the su-

perintendent of public instruction may cause an investigation to be made of the alleged violation, together with such other matters that may be disclosed in the course of the investigation related to certificated personnel.

(2) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be revoked by the authority authorized to grant the certificate upon a guilty plea or the conviction of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (excepting motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction. The person whose certificate is in question shall be given an opportunity to be heard. Mandatory permanent revocation upon a guilty plea or the conviction of felony crimes specified under this subsection shall apply to such convictions or guilty pleas which occur after July 23, 1989. Revocation of any certificate or permit authorized under this chapter or chapter 28A.405 RCW for a guilty plea or criminal conviction occurring prior to July 23, 1989, shall be subject to the provisions of subsection (1) of this section. [1996 c 126 § 2; 1992 c 159 § 4; 1990 c 33 § 408; 1989 c 320 § 1; 1975 1st ex.s. c 275 § 137; 1974 ex.s. c 55 § 2; 1971 c 48 § 51; 1969 ex.s. c 223 § 28A.70.160. Prior: 1909 c 97 p 345 § 1; RRS § 4992; prior: 1897 c 118 § 148. Formerly RCW 28A.70.160, 28.70.160.]

Effective date—1996 c 126: See note following RCW 28A.400.304.

Findings—1992 c 159: See note following RCW 28A.400.303.

Severability—1989 c 320: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 320 § 7.]

Severability—1971 c 48: See note following RCW 28A.305.040.

Crimes against children—Notification of conviction or guilty plea of school employee: RCW 43.43.845.

28A.410.095 Violation or noncompliance—Investigatory powers of superintendent of public instruction—Court orders—Contempt. (1) The superintendent of public instruction may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with this chapter or any rules adopted under it. For the purpose of any investigation or proceeding under this chapter, the superintendent or any officer designated by the superintendent may administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the superintendent deems relevant and material to the inquiry.

(2) If any person fails to obey a subpoena or obeys a subpoena but refuses to give evidence, any court of competent jurisdiction, upon application by the superintendent, may issue to that person an order requiring him or her to appear before the court and to show cause why he or she should not be compelled to obey the subpoena, and give evidence

material to the matter under investigation. The failure to obey an order of the court may be punishable as contempt. [1992 c 159 § 5.]

Findings—1992 c 159: See note following RCW 28A.400.303.

28A.410.100 Revocation of authority to teach—Hearings and appeals. Any teacher whose certificate to teach has been questioned under RCW 28A.410.090 shall have a right to be heard by the issuing authority before his or her certificate is revoked. Any teacher whose certificate to teach has been revoked shall have a right of appeal to the state board of education if notice of appeal is given by written affidavit to the board within thirty days after the certificate is revoked.

An appeal to the state board of education within the time specified shall operate as a stay of revocation proceedings until the next regular or special meeting of said board and until the board's decision has been rendered. [1992 c 159 § 6; 1990 c 33 § 409; 1975 1st ex.s. c 275 § 138; 1971 c 48 § 52; 1969 ex.s. c 223 § 28A.70.170. Prior: 1909 c 97 p 346 § 3; RRS § 4994. Formerly RCW 28A.70.170, 28.70.170.]

Findings—1992 c 159: See note following RCW 28A.400.303.

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.410.105 Certificate or permit suspension—Nonpayment or default on educational loan or scholarship. The authorizing authority shall suspend the certificate or permit of any person who has been certified by a lending agency and reported to the authorizing authority for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's certificate or permit shall not be reissued until the person provides the authorizing authority a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for certification or permit during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the authorizing authority may impose. [1996 c 293 § 27.]

Severability—1996 c 293: See note following RCW 18.04.420.

28A.410.110 Limitation on reinstatement after revocation—Reinstatement prohibited for crimes against children. In case any certificate or permit authorized under this chapter or chapter 28A.405 RCW is revoked, the holder shall not be eligible to receive another certificate or permit for a period of twelve months after the date of revocation. However, if the certificate or permit authorized under this chapter or chapter 28A.405 RCW was revoked because of a guilty plea or the conviction of a felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter

9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction, the certificate or permit shall not be reinstated. [1990 c 33 § 410; 1989 c 320 § 2; 1969 ex.s. c 223 § 28A.70.180. Prior: 1909 c 97 p 346 § 2; RRS § 4993. Formerly RCW 28A.70.180, 28.70.180.]

Severability—1989 c 320: See note following RCW 28A.410.090.

28A.410.120 Professional certification not to be required of superintendents, deputy or assistant superintendents. Notwithstanding any other provision of this title, the state board of education or superintendent of public instruction shall not require any professional certification or other qualifications of any person elected superintendent of a local school district by that district's board of directors, or any person hired in any manner to fill a position designated as, or which is, in fact, deputy superintendent, or assistant superintendent. [1990 c 33 § 411; 1975 1st ex.s. c 254 § 3. Formerly RCW 28A.02.260.]

Severability—1975 1st ex.s. c 254: "If any provision of this 1975 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 254 § 4.]

Chapter 28A.415

INSTITUTES, WORKSHOPS, AND TRAINING

(Formerly: Teachers' institutes, workshops, and other in-service training)

Sections

- 28A.415.010 Center for improvement of teaching—Improvement of teaching coordinating council—Teachers' institutes and workshops.
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- 28A.415.025 Internship clock hours—Rules.
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28A.415.010 Center for improvement of teaching—Improvement of teaching coordinating council—Teachers' institutes and workshops. It shall be the responsibility of each educational service district board to

establish a center for the improvement of teaching. The center shall administer, coordinate, and act as fiscal agent for such programs related to the recruitment and training of certificated and classified K-12 education personnel as may be delegated to the center by the superintendent of public instruction under RCW 28A.310.470, or the state board of education under RCW 28A.310.480. To assist in these activities, each educational service district board shall establish an improvement of teaching coordinating council to include, at a minimum, representatives as specified in RCW 28A.415.040. An existing in-service training task force, established pursuant to RCW 28A.415.040, may serve as the improvement of teaching coordinating council. The educational service district board shall ensure coordination of programs established pursuant to RCW 28A.415.030, 28A.410.060, and 28A.415.250.

The educational service district board may arrange each year for the holding of one or more teachers' institutes and/or workshops for professional staff preparation and in-service training in such manner and at such time as the board believes will be of benefit to the teachers and other professional staff of school districts within the educational service district and shall comply with rules and regulations of the state board of education pursuant to RCW 28A.410.060 or the superintendent of public instruction or state board of education pursuant to RCW 28A.415.250. The board may provide such additional means of teacher and other professional staff preparation and in-service training as it may deem necessary or appropriate and there shall be a proper charge against the educational service district general expense fund when approved by the educational service district board.

Educational service district boards of contiguous educational service districts, by mutual arrangements, may hold joint institutes and/or workshops, the expenses to be shared in proportion to the numbers of certificated personnel as shown by the last annual reports of the educational service districts holding such joint institutes or workshops.

In local school districts employing more than one hundred teachers and other professional staff, the school district superintendent may hold a teachers' institute of one or more days in such district, said institute when so held by the school district superintendent to be in all respects governed by the provisions of this title and state board of education rules and regulations relating to teachers' institutes held by educational service district superintendents. [1991 c 285 § 1; 1990 c 33 § 414; 1975-'76 2nd ex.s. c 15 § 18. Prior: 1975 1st ex.s. c 275 § 139; 1975 1st ex.s. c 192 § 2; 1971 ex.s. c 282 § 31; 1969 ex.s. c 176 § 146; 1969 ex.s. c 223 § 28A.71.100; prior: 1965 c 139 § 21. Formerly RCW 28A.71.100, 28.71.100.]

Severability—1975 1st ex.s. c 192: See note following RCW 28A.410.060.

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

Transitional bilingual instruction program—In-service training: RCW 28A.180.040(4).

28A.415.020 Credit on salary schedule for approved in-service training, continuing education, and internship.

(1) Certificated personnel shall receive for each ten clock hours of approved in-service training attended the equivalent of a one credit college quarter course on the salary schedule developed by the legislative evaluation and accountability program committee.

(2) Certificated personnel shall receive for each ten clock hours of approved continuing education earned, as continuing education is defined by rule adopted by the state board of education, the equivalent of a one credit college quarter course on the salary schedule developed by the legislative evaluation and accountability program committee.

(3) Certificated personnel shall receive for each forty clock hours of participation in an approved internship with a business, an industry, or government, as an internship is defined by rule of the state board of education in accordance with RCW 28A.415.025, the equivalent of a one credit college quarter course on the salary schedule developed by the legislative evaluation and accountability program committee.

(4) An approved in-service training program shall be a program approved by a school district board of directors, which meet standards adopted by the state board of education, and the development of said program has been participated in by an in-service training task force whose membership is the same as provided under RCW 28A.415.040, or a program offered by an education agency approved to provide in-service for the purposes of continuing education as provided for under rules adopted by the state board of education, or both.

(5) Clock hours eligible for application to the salary schedule developed by the legislative evaluation and accountability program committee as described in subsections (1) and (2) of this section, shall be those hours acquired after August 31, 1987. Clock hours eligible for application to the salary schedule as described in subsection (3) of this section shall be those hours acquired after December 31, 1995. [1995 c 284 § 2; 1990 c 33 § 415; 1987 c 519 § 1. Formerly RCW 28A.71.110.]

Findings—1995 c 284: "The legislature finds that if students are to succeed in an increasingly competitive economy, they will need to be taught by teachers who are aware of the technological innovations and changes that are occurring throughout business, industry, and government. Having teachers who are more aware of these changes will lead to improvements in curriculum and instruction, thereby making public schools more relevant to the future career and personal needs of our students." [1995 c 284 § 1.]

Evaluation—1995 c 284: "The legislative office on performance audit and fiscal analysis shall conduct an evaluation, by December 15, 1997, of internship credits granted to teachers to advance on the salary schedule as provided in RCW 28A.415.020. This evaluation shall compare the efficacy of internship, in-service, and academic credits as recognized in the state salary allocation schedule in the omnibus appropriations act, in improving teacher effectiveness and productivity." [1995 c 284 § 4.]

28A.415.025 Internship clock hours—Rules. The state board of education shall establish rules for awarding clock hours for participation of certificated personnel in internships with business, industry, or government. To receive clock hours for an internship, the individual must demonstrate that the internship will provide beneficial skills and knowledge in an area directly related to his or her current assignment, or to his or her assignment for the following school year. An individual may not receive more than the equivalent of two college quarter credits for internships during a calendar-year period. The total number

of credits for internships that an individual may earn to advance on the salary schedule developed by the legislative evaluation and accountability program committee or its successor agency is limited to the equivalent of fifteen college quarter credits. [1995 c 284 § 3.]

Findings—1995 c 284: See note following RCW 28A.415.020.

28A.415.030 In-Service Training Act of 1977—

Purpose. In order to provide for the improvement of the instructional process in the public schools and maintain and improve the skills of public school certificated and classified personnel, there is hereby adopted an act to be known as the "In-Service Training Act of 1977". [1977 ex.s. c 189 § 1. Formerly RCW 28A.71.200.]

Severability—1977 ex.s. c 189: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 189 § 4.]

28A.415.040 In-Service Training Act of 1977—

Administration of funds—Rules—Requirements for local districts—In-service training task force. The superintendent of public instruction is hereby empowered to administer funds now or hereafter appropriated for the conduct of in-service training programs for public school certificated and classified personnel and to supervise the conduct of such programs. The superintendent of public instruction shall adopt rules in accordance with chapter 34.05 RCW that provide for the allocation of such funds to public school district or educational service district applicants on such conditions and for such training programs as he or she deems to be in the best interest of the public school system: PROVIDED, That each district requesting such funds shall have:

(1) Conducted a district needs assessment, including plans developed at the building level, to be reviewed and updated at least every two years, of certificated and classified personnel to determine identified strengths and weakness of personnel that would be strengthened by such in-service training program;

(2) Demonstrate that the plans are consistent with the goals of basic education;

(3) Established an in-service training task force and demonstrated to the superintendent of public instruction that the task force has participated in identifying in-service training needs and goals; and

(4) Demonstrated to the superintendent of public instruction its intention to implement the recommendations of the needs assessment and thereafter the progress it has made in providing in-service training as identified in the needs assessment.

The task force required by this section shall be composed of representatives from the ranks of administrators, building principals, teachers, classified and support personnel employed by the applicant school district or educational service district, from the public, and from an institution(s) of higher education, in such numbers as shall be established by the school district board of directors or educational service district board of directors. [1987 c 525 § 301; 1985 c 214 § 1; 1979 c 149 § 10; 1977 ex.s. c 189 § 2. Formerly RCW 28A.71.210.]

Severability—1987 c 525: See note following RCW 28A.630.100.

(1996 Ed.)

Severability—1979 c 149: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 149 § 11.]

Severability—1977 ex.s. c 189: See note following RCW 28A.300.050.

28A.415.060 Credits for educational staff associates to fulfill continuing education requirements. The state board of education rules for continuing education shall provide that educational staff associates may use credits or clock hours that satisfy the continuing education requirements for their state professional licensure, if any, to fulfill the continuing education requirements established by the state board of education. [1991 c 155 § 1.]

28A.415.100 Student teaching centers—Legislative recognition—Intent. (1) The legislature recognizes that:

(a) Strong teacher preparation programs are vital to the success of the state's entire education system;

(b) Clinical field experiences, particularly student teaching, are critical to the developmental preparation of teacher candidates and to the success of teacher preparation programs;

(c) Schools, school districts, educational service districts, and institutions of higher education benefit mutually from cooperative relationships that provide teacher candidates with appropriate, necessary, and successful student teaching experiences that establish continuity between the theory and practice of teaching;

(d) Positive student teaching experiences result from the careful match between cooperating teachers and student teachers;

(e) Teacher candidates should have student teaching opportunities and other field experiences that are reflective of the diversity existing among schools and school districts state-wide; and

(f) School districts state-wide should have access to student teachers.

(2) Therefore, in support of quality, professional, research-based training of prospective teachers, it is the intent of the legislature to continue its support of evolving partnerships among schools, school districts, educational service districts, community colleges, and colleges and universities, that are:

(a) Benefiting the teaching profession;

(b) Enhancing the ability of all new teachers to assume initial teaching responsibilities with greater confidence and a higher level of training;

(c) Providing important and positive mentoring opportunities for experienced teachers; and

(d) Strengthening cooperation and communication between the precollegiate and collegiate sectors of the state education system. [1991 c 258 § 1.]

28A.415.105 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28A.415.125 through 28A.415.140.

(1) "Cooperating organizations" means that at least one school district, one college or university, and one educational service district are involved jointly with the development of a student teaching center.

(2) "Cooperating teacher" means a teacher who holds a continuing certificate and supervises and coaches a student teacher.

(3) "Field experience" means opportunities for observation, tutoring, microteaching, extended practicums, and clinical and laboratory experiences which do not fall within the meaning of student teaching.

(4) "School setting" means a classroom in a public, common school in the state of Washington.

(5) "Student teacher" means a candidate for initial teacher certification who is in a state board of education-approved, or regionally or nationally accredited teacher preparation program in a school setting as part of the field-based component of their preparation program.

(6) "Student teaching" means the full quarter or semester in a school setting during which the student teacher observes the cooperating teacher, participates in instructional activities, and assumes both part-time and full-time teaching responsibilities under the supervision of the cooperating teacher.

(7) "Student teaching center" means the program established to provide student teachers in a geographic region of the state with special support and training as part of their teacher preparation program.

(8) "Supervisor or university supervisor" means the regular or adjunct faculty member, or college or university-approved designee, who assists and supervises the work of cooperating teachers and student teachers. [1995 c 335 § 403; 1991 c 258 § 2.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

28A.415.125 Network of student teaching centers. The state board of education, from appropriated funds, shall establish a network of student teaching centers to support the continuing development of the field-based component of teacher preparation programs. The purpose of the training centers is to:

(1) Expand opportunities for student teacher placements in school districts state-wide, with an emphasis on those populations and locations that are unserved or underserved;

(2) Provide cooperating teachers for all student teachers during their student internship for up to two academic quarters;

(3) Enhance the student teaching component of teacher preparation programs, including a placement of student teachers in special education and multi-ethnic school settings; and

(4) Expand access to each other and opportunities for collaboration in teacher education between colleges and universities and school districts. [1991 c 258 § 6.]

28A.415.130 Allocation of funds for student teaching centers. Funds for the student teaching centers shall be allocated by the superintendent of public instruction among the educational service district regions on the basis of student teaching placements. The fiscal agent for each center shall be either an educational service district or a state institution of higher education. Prospective fiscal agents shall document to the state board of education the following information:

(1) The existing or proposed center was developed jointly through a process including participation by at least one school district, one college or university, and one educational service district;

(2) Primary administration for each center shall be the responsibility of one or more of the cooperating organizations;

(3) Assurance that the training center program provides appropriate and necessary training in observation, supervision, and assistance skills and techniques for:

(a) Cooperating teachers;

(b) Other school building personnel; and

(c) School district employees. [1991 c 258 § 7.]

28A.415.135 Alternative means of teacher placement. The student teaching centers shall be an alternative means of placing teachers into school districts throughout the state. Nothing in RCW 28A.415.100 through 28A.415.140 or 28A.415.250 precludes a higher education institution that is not a participant in a training center from placing student teachers into a district that may be participating formally with other institutions in a student teaching center program, or placing student teachers into districts pursuant to an agreement between the institution and district. [1991 c 258 § 8.]

28A.415.140 Field experiences. Field experiences may be provided through a student teaching center. The cost of providing such experiences and opportunities shall be the sole responsibility of the participants cooperating in the operation of the center. [1991 c 258 § 9.]

28A.415.145 Rules. The state board of education and the superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW to carry out the purposes of RCW 28A.415.100 through 28A.415.140. [1991 c 258 § 10.]

28A.415.200 Minority teacher recruitment program—Intent. The legislature finds that it is important to have a teaching force that reflects the rich diversity of the students served in the public schools. The legislature further finds that certain groups, as characterized by ethnic background, are traditionally underrepresented in the teaching profession in the state of Washington and that the ethnic diversity of the student population in the state of Washington is increasing. The legislature intends to increase the number of people from underrepresented groups entering our teaching force. [1989 c 146 § 1. Formerly RCW 28A.305.260, 28A.67.250.]

28A.415.205 Minority teacher recruitment program. (1) The Washington state minority teacher recruitment program is established. The program shall be administered by the state board of education. The state board of education shall consult with the higher education coordinating board, representatives of institutions of higher education, education organizations having an interest in teacher recruitment issues, the superintendent of public instruction, the state board for community and technical colleges, the department of employment security, and the work force

training and education coordinating board. The program shall be designed to recruit future teachers from students in the targeted groups who are in the ninth through twelfth grades and from adults in the targeted groups who have entered other occupations.

(2) The program shall include the following:

(a) Encouraging students in targeted groups in grades nine through twelve to acquire the academic and related skills necessary to prepare for the study of teaching at an institution of higher education;

(b) Promoting teaching career opportunities to develop an awareness of opportunities in the education profession;

(c) Providing opportunities for students to experience the application of regular high school course work to activities related to a teaching career; and

(d) Providing for increased cooperation among institutions of higher education including community colleges, the superintendent of public instruction, the state board of education, and local school districts in working toward the goals of the program. [1991 c 238 § 75; 1989 c 146 § 2. Formerly RCW 28A.305.270, 28A.67.260.]

Effective dates—Severability—1991 c 238: See RCW 28B.50.917 and 28B.50.918.

28A.415.250 Teacher assistance program—Provision for mentor teachers. The superintendent of public instruction shall adopt rules to establish and operate a teacher assistance program. For the purposes of this section, the terms "mentor teachers," "beginning teachers," and "experienced teachers" may include any person possessing any one of the various certificates issued by the superintendent of public instruction under RCW 28A.410.010. The program shall provide for:

(1) Assistance by mentor teachers who will provide a source of continuing and sustained support to beginning teachers, or experienced teachers who are having difficulties, or both, both in and outside the classroom. A mentor teacher may not be involved in evaluations under RCW 28A.405.100 of a teacher who receives assistance from said mentor teacher under the teacher assistance program established under this section. The mentor teachers shall also periodically inform their principals respecting the contents of training sessions and other program activities;

(2) Stipends for mentor teachers and beginning and experienced teachers which shall not be deemed compensation for the purposes of salary lid compliance under RCW 28A.400.200: PROVIDED, That stipends shall not be subject to the continuing contract provisions of this title;

(3) Workshops for the training of mentor and beginning teachers;

(4) The use of substitutes to give mentor teachers, beginning teachers, and experienced teachers opportunities to jointly observe and evaluate teaching situations and to give mentor teachers opportunities to observe and assist beginning and experienced teachers in the classroom;

(5) Mentor teachers who are superior teachers based on their evaluations, pursuant to RCW *28A.405.010 through 28A.405.240, and who hold valid continuing certificates;

(6) Mentor teachers shall be selected by the district and may serve as mentors up to and including full time. If a bargaining unit, certified pursuant to RCW 41.59.090 exists within the district, classroom teachers representing the

bargaining unit shall participate in the mentor teacher selection process; and

(7) Periodic consultation by the superintendent of public instruction or the superintendent's designee with representatives of educational organizations and associations, including educational service districts and public and private institutions of higher education, for the purposes of improving communication and cooperation and program review. [1993 c 336 § 401; 1991 c 116 § 19; 1990 c 33 § 403; 1987 c 507 § 1; 1985 c 399 § 1. Formerly RCW 28A.405.450, 28A.67.240.]

***Reviser's note:** RCW 28A.405.010 was recodified as RCW 28A.410.025 pursuant to 1995 c 335 § 305.

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

Effective date—1987 c 507: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 15, 1987." [1987 c 507 § 4.]

28A.415.260 Pilot program using full-time mentor teachers. (1) To the extent specific funds are appropriated for the pilot program in this section, the superintendent of public instruction shall establish a pilot program to support the pairing of full-time mentor teachers with experienced teachers who are having difficulties and full-time mentor teachers with beginning teachers under RCW 28A.415.250.

(2) The superintendent of public instruction shall submit a report to the legislature by December 31, 1995, with findings about the pilot program. The report shall include an analysis of the effectiveness of the pilot program in the remediation of teachers having difficulties, recommendations regarding continuing the program, and recommendations on new procedures under chapter 28A.405 RCW regarding teachers who have not shown sufficient progress in the area or areas of teaching skills needing improvement.

(3) The superintendent of public instruction shall appoint an oversight committee, which shall include teachers and administrators from the pilot districts, that shall be involved in the evaluation of the pilot program under this section.

(4) The superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW to implement the pilot program established under subsection (1) of this section. [1993 c 336 § 402.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

28A.415.270 Principal internship support program. (1) To the extent funds are appropriated, the Washington state principal internship support program is created beginning in the 1994-95 school year. The purpose of the program is to provide funds to school districts to provide partial release time for district employees who are in a principal preparation program to complete an internship with a mentor principal. Funds may be used in a variety of ways to accommodate flexible implementation in releasing the intern to meet program requirements.

(2) Participants in the principal internship support program shall be selected as follows:

(a) The candidate shall be enrolled in a state board-approved school principal preparation program;

(b) The candidate shall apply in writing to his or her local school district;

(c) Each school district shall determine which applicants meet its criteria for participation in the principal internship support program and shall notify its educational service district of the school district's selected applicants. When submitting the names of applicants, the school district shall identify a mentor principal for each principal intern applicant, and shall agree to provide the internship applicant release time not to exceed the equivalent of forty-five student days by means of this funding source; and

(d) Educational service districts, with the assistance of an advisory board, shall select internship participants.

(3) The maximum amount of state funding for each internship shall not exceed the actual daily rate cost of providing a substitute teacher for the equivalent of forty-five school days.

(4) Funds appropriated for the principal internship support program shall be allocated by the superintendent of public instruction to the educational service districts based on the percentage of full-time equivalent public school students enrolled in school districts in each educational service district. If it is not possible to find qualified candidates within the educational service district, the positions remain unfilled, and any unspent funds shall revert to the superintendent of public instruction for supplementary direct disbursement.

The superintendent of public instruction shall allocate any remaining unfilled positions and unspent funds among the educational service districts that have qualified candidates but not enough positions for them.

This subsection does not preclude the superintendent of public instruction from permitting the affected educational service districts to make the supplementary selections.

(5) Once principal internship participants have been selected, the educational service districts shall allocate the funds to the appropriate school districts. The funds shall be used to pay for partial release time while the school district employee is completing the principal internship.

(6) Educational service districts may be reimbursed for costs associated with implementing the program. Reimbursement rates shall be determined by the superintendent of public instruction. [1996 c 233 § 1; 1993 c 336 § 404.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

28A.415.280 Superintendent and program administrator internship support program. (1) To the extent funds are appropriated, the Washington state superintendent and program administrator internship support program is created beginning in the 1994-95 school year. The purpose of the program is to provide funds to school districts to provide partial release time for district employees who are in a superintendent or program administrator preparation program to complete an internship with a mentor administrator. Funds may be used in a variety of ways to accommodate flexible implementation in releasing the intern to meet program requirements.

(2) Participants in the superintendent and program administrator internship support program shall be selected as follows:

(a) The candidate shall be enrolled in a state board-approved school district superintendent or program administrator preparation program;

(b) The candidate shall apply in writing to his or her local school district;

(c) Each school district shall determine which applicants meet its criteria for participation in the internship support program and shall notify its educational service district of the school district's selected applicants. When submitting the names of applicants, the school district shall identify a mentor administrator for each intern applicant and shall agree to provide the internship applicant release time not to exceed the equivalent of forty-five student days by means of this funding source; and

(d) Educational service districts, with the assistance of an advisory board, shall select internship participants.

(3)(a) The maximum amount of state funding for each internship shall not exceed the actual daily rate cost of providing a substitute teacher for the equivalent of forty-five school days.

(b) Funds appropriated for the internship support program shall be allocated by the superintendent of public instruction to the educational service districts based on the percentage of full-time equivalent public school students enrolled in school districts in each educational service district.

(c) Once internship participants have been selected, the educational service districts shall allocate the funds to the appropriate school districts. The funds shall be used to pay for partial release time while the school district employee is completing the internship.

(d) If an educational service district has unfilled superintendent or program administrator internship positions, the positions and unspent funds shall revert to the superintendent of public instruction for supplementary direct disbursement among the educational service districts.

The superintendent of public instruction shall allocate any remaining unfilled positions and unspent funds among the educational service districts that have qualified candidates but not enough positions for them.

This subsection does not preclude the superintendent of public instruction from permitting the affected educational service districts to make the supplementary selections.

(e) Educational service districts may be reimbursed for costs associated with implementing the program. Reimbursement rates shall be determined by the superintendent of public instruction. [1996 c 233 § 2; 1993 c 336 § 405.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

28A.415.300 Rules. The superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW to administer the principal and superintendent and program administrator internship support programs. [1993 c 336 § 407.]

Reviser's note: 1993 c 336 directed that this section be added to chapter 28A.300 RCW. This section has been codified in chapter 28A.415 RCW, which relates more directly to educators' training.

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

28A.415.310 Paraprofessional training program.

(1) The paraprofessional training program is created. The primary purpose of the program is to provide training for classroom assistants to assist them in helping students achieve the student learning goals under RCW 28A.150.210. Another purpose of the program is to provide training to certificated personnel who work with classroom assistants.

(2) The superintendent of public instruction may allocate funds, to the extent funds are appropriated for this program, to educational service districts, school districts, and other organizations for providing the training in subsection (1) of this section. [1993 c 336 § 408.]

Reviser's note: 1993 c 336 directed that this section be added to chapter 28A.300 RCW. This section has been codified in chapter 28A.415 RCW, which relates more directly to educators' training.

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

Chapter 28A.500

LOCAL EFFORT ASSISTANCE

Sections

28A.500.010 Local assistance funds—Definitions—Allocation.

28A.500.010 Local assistance funds—Definitions—

Allocation. (1) Commencing with taxes assessed in 1988 to be collected in calendar year 1989 and thereafter, in addition to a school district's other general fund allocations, each eligible district shall be provided local effort assistance funds as provided in this section. Such funds are not part of the district's basic education allocation. For the first distribution of local effort assistance funds provided under this section in calendar year 1989, state funds may be prorated according to the formula in this section.

(2) (a) "Prior tax collection year" shall mean the year immediately preceding the year in which the local effort assistance shall be allocated.

(b) The "state-wide average ten percent levy rate" shall mean ten percent of the total levy bases as defined in RCW 84.52.0531(4) summed for all school districts, and divided by the total assessed valuation for excess levy purposes in the prior tax collection year for all districts as adjusted to one hundred percent by the county indicated ratio established in RCW 84.48.075.

(c) The "ten percent levy rate" of a district shall mean:

(i) Ten percent of the district's levy base as defined in RCW 84.52.0531(4), plus one-half of any amount computed under RCW 84.52.0531(3)(b) in the case of nonhigh school districts; divided by

(ii) The district's assessed valuation for excess levy purposes for the prior tax collection year as adjusted to one hundred percent by the county indicated ratio.

(d) "Eligible districts" shall mean those districts with a ten percent levy rate which exceeds the state-wide average ten percent levy rate.

(3) Allocation of state matching funds to eligible districts for local effort assistance shall be determined as follows:

(a) Funds raised by the district through maintenance and operation levies during that tax collection year shall be matched with state funds using the following ratio of state funds to levy funds: (i) The difference between the district's ten percent levy rate and the state-wide average ten percent levy rate; to (ii) the state-wide average ten percent levy rate.

(b) The maximum amount of state matching funds for which a district may be eligible in any tax collection year shall be ten percent of the district's levy base as defined in RCW 84.52.0531(4), multiplied by the following percentage: (i) The difference between the district's ten percent levy rate and the state-wide average ten percent levy rate; divided by (ii) the district's ten percent levy rate.

(4)(a) Through tax collection year 1992, fifty-five percent of local effort assistance funds shall be distributed to qualifying districts during the applicable tax collection year on or before June 30 and forty-five percent shall be distributed on or before December 31 of any year.

(b) In tax collection year 1993 and thereafter, local effort assistance funds shall be distributed to qualifying districts as follows:

(i) Thirty percent in April;

(ii) Twenty-three percent in May;

(iii) Two percent in June;

(iv) Seventeen percent in August;

(v) Nine percent in October;

(vi) Seventeen percent in November; and

(vii) Two percent in December. [1993 c 410 § 1; (1993 c 465 § 2 expired December 31, 1995); 1992 c 49 § 2; 1987 1st ex.s. c 2 § 102. Formerly RCW 28A.41.155.]

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Chapter 28A.505

SCHOOL DISTRICTS BUDGETS

Sections

28A.505.010

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28A.505.020

Districts must utilize methods of revenue and expenditure recognition.

28A.505.030

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28A.505.040

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28A.505.150	Budgeted expenditures as appropriations—Interim expenditures—Transfer between budget classes—Liability for nonbudgeted expenditures.
28A.505.160	Appropriations lapse at end of fiscal year—Exception.
28A.505.170	First class school districts—Emergency or additional appropriation resolutions—Procedure.
28A.505.180	Second class school districts—Additional appropriation resolutions—Procedure.
28A.505.200	Repayment of federal moneys—Federal disallowance determination.

28A.505.010 Definitions. The following terms when used in this chapter shall have the following meanings, unless where used the context thereof shall clearly indicate to the contrary:

(1) "Revenue" means an addition to assets of a fund of a school district during a fiscal period that is available to finance the fund's expenditures during the fiscal period. Revenue does not accompany the increase of liabilities or represent refunds of previous disbursements. Revenue may be in the form of cash or in the form of noncash assets such as donated commodities. Revenue for accrual basis expenditure funds is limited to amounts received in cash or noncash donations plus or minus adjustments for revenue accruals.

(2) "Accrual basis expenditures" mean expenditures incurred during a given fiscal period, whether paid or unpaid.

(3) "Cash basis expenditures" mean actual disbursements during a given fiscal period except for debt service, regardless of when liabilities are incurred, or the period of incurrence of expenditures.

(4) "Cash basis revenue" means actual receipt of revenue not adjusted for revenue accruals.

(5) "Revenue accruals" means those revenues anticipated to be received in cash after the close of the fiscal period that represent reimbursement for expenditures incurred by the end of the fiscal period.

(6) "Appropriation" means the maximum authorization during a given fiscal period to incur expenditures.

(7) "Disbursements" mean payments in cash, including but not limited to issuance of warrants. [1983 c 59 § 1; 1975-'76 2nd ex.s. c 118 § 1. Formerly RCW 28A.65.400.]

Application—Effective date—1983 c 59: "This act shall apply to school district budgets, financial statements, and bookkeeping and accounting procedures, practices, and principles beginning with fiscal year 1983-'84 starting September 1, 1983. This act shall take effect September 1, 1983." [1983 c 59 § 19.]

Severability—1983 c 59: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 59 § 20.]

Severability—1975-'76 2nd ex.s. c 118: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 118 § 37.]

28A.505.020 Districts must utilize methods of revenue and expenditure recognition. All school districts must utilize the following methods of revenue and expenditure recognition in budgeting, accounting and financial reporting:

(1) Recognize revenue as defined in RCW 28A.505.010(1) for all funds: PROVIDED, That school districts that elect the cash basis of expenditure recognition

under subsection (2) of this section shall recognize revenue on the cash basis.

(2) Recognition of expenditures for all funds shall be on the accrual basis: PROVIDED, That school districts with under one thousand full time equivalent students for the preceding fiscal year may make a uniform election for all funds, except debt service funds, to be on the cash basis of expenditure recognition. Notification of such election shall be given to the state superintendent of public instruction in the budget of the school district and shall remain in effect for one full fiscal year. [1990 c 33 § 416; 1983 c 59 § 2; 1980 c 18 § 1; 1975-'76 2nd ex.s. c 118 § 2. Formerly RCW 28A.65.405.]

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.030 District fiscal year. Beginning September 1, 1977 the fiscal year for all school districts shall be September 1 through August 31. [1975-'76 2nd ex.s. c 118 § 3. Formerly RCW 28A.65.410.]

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.040 Budget—Notice of completion—Copies—Review by educational service districts. On or before the tenth day of July in each year, all school districts shall prepare their budget for the ensuing fiscal year. The budget shall set forth the complete financial plan of the district for the ensuing fiscal year.

Upon completion of their budgets, every school district shall publish a notice stating that the district has completed the budget, placed it on file in the school district administration office, and that a copy thereof will be furnished to any person who calls upon the district for it. The district shall provide a sufficient number of copies of the budget to meet the reasonable demands of the public. School districts shall submit one copy of their budget to their educational service districts for review and comment by July 10th. The superintendent of public instruction may delay the date in this section if the state's operating budget is not finally approved by the legislature until after June 1st. [1995 c 121 § 1; 1975-'76 2nd ex.s. c 118 § 4. Formerly RCW 28A.65.415.]

Effective date—1995 c 121: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 20, 1995]." [1995 c 121 § 3.]

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.050 Budget—Notice of meeting to adopt. Upon completion of their budgets as provided in RCW 28A.505.040, every school district shall publish a notice stating that the board of directors will meet for the purpose of fixing and adopting the budget of the district for the ensuing fiscal year. Such notice shall designate the date, time, and place of said meeting which shall occur no later than the thirty-first day of August for first class school districts, and the first day of August for second class school districts. The notice shall also state that any person may appear thereat and be heard for or against any part of such

budget. Said notice shall be published at least once each week for two consecutive weeks in a newspaper of general circulation in the district, or, if there be none, in a newspaper of general circulation in the county or counties in which such district is a part. The last notice shall be published no later than seven days immediately prior to the hearing. [1995 c 121 § 2; 1990 c 33 § 417; 1983 c 59 § 3; 1975-'76 2nd ex.s. c 118 § 5. Formerly RCW 28A.65.420.]

Effective date—1995 c 121: See note following RCW 28A.505.040.

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.060 Budget—Hearing and adoption of—Copies filed with ESD's. On the date given in said notice as provided in RCW 28A.505.050 the school district board of directors shall meet at the time and place designated. Any person may appear thereat and be heard for or against any part of such budget. Such hearing may be continued not to exceed a total of two days: PROVIDED, That the budget must be adopted no later than August 31st in first class school districts, and not later than August 1st in second class school districts.

Upon conclusion of the hearing, the board of directors shall fix and determine the appropriation from each fund contained in the budget separately, and shall by resolution adopt the budget and the appropriations as so finally determined, and enter the same in the official minutes of the board: PROVIDED, That first class school districts shall file copies of their adopted budget with their educational service district no later than September 3rd, and second class school districts shall forward copies of their adopted budget to their educational service district no later than August 3rd for review, alteration and approval as provided for in RCW 28A.505.070 by the budget review committee. [1990 c 33 § 418; 1983 c 59 § 4; 1975-'76 2nd ex.s. c 118 § 6. Formerly RCW 28A.65.425.]

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.070 Budget review committee—Members—Review of budget, limitations. The budget review committee shall fix and approve the amount of the appropriation from each fund of the budget of second class districts not later than August 31st. No budget review committee shall knowingly approve any budget or appropriation that is in violation of this chapter or rules and regulations adopted by the superintendent of public instruction in accordance with RCW 28A.505.140(1). A copy of said budget shall be returned to the local school districts no later than September 10th.

Members of the budget review committee as referred to in this section shall consist of the educational service district superintendent or a representative thereof, a member of the local school district board of directors or a representative thereof, and a representative of the superintendent of public instruction. [1990 c 33 § 419; 1975-'76 2nd ex.s. c 118 § 7. Formerly RCW 28A.65.430.]

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.080 Budget—Disposition of copies. Copies of the budgets for all local school districts shall be filed with the superintendent of public instruction no later than September 10th. One copy will be retained by the educational service district. [1984 c 128 § 8; 1983 c 59 § 5; 1975-'76 2nd ex.s. c 118 § 8. Formerly RCW 28A.65.435.]

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.090 Budget—Format, classifications, mandatory. Every school district budget shall be prepared, submitted and adopted in the format prescribed by the office of the superintendent of public instruction. The budget classifications contained in said format shall be in accordance with the accounting manual for public school districts, published by the office of the superintendent of public instruction and the office of the state auditor. Budgets prepared and adopted in a format other than that prescribed by the office of the superintendent of public instruction shall not be official and will have no legal effect. [1983 c 59 § 6; 1975-'76 2nd ex.s. c 118 § 9. Formerly RCW 28A.65.440.]

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.100 Budget—Contents—Display of salaries. The budget shall set forth the estimated revenues for the ensuing fiscal year, the estimated revenues for the fiscal year current at the time of budget preparation, the actual revenues for the last completed fiscal year, and the reserved and unreserved fund balances for each year. The estimated revenues from all sources for the ensuing fiscal year shall not include any revenue not anticipated to be available during that fiscal year: PROVIDED, That school districts, pursuant to RCW 28A.505.110 can be granted permission by the superintendent of public instruction to include as revenues in their budgets, receivables collectible in future fiscal years.

The budget shall set forth by detailed items or classes the estimated expenditures for the ensuing fiscal year, the estimated expenditures for the fiscal year current at the time of budget preparation, and the actual expenditures for the last completed fiscal year. Total salary amounts, full-time equivalents, and the high, low, and average annual salaries, shall be displayed by job classification within each budget classification. If individual salaries within each job classification are not displayed, districts shall provide the individual salaries together with the title or position of the recipient and the total amounts of salary under each budget class upon request. Salary schedules shall be displayed. In districts where negotiations have not been completed, the district may budget the salaries at the current year's rate and restrict fund balance for the amount of anticipated increase in salaries, so long as an explanation shall be attached to the budget on such restriction of fund balance. [1990 c 33 § 420; 1983 c

59 § 7; 1975-'76 2nd ex.s. c 118 § 10. Formerly RCW 28A.65.445.]

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.110 Budget—Including receivables collectible in future years—Limitations. When a school district board is unable to prepare a budget or budget extension pursuant to RCW 28A.505.170 or 28A.505.180 in which the estimated revenues for the budgeted fiscal year plus the estimated fund balance at the beginning of the budgeted fiscal year less the ending reserved fund balance for the budgeted fiscal year do not at least equal the estimated expenditures for the budgeted fiscal year, the school district board may deliver a petition in writing, at least twenty days before the budget or budget extension is scheduled for adoption, to the superintendent of public instruction requesting permission to include receivables collectible in future years, in order to balance the budget. If such permission is granted, it shall be in writing, and it shall contain conditions, binding on the district, designed to improve the district's financial condition. Any budget or appropriation adopted by the board of directors without written permission from the superintendent of public instruction that contains estimated expenditures in excess of the total of estimated revenue for the budgeted fiscal year plus estimated fund balance at the beginning of the budgeted fiscal year less ending reserve fund balance for the budgeted fiscal year shall be null and void and shall not be considered an appropriation. [1990 c 33 § 421; 1983 c 59 § 8; 1975-'76 2nd ex.s. c 118 § 11. Formerly RCW 28A.65.450.]

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.120 Withholding state funds upon district noncompliance—Notice of. If a local school district fails to comply with any binding restrictions issued by the superintendent of public instruction, the allocation of state funds for support of the local school district may be withheld, pending an investigation of the reason for such noncompliance by the office of the superintendent of public instruction. Written notice of the intent to withhold state funds, with reasons stated for this action, shall be made to the school district by the office of the superintendent of public instruction before any portion of the state allocation is withheld. [1975-'76 2nd ex.s. c 118 § 12. Formerly RCW 28A.65.455.]

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.130 Budget—Requirements for balancing estimated expenditures. For each fund contained in the school district budget the estimated expenditures for the budgeted fiscal year must not be greater than the total of the estimated revenues for the budgeted fiscal year, the estimated fund balance at the beginning of the budgeted fiscal year less the estimated reserve fund balance at the end of the budgeted fiscal year, and the projected revenue from

receivables collectible on future years as approved by the superintendent of public instruction for inclusion in the budget.

The proceeds of any interfund loan must not be used to balance the budget of the borrowing fund. [1983 c 59 § 9; 1975-'76 2nd ex.s. c 118 § 13. Formerly RCW 28A.65.460.]

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.140 Rules and regulations for budgetary procedures—Review when superintendent determines budget irregularity—Revised budget, state board's financial plan until adoption. (1) Notwithstanding any other provision of law, the superintendent of public instruction is hereby directed to promulgate such rules and regulations as will insure proper budgetary procedures and practices, including monthly financial statements consistent with the provisions of RCW 43.09.200, and this chapter.

(2) If the superintendent of public instruction determines upon a review of the budget of any district that said budget does not comply with the budget procedures established by this chapter or by rules and regulations promulgated by the superintendent of public instruction, or the provisions of RCW 43.09.200, the superintendent shall give written notice of this determination to the board of directors of the local school district.

(3) The local school district, notwithstanding any other provision of law, shall, within thirty days from the date the superintendent of public instruction issues a notice pursuant to subsection (2) of this section, submit a revised budget which meets the requirements of RCW 43.09.200, this chapter, and the rules and regulations of the superintendent of public instruction: PROVIDED, That if the district fails or refuses to submit a revised budget which in the determination of the superintendent of public instruction meets the requirements of RCW 43.09.200, this chapter, and the rules and regulations of the superintendent of public instruction, the matter shall be submitted to the state board of education, which board shall meet and adopt a financial plan which shall be in effect until a budget can be adopted and submitted by the district in compliance with this section. [1990 c 33 § 422; 1983 c 59 § 10; 1975-'76 2nd ex.s. c 118 § 14. Formerly RCW 28A.65.465.]

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.150 Budgeted expenditures as appropriations—Interim expenditures—Transfer between budget classes—Liability for nonbudgeted expenditures. Total budgeted expenditures for each fund as adopted in the budget of a school district shall constitute the appropriations of the district for the ensuing fiscal year and the board of directors shall be limited in the incurring of expenditures to the grand total of such appropriations. The board of directors shall incur no expenditures for any purpose in excess of the appropriation for each fund: PROVIDED, That no board of directors shall be prohibited from incurring

expenditures for the payment of regular employees, for the necessary repairs and upkeep of the school plant, for the purchase of books and supplies, and for their participation in joint purchasing agencies authorized in RCW 28A.320.080 during the interim while the budget is being settled under RCW 28A.505.140: PROVIDED FURTHER, That transfers between budget classes may be made by the school district's chief administrative officer or finance officer, subject to such restrictions as may be imposed by the school district board of directors.

Directors, officers or employees who knowingly or negligently violate or participate in a violation of this section by the incurring of expenditures in excess of any appropriation(s) shall be held civilly liable, jointly and severally, for such expenditures in excess of such appropriation(s), including consequential damages following therefrom, for each such violation. If as a result of any civil or criminal action the violation is found to have been done knowingly, such director, officer, or employee who is found to have participated in such breach shall immediately forfeit his or her office or employment, and the judgment in any such action shall so provide.

Nothing in this section shall be construed to limit the duty of the attorney general to carry out the provisions of RCW 43.09.260, as now or hereafter amended. [1990 c 33 § 423; 1975-'76 2nd ex.s. c 118 § 15. Formerly RCW 28A.65.470.]

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.160 Appropriations lapse at end of fiscal year—Exception. All appropriations for any school district upon which their budget is based shall lapse at the end of the fiscal year. At the expiration of said period all appropriations shall become null and void and any claim presented thereafter against any such appropriation for the fiscal year just closed shall be provided for in the appropriation for the next fiscal year: PROVIDED, That this shall not prevent payments upon incompleting improvements in progress at the close of the fiscal year. [1975-'76 2nd ex.s. c 118 § 16. Formerly RCW 28A.65.475.]

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.170 First class school districts—Emergency or additional appropriation resolutions—Procedure. (1) Notwithstanding any other provision of this chapter, upon the happening of any emergency in first class school districts caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection, or for the restoration to a condition of usefulness of any school district property, the usefulness of which has been destroyed by accident, and no provision has been made for such expenditures in the adopted appropriation, the board of directors, upon the adoption by the vote of the majority of all board members of a resolution stating the facts constituting the emergency, may make an appropriation therefor without notice or hearing.

(2) Notwithstanding any other provision of this chapter, if in first class districts it becomes necessary to increase the amount of the appropriation, and if the reason is not one of the emergencies specifically enumerated in subsection (1) of

this section, the school district board of directors, before incurring expenditures in excess of the appropriation, shall adopt a resolution stating the facts and the estimated amount of appropriation to meet it.

Such resolution shall be voted on at a public meeting, notice to be given in the manner provided in RCW 28A.505.050. Its introduction and passage shall require the vote of a majority of all members of the school district board of directors.

Any person may appear at the meeting at which the appropriation resolution is to be voted on and be heard for or against the adoption thereof.

Copies of all adopted appropriation resolutions shall be filed with the educational service district who shall forward one copy each to the office of the superintendent of public instruction. One copy shall be retained by the educational service district. [1990 c 33 § 424; 1984 c 128 § 9; 1983 c 59 § 11; 1975-'76 2nd ex.s. c 118 § 17. Formerly RCW 28A.65.480.]

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.180 Second class school districts—Additional appropriation resolutions—Procedure. Notwithstanding any other provision of this chapter, if a second class school district needs to increase the amount of the appropriation from any fund for any reason, the school district board of directors, before incurring expenditures in excess of appropriation, shall adopt a resolution stating the facts and estimating the amount of additional appropriation needed.

Such resolution shall be voted on at a public meeting, notice to be given in the manner provided by RCW 28A.505.050. Its introduction and passage shall require the vote of a majority of all members of the school district board of directors.

Any person may appear at the meeting at which the appropriation resolution is to be voted on and be heard for or against the adoption thereof.

Upon passage of the appropriation resolution the school district shall petition the superintendent of public instruction for approval to increase the amount of its appropriations in the manner prescribed in rules and regulations for such approval by the superintendent.

Copies of all appropriation resolutions approved by the superintendent of public instruction shall be filed by the office of the superintendent of public instruction with the educational service district. [1990 c 33 § 425; 1984 c 128 § 10; 1983 c 59 § 12; 1975-'76 2nd ex.s. c 118 § 18. Formerly RCW 28A.65.485.]

Application—Effective date—Severability—1983 c 59: See notes following RCW 28A.505.010.

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

28A.505.200 Repayment of federal moneys—Federal disallowance determination. Each school district that receives federal moneys from or through the superintendent of public instruction shall comply with applicable federal requirements and shall repay expenditures subse-

quently disallowed by the federal government together with such interest as may be assessed by the federal government. Once a federal disallowance determination, decision, or order becomes final respecting federal moneys expended by a school district, the superintendent of public instruction may withhold all or a portion of the annual basic education allocation amounts otherwise due and apportionable to the school district as necessary to facilitate payment of the principal and interest to the federal government. The superintendent of public instruction may pay withheld basic education allocation moneys:

(1) To the school district before the close of the biennium and following the school district's repayment of moneys due the federal government, or the school district's commitment to an acceptable repayment plan, or both; or

(2) To the federal government, subject to the reapportionment of the withheld basic education allocation, moneys for the purpose of payment to the federal government.

No withholding of basic education allocation moneys may occur under this subsection until the superintendent of public instruction has first determined that the withholding should not substantially impair the school district's financial ability to provide the basic education program offerings required by statute. [1990 c 103 § 1.]

Chapter 28A.510

APPORTIONMENT TO DISTRICT—DISTRICT ACCOUNTING

Sections

- 28A.510.250 By state superintendent.
28A.510.260 Distribution by ESD superintendent.
28A.510.270 County treasurer's duties.

28A.510.250 By state superintendent. On or before the last business day of September 1969 and each month thereafter, the superintendent of public instruction shall apportion from the state general fund to the several educational service districts of the state the proportional share of the total annual amount due and apportionable to such educational service districts for the school districts thereof as follows:

Table with 2 columns: Month and Percentage. Rows include September (9%), October (9%), November (5.5%), December (9%), January (9%), February (9%), March (9%), April (9%), May (5.5%), June (6.0%), July (10.0%), August (10.0%).

The annual amount due and apportionable shall be the amount apportionable for all apportionment credits estimated to accrue to the schools during the apportionment year beginning September first and continuing through August thirty-first. Appropriations made for school districts for each year of a biennium shall be apportioned according to the

schedule set forth in this section for the fiscal year starting September 1st of the then calendar year and ending August 31st of the next calendar year. The apportionment from the state general fund for each month shall be an amount which will equal the amount due and apportionable to the several educational service districts during such month: PROVIDED, That any school district may petition the superintendent of public instruction for an emergency advance of funds which may become apportionable to it but not to exceed ten percent of the total amount to become due and apportionable during the school districts apportionment year. The superintendent of public instruction shall determine if the emergency warrants such advance and if the funds are available therefor. If the superintendent determines in the affirmative, he or she may approve such advance and, at the same time, add such an amount to the apportionment for the educational service district in which the school district is located: PROVIDED, That the emergency advance of funds and the interest earned by school districts on the investment of temporary cash surpluses resulting from obtaining such advance of state funds shall be deducted by the superintendent of public instruction from the remaining amount apportionable to said districts during that apportionment year in which the funds are advanced. [1990 c 33 § 426; 1982 c 136 § 1; 1981 c 282 § 1; 1981 c 5 § 32; 1980 c 6 § 5; 1979 ex.s. c 237 § 1; 1975-'76 2nd ex.s. c 118 § 27; 1975 1st ex.s. c 275 § 67; 1974 ex.s. c 89 § 1; 1972 ex.s. c 146 § 1; 1970 ex.s. c 15 § 15. Prior: 1969 ex.s. c 184 § 3; 1969 ex.s. c 176 § 108; 1969 ex.s. c 223 § 28A.48.010; prior: 1965 ex.s. c 162 § 1; 1959 c 276 § 3; prior: 1945 c 141 § 3, part; 1923 c 96 § 1; 1911 c 118 § 1; 1909 c 97 p 312 §§ 1, 2, 3; Rem. Supp. 1945 § 4940-3, part. Formerly RCW 28A.48.010, 28.48.010.]

Certain 1982-83 school year monthly payments delayed—Interest—1982 c 136: "For the 1982-83 school year, one-half of the September, October, March, and April payments under RCW 28A.48.010 shall be made on the last business day of the respective month and the remainder on the fifteenth day of the following month. Interest shall be paid on the amounts deferred under this section at the rate for state interfund loans as established by the state finance committee." [1982 c 136 § 2.]

Effective date—1982 c 136: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1982]. The remainder to [of] this act shall take effect September 1, 1982." [1982 c 136 § 5.]

Severability—1980 c 6: See note following RCW 28A.515.320.

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

Effective date—1972 ex.s. c 146: "This 1972 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and section 1 shall take effect July 1, 1972, and section 2 shall take effect immediately [February 25, 1972]." [1972 ex.s. c 146 § 3.]

Severability—1970 ex.s. c 15: See note following RCW 28A.230.160.

Student transportation allocation—Notice—Revised eligible student data, when—Allocation payments, amounts, when: RCW 28A.160.190.

Vehicle acquisition—Reimbursement schedule—Maintenance and operation—Depreciation schedule: RCW 28A.160.200.

28A.510.260 Distribution by ESD superintendent. Upon receiving the certificate of apportionment from the superintendent of public instruction the educational service district superintendent shall promptly apportion to the school

districts of his or her educational service district the amounts then due and apportionable to such districts as certified by the superintendent of public instruction. [1990 c 33 § 427; 1983 c 56 § 5; 1975 1st ex.s. c 275 § 68; 1969 ex.s. c 176 § 109; 1969 ex.s. c 223 § 28A.48.030. Prior: 1965 ex.s. c 162 § 2; 1945 c 141 § 9; Rem. Supp. 1945 § 4940-8. Formerly RCW 28A.48.030, 28.48.030.]

Severability—1983 c 56: See note following RCW 28A.195.010.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.510.270 County treasurer's duties. The county treasurer of each county of this state shall be ex officio treasurer of the several school districts of their respective counties, and, except as otherwise provided by law, it shall be the duty of each county treasurer:

(1) To receive and hold all moneys belonging to such school districts, and to pay them only for legally authorized obligations of the district.

(2) To prepare and submit to each school district superintendent in the county a written report of the state of the finances of such district on the first day of each month, which report shall be submitted not later than the seventh business day of the month, which report shall contain the balance on hand the first of the preceding month, the funds paid in, warrants paid with interest thereon, if any, the number of warrants issued and not paid, and the balance on hand.

(3) The treasurer of each county shall submit a statement of all canceled warrants of districts to the respective school district superintendents. The canceled warrants of each district shall be preserved separately and shall at all times be open to inspection by the school district superintendent or by any authorized accountant of such district. [1991 c 245 § 2; 1990 c 33 § 428; 1975-'76 2nd ex.s. c 118 § 28; 1975 1st ex.s. c 275 § 73; 1969 ex.s. c 176 § 114; 1969 ex.s. c 223 § 28A.48.100. Prior: 1911 c 85 § 1; 1909 c 97 p 309 § 1; RRS § 4867; prior: 1907 c 240 § 8; 1897 c 118 § 59; 1893 c 109 § 8; 1891 c 127 § 27; 1890 p 380 § 71; 1886 p 26 § 83; Code 1881 § 3236. Formerly RCW 28A.48.100, 28.48.100.]

Severability—1975-'76 2nd ex.s. c 118: See note following RCW 28A.505.010.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

Chapter 28A.515

COMMON SCHOOL CONSTRUCTION FUND

Sections

28A.515.300	Permanent common school fund—Sources—Use.
28A.515.310	Certain losses to permanent common school fund or other state educational funds as funded debt against state.
28A.515.320	Common school construction fund—Sources—Use—Excess moneys in, availability, repayment.

28A.515.300 Permanent common school fund—Sources—Use. The principal of the common school fund as the same existed on June 30, 1965, shall remain permanent and irreducible. The said fund shall consist of the principal amount thereof existing on June 30, 1965, and such additions

thereto as may be derived after June 30, 1965, from the following named sources, to wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or public for common schools; the proceeds of lands and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified, or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of stone, minerals or property other than timber and other crops from school and state lands, other than those granted for specific purposes; all moneys received from persons appropriating stone, minerals or property other than timber and other crops from school and state lands other than those granted for specific purposes, and all moneys other than rental, recovered from persons trespassing on said lands; five percent of the proceeds of the sale of public lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 13 of the act of congress enabling the admission of the state into the Union; the principal of all funds arising from the sale of lands and other property which have been, and hereafter may be, granted to the state for the support of common schools and such other funds as may be provided by legislative enactment. [1969 ex.s. c 223 § 28A.40.010. Prior: 1967 c 29 § 1; 1909 c 97 p 320 § 1; RRS § 4932; prior: 1897 c 118 § 109; 1890 p 373 § 50; 1886 p 20 § 57, part; Code 1881 § 3210, part; 1873 p 421 § 1. Formerly RCW 28A.40.010, 28.40.010.]

Banks and trust companies, liquidation and winding up dividends unclaimed deposited in: RCW 30.44.150, 30.44.180.
personal property, proceeds deposited in: RCW 30.44.220.

Enlargement of, legislature may provide: State Constitution Art. 9 § 3 (Amendment 43).

Escheated estates deposited in: RCW 11.08.210.

Game and game fish lands payments to in lieu of property taxes: RCW 77.12.203.
withdrawn from lease, payment of amount of lease into: RCW 77.12.360.

Interest deposited in current state school fund used for current expenses: State Constitution Art. 9 § 3 (Amendment 43).

Investment of permanent common school fund: State Constitution Art. 16 § 5 (Amendment 44).

Lands set aside and permanent funds established: Enabling act §§ 10 through 25.

Losses occasioned by default, fraud, etc., to become permanent debt against state: State Constitution Art. 9 § 5.

Permanent and irreducible: State Constitution Art. 9 § 3 (Amendment 43), RCW 28A.515.300.

Safe deposit box contents rent unpaid, sale, proceeds deposited in: RCW 22.28.040.
unclaimed after liquidation and winding up of bank or trust company, proceeds from sale deposited in: RCW 30.44.220.

School funds enumerated—Deposits—Uses: RCW 28A.320.330.

State land acquired, lease and sale of, disposition of proceeds: RCW 79.01.612.
withdrawn for game purposes, payment of amount of lease into: RCW 77.12.360.

28A.515.310 Certain losses to permanent common school fund or other state educational funds as funded debt against state. All losses to the permanent common school or any other state educational fund, which shall be occasioned by defalcation, mismanagement or fraud of the

agents or officers controlling or managing the same, shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the state in favor of the particular fund sustaining such loss, upon which not less than six percent annual interest shall be paid. [1969 ex.s. c 223 § 28A.40.020. Prior: 1909 c 97 p 321 § 2; RRS § 4933; prior: 1897 c 118 § 110, part; 1890 p 373 § 51, part. Formerly RCW 28A.40.020, 28.40.020.]

28A.515.320 Common school construction fund—

Sources—Use—Excess moneys in, availability, repayment. The common school construction fund is to be used exclusively for the purpose of financing the construction of facilities for the common schools. The sources of said fund shall be: (1) Those proceeds derived from sale or appropriation of timber and other crops from school and state land other than those granted for specific purposes; (2) the interest accruing on the permanent common school fund less the allocations to the state treasurer's service account [fund] pursuant to RCW 43.08.190 and the state investment board expense account pursuant to RCW 43.33A.160 together with all rentals and other revenue derived therefrom and from land and other property devoted to the permanent common school fund; (3) all moneys received by the state from the United States under the provisions of section 191, Title 30, United States Code, Annotated, and under section 810, chapter 12, Title 16, (Conservation), United States Code, Annotated, except moneys received before June 30, 2001, and when thirty megawatts of geothermal power is certified as commercially available by the receiving utilities and the department of community, trade, and economic development, eighty percent of such moneys, under the Geothermal Steam Act of 1970 pursuant to RCW 43.140.030; and (4) such other sources as the legislature may direct. That portion of the common school construction fund derived from interest on the permanent common school fund may be used to retire such bonds as may be authorized by law for the purpose of financing the construction of facilities for the common schools.

The interest accruing on the permanent common school fund less the allocations to the state treasurer's service fund pursuant to RCW 43.08.190 and the state investment board expense account pursuant to RCW 43.33A.160 together with all rentals and other revenues accruing thereto pursuant to subsection (2) of this section prior to July 1, 1967, shall be exclusively applied to the current use of the common schools.

To the extent that the moneys in the common school construction fund are in excess of the amount necessary to allow fulfillment of the purpose of said fund, the excess shall be available for deposit to the credit of the permanent common school fund or available for the current use of the common schools, as the legislature may direct. Any money from the common school construction fund which is made available for the current use of the common schools shall be restored to the fund by appropriation, including interest income foregone, before the end of the next fiscal biennium following such use. [1996 c 186 § 503; 1991 sp.s. c 13 § 58; 1991 c 76 § 2; 1981 c 158 § 6; 1981 c 4 § 1; 1980 c 6 § 1; 1969 ex.s. c 223 § 28A.40.100. Prior: 1967 c 29 § 3. Formerly RCW 28A.40.100, 28.40.100.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Severability—1981 c 4: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 4 § 10.]

Severability—1980 c 6: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 6 § 8.]

Current state school fund—Abolished—Moneys transferred: RCW 43.79.425.

Chapter 28A.520

FOREST RESERVE FUNDS DISTRIBUTION

Sections

28A.520.010	Distribution of forest reserve funds—Procedure—Proportional county area distribution, when.
28A.520.020	Distribution of forest reserve funds—Revolving account created—Use—Apportionments from—As affects basic education allocation.

28A.520.010 Distribution of forest reserve funds—Procedure—Proportional county area distribution, when. Of the moneys received by the state from the federal government in accordance with Title 16, section 500, United States Code, fifty percent shall be spent by the counties on public schools or public roads, and fifty percent shall be spent by the counties on public schools as provided in RCW 28A.520.020(2), or for any other purposes as now or hereafter authorized by federal law, in the counties in the United States forest reserve from which such moneys were received. Where the reserve is situated in more than one county, the state treasurer shall determine the proportional area of the counties therein. The state treasurer is authorized and required to obtain the necessary information to enable him or her to make that determination.

The state treasurer shall distribute to the counties, according to the determined proportional area, the money to be spent by the counties. The county legislative authority shall expend the fifty percent received by the county for the benefit of the public roads or public schools of the county, or for any other purposes as now or hereafter authorized by federal law. [1990 c 33 § 429; 1985 c 311 § 1; 1982 c 126 § 1. Formerly RCW 28A.02.300.]

Effective date—1982 c 126: "This act shall take effect July 1, 1983." [1982 c 126 § 5.]

Severability—1982 c 126: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 126 § 4.]

28A.520.020 Distribution of forest reserve funds—Revolving account created—Use—Apportionments from—As affects basic education allocation. (1) There shall be a fund known as the federal forest revolving account. The state treasurer, who shall be custodian of the revolving account, shall deposit into the revolving account the funds for each county received by the state in accordance with Title 16, section 500, United States Code. The state treasurer shall distribute these moneys to the counties

according to the determined proportional area. The county legislative authority shall expend fifty percent of the money for the benefit of the public roads and other public purposes as authorized by federal statute or public schools of such county and not otherwise. Disbursements by the counties of the remaining fifty percent of the money shall be as authorized by the superintendent of public instruction, or the superintendent's designee, and shall occur in the manner provided in subsection (2) of this section.

(2) No later than thirty days following receipt of the funds from the federal government, the superintendent of public instruction shall apportion moneys distributed to counties for schools to public school districts in the respective counties in proportion to the number of full time equivalent students enrolled in each public school district to the number of full time equivalent students enrolled in public schools in the county. In apportioning these funds, the superintendent of public instruction shall utilize the October enrollment count.

(3) If the amount received by any public school district pursuant to subsection (2) of this section is less than the basic education allocation to which the district would otherwise be entitled, the superintendent of public instruction shall apportion to the district, in the manner provided by RCW 28A.510.250, an amount which shall be the difference between the amount received pursuant to subsection (2) of this section and the basic education allocation to which the district would otherwise be entitled.

(4) All federal forest funds shall be expended in accordance with the requirements of Title 16, section 500, United States Code, as now existing or hereafter amended. [1991 sp.s. c 13 § 113; 1990 c 33 § 430; 1985 c 311 § 2; 1982 c 126 § 2. Formerly RCW 28A.02.310.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—Severability—1982 c 126: See notes following RCW 28A.520.010.

**Chapter 28A.525
BOND ISSUES**

Sections

- 28A.525.010 Statement of intent.
- 28A.525.020 Duties of state board of education.
- 28A.525.030 Modernization of existing school facilities.
- 28A.525.040 Portable buildings or classrooms.
- 28A.525.050 Applications for aid—Rules and regulations—Recommendations.
- 28A.525.055 New construction—Eligibility for state assistance—Inventory assessment exclusion.
- 28A.525.060 Manual—Contents—Preparation and revision.
- 28A.525.070 State superintendent to assist districts and state board.
- 28A.525.080 Federal grants—Rules and regulations.
- 28A.525.120 1967 bond issue for construction, modernization of school plant facilities—Authorized—Sale, conditions—Form, terms, etc.
- 28A.525.122 1967 bond issue for construction, modernization of school plant facilities—Common school building construction account—Created—Proceeds from bond sale deposited in—Use.
- 28A.525.124 1967 bond issue for construction, modernization of school plant facilities—Bonds not general obligation of state—Bonds, interest on, source for payment of—Pledge.

- 28A.525.126 1967 bond issue for construction, modernization of school plant facilities—Common school building bond redemption fund of 1967—Created—Use—Transfer of funds to—Prior charge against certain common school construction fund moneys.
- 28A.525.128 1967 bond issue for construction, modernization of school plant facilities—Legislature may provide additional means of revenue—General credit of state not pledged.
- 28A.525.130 1967 bond issue for construction, modernization of school plant facilities—Bonds are negotiable, legal investment and security.
- 28A.525.132 1967 bond issue for construction, modernization of school plant facilities—Allotment of funds appropriated from common school building construction account or common school construction fund—Local responsibility—Duties, rules and regulations of state board of education.
- 28A.525.134 1967 bond issue for construction, modernization of school plant facilities—Appropriations to state board of education—Allocation of, limitations.
- 28A.525.140 1969 bond issue for construction, modernization of school plant facilities—Authorized—Sale, conditions—Form, terms.
- 28A.525.142 1969 bond issue for construction, modernization of school plant facilities—Proceeds from bond sale deposited in common school building construction account—Use.
- 28A.525.144 1969 bond issue for construction, modernization of school plant facilities—Bonds not general obligation of state—Bonds, interest on, source of payment of—Pledge.
- 28A.525.146 1969 bond issue for construction, modernization of school plant facilities—Common school building bond redemption fund of 1967—Use—Transfer of funds to—Prior charge against certain common school construction fund moneys.
- 28A.525.148 1969 bond issue for construction, modernization of school plant facilities—Legislature may provide additional means of revenue.
- 28A.525.150 1969 bond issue for construction, modernization of school plant facilities—Bonds are negotiable, legal investment and security.
- 28A.525.152 1969 bond issue for construction, modernization of school plant facilities—Allotment of funds appropriated from common school building construction account—Local responsibility—Duties of state board of education.
- 28A.525.154 1969 bond issue for construction, modernization of school plant facilities—Appropriations to state board of education—Allocation of, limitations.
- 28A.525.156 Bonds authorized under RCW 28A.525.120 through 28A.525.154 may be refunded—Security.
- 28A.525.158 Rescinding authority to issue balance of bonds authorized under RCW 28A.525.140 through 28A.525.154.
- 28A.525.160 1969 appropriation for construction, modernization of school plant facilities.
- 28A.525.162 Allotment of appropriations for school plant facilities by state board—Local school district participation—Computing state matching percentage—Rules.
- 28A.525.164 Allotment of appropriations for school plant facilities—Duties of board.
- 28A.525.166 Allotment of appropriations for school plant facilities—Basis of state aid for school plant.
- 28A.525.168 Allotment of appropriations for school plant facilities—Taxable valuation and percentage of state assistance to be used in determining eligibility.
- 28A.525.170 Allotment of appropriations for school plant facilities—Additional allotment authorized—Effect of allotment on future disbursements to district.
- 28A.525.172 Allotment of appropriations for school plant facilities—Application by district for state assistance—Studies and surveys by state board.

28A.525.174	Allotment of appropriations for school plant facilities—Manual, other materials to guide and provide information to district.
28A.525.176	Allotment of appropriations for school plant facilities—State board to provide district with consultancy, advisory service.
28A.525.178	Allotment of appropriations for school plant facilities—Modifiable basic or standard plans for school buildings.
28A.525.180	Allotment of appropriations for school plant facilities—Appropriation to be reduced by amount of federal funds made available for school construction except to federally affected areas.
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28A.525.190	Board limited when prioritizes construction.
28A.525.200	Specific RCW sections enumerated governing allocation and distribution of funds for school plant facilities.
28A.525.210	1984 bond issue for construction, modernization of school plant facilities—Intent.
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28A.525.220	1984 bond issue for construction, modernization of school plant facilities—Legislature may provide additional means for payment.
28A.525.222	1984 bond issue for construction, modernization of school plant facilities—Bonds as legal investment for public funds.
28A.525.230	Bonds authorized—Amount—As compensation for sale of timber—Sale, conditions.
28A.525.240	Bond anticipation notes—Authorized—Payment.
28A.525.250	Form, terms, conditions, sale and covenants of bonds and notes.
28A.525.260	Disposition of proceeds from sale of bonds and notes—Use.
28A.525.270	State general obligation bond retirement fund utilized for payment of bond principal and interest—Procedure.
28A.525.280	Bonds as legal investment for public funds.
28A.525.290	Chapter provisions as limited by other statutes, covenants and proceedings.
28A.525.300	Proceeds from sale of bonds as compensation for sale of timber from trust lands.

28A.525.010 Statement of intent. It is hereby declared to be the intent of the legislature that the following provisions be enacted for the purpose of establishing and providing for the operation of a program of state assistance to school districts in providing school plant facilities. [1969 ex.s. c 223 § 28A.47.050. Prior: 1947 c 278 § 1; Rem. Supp. 1947 § 4940-12. Formerly RCW 28A.47.050, 28.47.050.]

28A.525.020 Duties of state board of education. The state board of education shall have the power and it shall be its duty (1) to prescribe rules and regulations governing the administration, control, terms, conditions, and disbursements of allotments to school districts to assist them in providing school plant facilities; (2) to approve allotments

to districts that apply for state assistance whenever the board deems such action advisable and in so doing to give due consideration to the findings, reports, and recommendations of the superintendent of public instruction pertaining thereto; (3) to authorize the payment of approved allotments by warrant of the state treasurer; and (4) in the event that the amount of state assistance applied for exceeds the funds available for such assistance during any biennium, to make allotments on the basis of the urgency of need for school facilities in the districts that apply for assistance and/or to prorate allotments among such districts in conformity with procedures and regulations applicable thereto which shall be established by the state board. [1969 ex.s. c 223 § 28A.47.060. Prior: 1947 c 278 § 2; Rem. Supp. 1947 § 4940-13. Formerly RCW 28A.47.060, 28.47.060.]

28A.525.030 Modernization of existing school facilities. Whenever funds are appropriated for modernization of existing school facilities, the state board of education is authorized to approve the use of such funds for modernization of existing facilities, modernization being limited to major structural changes in such facilities and, as necessary to bring such facilities into compliance with the barrier free access requirements of section 504 of the federal rehabilitation act of 1973 (29 U.S.C. Sec. 706) and rules implementing the act, both major and minor structural changes, and may include as incidental thereto the replacement of fixtures, fittings, furnishings and service systems of a building in order to bring it up to a contemporary state consistent with the needs of changing educational programs. The allocation of such funds shall be made upon the same basis as funds used for the financing of a new school plant project utilized for a similar purpose. [1995 c 77 § 23; 1980 c 154 § 17; 1969 ex.s. c 223 § 28A.47.073. Prior: 1967 ex.s. c 21 § 1. Formerly RCW 28A.47.073, 28.47.073.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82.45 RCW digest.

28A.525.040 Portable buildings or classrooms. State matching funds shall not be denied to any school district undertaking any construction, repairs or improvements for school district purposes solely on the ground that said construction, repairs and improvements are in connection with portable buildings or classrooms. [1969 ex.s. c 223 § 28A.47.075. Prior: 1953 c 158 § 1. Formerly RCW 28A.47.075, 28.47.075.]

28A.525.050 Applications for aid—Rules and regulations—Recommendations. All applications by school districts for state assistance in providing school plant facilities shall be made to the superintendent of public instruction in conformity with rules and regulations which shall be prescribed by the state board of education. Studies and surveys shall be conducted by the aforesaid officer for the purpose of securing information relating to (1) the kind and extent of the school plant facilities required and the urgency of need for such facilities in districts that seek state assistance, (2) the ability of such districts to provide capital outlay funds by local effort, (3) the need for improvement of school administrative units and school attendance areas among or within such districts, and (4) any other pertinent

matters. Recommendations respecting action on the aforesaid applications shall be submitted to the state board of education by the superintendent of public instruction together with such reports of the findings, studies, and surveys made by said officer as may be required by the state board. [1969 ex.s. c 223 § 28A.47.080. Prior: 1947 c 278 § 4; Rem. Supp. 1947 § 4940-15. Formerly RCW 28A.47.080, 28.47.080.]

28A.525.055 New construction—Eligibility for state assistance—Inventory assessment exclusion. The state board of education, for purposes of determining eligibility for state assistance for new construction, shall adopt rules excluding from the inventory of available educational space those spaces that have been constructed for educational and community activities from grants received from other public or private entities. [1994 c 219 § 11.]

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

28A.525.060 Manual—Contents—Preparation and revision. It shall be the duty of the superintendent of public instruction, in consultation with the Washington state department of social and health services, to prepare, and so often as the superintendent deems necessary revise, a manual for the information and guidance of local school district authorities and others responsible for and concerned with the designing, planning, maintenance, and operation of school plant facilities for the common schools. In the preparation and revision of the aforesaid manual due consideration shall be given to the presentation of information regarding (1) the need for cooperative state-local district action in planning school plant facilities arising out of the cooperative plan for financing said facilities provided for in RCW 28A.525.010 through 28A.525.080 and 28A.335.230; (2) procedures in inaugurating and conducting a school plant planning program for a school district; (3) standards for use in determining the selection and development of school sites and in designing, planning, and constructing school buildings to the end that the health, safety, and educational well-being and development of school children will be served; (4) the planning of readily expansible and flexible school buildings to meet the requirements of an increasing school population and a constantly changing educational program; (5) an acceptable school building maintenance program and the necessity therefor; (6) the relationship of an efficient school building operations service to the health and educational progress of pupils; and (7) any other matters regarded by the aforesaid officer as pertinent or related to the purposes and requirements of RCW 28A.525.010 through 28A.525.080 and 28A.335.230. [1990 c 33 § 431; 1979 c 141 § 36; 1969 ex.s. c 223 § 28A.47.090. Prior: 1947 c 278 § 5; Rem. Supp. 1947 § 4940-16. Formerly RCW 28A.47.090, 28.47.090.]

28A.525.070 State superintendent to assist districts and state board. The superintendent of public instruction shall furnish (1) to school districts seeking state assistance consultatory and advisory service in connection with the development of school building programs and the planning of school plant facilities for such district, and (2) to the state board of education such service as may be required by the

board in the exercise of the powers and the performance of the duties vested in and required to be performed by the board. [1985 c 136 § 1; 1969 ex.s. c 223 § 28A.47.100. Prior: 1947 c 278 § 6; Rem. Supp. 1947 § 4940-17. Formerly RCW 28A.47.100, 28.47.100.]

28A.525.080 Federal grants—Rules and regulations. Insofar as is permissible under acts of congress, funds made available by the federal government for the purpose of assisting school districts in providing school plant facilities shall be made available to such districts in conformity with rules and regulations which the state board of education shall establish. [1969 ex.s. c 223 § 28A.47.120. Prior: 1947 c 278 § 8; Rem. Supp. 1947 § 4940-19. Formerly RCW 28A.47.120, 28.47.120.]

28A.525.120 1967 bond issue for construction, modernization of school plant facilities—Authorized—Sale, conditions—Form, terms, etc. For the purpose of furnishing funds for state assistance to school districts in providing common school plant facilities and modernization of existing common school plant facilities, there shall be issued and sold limited obligation bonds of the state of Washington in the sum of twenty-two million dollars to be paid and discharged in accordance with terms to be established by the finance committee. The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee: **PROVIDED,** That no part of the twenty-two million dollar bond issue shall be sold unless there are insufficient funds in the common school construction fund to meet appropriations authorized by RCW 28A.525.120 through 28A.525.134 as evidenced by a joint agreement entered into between the governor and the superintendent of public instruction.

The state finance committee is authorized to prescribe the forms of such bonds; the provisions of sale of all or any portion or portions of such bonds; the terms, provisions, and covenants of said bonds, and the sale, issuance and redemption thereof. The covenants of said bonds may include but not be limited to a covenant for the creation, maintenance and replenishment of a reserve account or accounts within the common school building bond redemption fund of 1967 to secure the payment of the principal of and interest on said bonds, into which it shall be pledged there will be paid, from the same sources pledged for the payment of such principal and interest, such amounts at such times which in the opinion of the state finance committee are necessary for the most advantageous sale of said bonds; a covenant that additional bonds which may be authorized by the legislature payable out of the same source or sources may be issued on a parity with the bonds authorized in RCW 28A.525.120 through 28A.525.134 upon compliance with such conditions as the state finance committee may deem necessary to effect the most advantageous sale of the bonds authorized in RCW 28A.525.120 through 28A.525.134 and such additional bonds; and if found reasonably necessary by the state finance committee to accomplish the most advantageous sale of the bonds authorized herein or any issue or series thereof, such committee may select a trustee for the owners and holders of such bonds or issue or series thereof and shall fix the rights, duties, powers and obligations of such trustee. The money

in such reserve account or accounts and in such common school construction fund may be invested in any investments that are legal for the permanent common school fund of the state, and any interest earned on or profits realized from the sale of any such investments shall be deposited in such common school building bond redemption fund of 1967. None of the bonds herein authorized shall be sold for less than the par value thereof.

The committee may provide that the bonds, or any of them, may be called prior to the maturity date thereof under such terms, conditions, and provisions as it may determine and may authorize the use of facsimile signatures in the issuance of such bonds and upon any coupons attached thereto. Such bonds shall be payable at such places as the state finance committee may provide. [1990 c 33 § 440; 1970 ex.s. c 15 § 26; 1969 c 77 § 4; 1969 ex.s. c 223 § 28A.47.784. Prior: 1967 ex.s. c 56 § 1. Formerly RCW 28A.47.784.]

Severability—1970 ex.s. c 15: See note following RCW 28A.230.160.

28A.525.122 1967 bond issue for construction, modernization of school plant facilities—Common school building construction account—Created—Proceeds from bond sale deposited in—Use. The common school building construction account of the general fund is hereby created as an account of the general fund and the proceeds from the sale of the bonds authorized by RCW 28A.525.120 through 28A.525.134 shall be deposited therein and shall be used exclusively for the purposes of carrying out the provisions of RCW 28A.525.120 through 28A.525.134 and for payment of the expense incurred in the printing, issuance and sale of such bonds. [1990 c 33 § 441; 1969 ex.s. c 223 § 28A.47.785. Prior: 1967 ex.s. c 56 § 2. Formerly RCW 28A.47.785, 28.47.785.]

28A.525.124 1967 bond issue for construction, modernization of school plant facilities—Bonds not general obligation of state—Bonds, interest on, source for payment of—Pledge. Bonds issued under the provisions of RCW 28A.525.120 through 28A.525.134 shall distinctly state that they are not a general obligation bond of the state, but are payable in the manner provided in RCW 28A.525.120 through 28A.525.134 from that portion of the common school construction fund derived from the interest on the permanent common school fund. That portion of the common school construction fund derived from interest on the permanent common school fund is hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 28A.525.120 through 28A.525.134. [1990 c 33 § 442; 1969 ex.s. c 223 § 28A.47.786. Prior: 1967 ex.s. c 56 § 3. Formerly RCW 28A.47.786, 28.47.786.]

Common school construction fund: Chapter 28A.515 RCW.

28A.525.126 1967 bond issue for construction, modernization of school plant facilities—Common school building bond redemption fund of 1967—Created—Use—Transfer of funds to—Prior charge against certain common school construction fund moneys. The common school building bond redemption fund of 1967 is hereby

created in the state treasury which fund shall be exclusively devoted to the retirement of the bonds and interest authorized by RCW 28A.525.120 through 28A.525.134 and to the retirement of and payment of interest on any additional bonds which may be issued on a parity therewith. The state finance committee shall, on or before June thirtieth of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet reserve account payments, interest payments on and retirement of bonds payable out of such common school building bond redemption fund of 1967. On July first of each year the state treasurer shall transfer such amount to the common school building bond redemption fund of 1967 from moneys in the common school construction fund certified by the state finance committee to be interest on the permanent common school fund and such amount certified by the state finance committee to the state treasurer shall be a prior charge against that portion of the common school construction fund derived from interest on the permanent common school fund.

The owner and holder of each of said bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed herein. [1990 c 33 § 443; 1969 c 77 § 5; 1969 ex.s. c 223 § 28A.47.787. Prior: 1967 ex.s. c 56 § 4. Formerly RCW 28A.47.787.]

28A.525.128 1967 bond issue for construction, modernization of school plant facilities—Legislature may provide additional means of revenue—General credit of state not pledged. The legislature may provide additional means for raising funds for the payment of interest and principal of the bonds authorized by RCW 28A.525.120 through 28A.525.134 from any source or sources not prohibited by the state Constitution and RCW 28A.525.120 through 28A.525.134 shall not be deemed to provide an exclusive method of payment. The power given to the legislature by this section is permissive and shall not be construed to constitute a pledge of general credit of the state of Washington. [1990 c 33 § 444; 1969 c 77 § 6; 1969 ex.s. c 223 § 28A.47.788. Prior: 1967 ex.s. c 56 § 5. Formerly RCW 28A.47.788.]

28A.525.130 1967 bond issue for construction, modernization of school plant facilities—Bonds are negotiable, legal investment and security. The bonds authorized in RCW 28A.525.120 through 28A.525.134 shall be fully negotiable instruments and shall be legal investment for all state funds or for funds under state control and all funds of municipal corporations, and shall be legal security for all state, county and municipal deposits. [1990 c 33 § 445; 1969 ex.s. c 223 § 28A.47.789. Prior: 1967 ex.s. c 56 § 6. Formerly RCW 28A.47.789, 28.47.789.]

28A.525.132 1967 bond issue for construction, modernization of school plant facilities—Allotment of funds appropriated from common school building construction account or common school construction fund—Local responsibility—Duties, rules and regulations of state board of education. For the purpose of carrying out the provisions of RCW 28A.525.120 through 28A.525.134 funds appropriated to the state board of

education from the common school building construction account of the general fund or the common school construction fund shall be allotted by the state board of education in accordance with the provisions of *RCW 28A.47.732 through 28A.47.748: PROVIDED, That no allotment shall be made to a school district for the purpose aforesaid until such district has provided funds for school building construction purposes through the issuance of bonds or through the authorization of excess tax levies or both in an amount equivalent to ten percent of its taxable valuation or such amount as may be required by the state board of education. The state board of education shall prescribe and make effective such rules and regulations as are necessary to equate insofar as possible the efforts made by school districts to provide capital funds by the means aforesaid. [1990 c 33 § 446; 1969 ex.s. c 223 § 28A.47.790. Prior: 1967 ex.s. c 56 § 7. Formerly RCW 28A.47.790, 28.47.790.]

*Reviser's note: RCW 28A.47.732 through 28A.47.748 were repealed by 1983 c 189 § 1.

28A.525.134 1967 bond issue for construction, modernization of school plant facilities—Appropriations to state board of education—Allocation of, limitations. There is hereby appropriated to the state board of education the following sums, or so much thereof as may be necessary, for the purpose of carrying out the provisions of RCW 28A.525.120 through 28A.525.134: (1) Twenty-two million dollars from the common school building construction account and (2) twenty-nine million seven hundred forty-four thousand five hundred and fifty-four dollars from the common school construction fund including three million for modernization of existing school facilities.

In accordance with RCW 28A.525.132, the state board of education is authorized to allocate for the purposes of carrying out the provisions of RCW 28A.525.120 through 28A.525.134 the sum of sixty-three million nine hundred thousand dollars: PROVIDED, That expenditures against such allocation shall not exceed the amount appropriated in this section: PROVIDED FURTHER, That no part of the allocation provided in this section in excess of the total amount appropriated by RCW 28A.525.120 through 28A.525.134 shall be allocated unless joint agreement of its necessity shall be determined by the governor and the superintendent of public instruction. [1990 c 33 § 447; 1969 ex.s. c 223 § 28A.47.791. Prior: 1967 ex.s. c 56 § 8. Formerly RCW 28A.47.791, 28.47.791.]

28A.525.140 1969 bond issue for construction, modernization of school plant facilities—Authorized—Sale, conditions—Form, terms. For the purpose of furnishing funds for state assistance to school districts in providing common school plant facilities and modernization of existing common school plant facilities, there shall be issued and sold general obligation bonds of the state of Washington in the sum of twenty-two million five hundred thousand dollars to be paid and discharged in accordance with terms to be established by the state finance committee. The issuance, sale and retirement of said bonds shall be under the general supervision and control of the state finance committee: PROVIDED, That no part of the twenty-six million four hundred thousand dollar bond issue shall be sold

unless there are insufficient funds in the common school construction fund to meet appropriations authorized by RCW 28A.525.140 through 28A.525.154 as evidenced by a joint agreement entered into between the governor and the superintendent of public instruction.

The state finance committee is authorized to prescribe the forms of such bonds; the provisions of sale of all or any portion or portions of such bonds; the terms, provisions, and covenants of said bonds, and the sale, issuance and redemption thereof. The covenants of said bonds may include but not be limited to a covenant for the creation, maintenance and replenishment of a reserve account or accounts within the common school building bond redemption fund of 1967 to secure the payment of the principal of and interest on said bonds, into which it shall be pledged there will be paid, from the same sources pledged for the payment of such principal and interest, such amounts at such times which in the opinion of the state finance committee are necessary for the most advantageous sale of said bonds; a covenant that additional bonds which may be authorized by the legislature payable out of the same source or sources may be issued on a parity with the bonds authorized in RCW 28A.525.120 through 28A.525.134 and 28A.525.140 through 28A.525.154 upon compliance with such conditions as the state finance committee may deem necessary to effect the most advantageous sale of the bonds authorized in RCW 28A.525.140 through 28A.525.154 and such additional bonds; and if found reasonably necessary by the state finance committee to accomplish the most advantageous sale of the bonds authorized herein or any issue or series thereof, such committee may select a trustee for the owners and holders of such bonds or issue or series thereof and shall fix the rights, duties, powers and obligations of such trustee. The money in such reserve account or accounts and in such common school construction fund may be invested in any investments that are legal for the permanent common school fund of the state, and any interest earned on or profits realized from the sale of any such investments shall be deposited in such common school building bond redemption fund of 1967. None of the bonds herein authorized shall be sold for less than the par value thereof.

The committee may provide that the bonds, or any of them, may be called prior to the maturity date thereof under such terms, conditions, and provisions as it may determine and may authorize the use of facsimile signatures in the issuance of such bonds and upon any coupons attached thereto. Such bonds shall be payable at such places as the state finance committee may provide. [1990 c 33 § 448; 1985 ex.s. c 4 § 11; 1974 ex.s. c 108 § 1; 1971 ex.s. c 4 § 1; 1969 c 13 § 1. Formerly RCW 28A.47.792, 28.47.792.]

Severability—1985 ex.s. c 4: See RCW 43.99G.900.

Severability—1969 c 13: "If any section, paragraph, sentence, clause, phrase or word of this 1969 act shall be held to be invalid or unconstitutional, such 1969 act shall not affect nor impair the validity or constitutionality of any other section, paragraph, sentence, clause, phrase or word of this 1969 act. It is hereby declared that had any section, paragraph, sentence, clause, phrase or word as to which this 1969 act is declared invalid been eliminated from the act at the time the same was considered, the act would have nevertheless been enacted with such portions eliminated." [1969 c 13 § 9.]

Rescinding authority to issue balance of bonds authorized under RCW 28A.525.140 through 28A.525.154: RCW 28A.525.158.

28A.525.142 1969 bond issue for construction, modernization of school plant facilities—Proceeds from bond sale deposited in common school building construction account—Use. The proceeds from the sale of the bonds authorized herein shall be deposited in the common school building construction account of the general fund and shall be used exclusively for the purposes of carrying out the provisions of *RCW 28A.47.742 through 28A.47.748, and for payment of the expense incurred in the printing, issuance and sale of such bonds. [1969 c 13 § 2. Formerly RCW 28A.47.793, 28.47.793.]

*Reviser's note: RCW 28A.47.742 through 28A.47.748 were repealed by 1983 c 189 § 1.

Severability—1969 c 13: See note following RCW 28A.525.140.

28A.525.144 1969 bond issue for construction, modernization of school plant facilities—Bonds not general obligation of state—Bonds, interest on, source of payment of—Pledge. Bonds issued under the provisions of RCW 28A.525.140 through 28A.525.154 shall distinctly state that they are a general obligation bond of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal of and interest on such bonds shall be first payable in the manner provided in RCW 28A.525.140 through 28A.525.154 from that portion of the common school construction fund derived from the interest on the permanent common school fund. That portion of the common school construction fund derived from interest on the permanent common school fund is hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 28A.525.140 through 28A.525.154. [1990 c 33 § 449; 1974 ex.s. c 108 § 2; 1969 c 13 § 3. Formerly RCW 28A.47.794, 28.47.794.]

Severability—1969 c 13: See note following RCW 28A.525.140.

28A.525.146 1969 bond issue for construction, modernization of school plant facilities—Common school building bond redemption fund of 1967—Use—Transfer of funds to—Prior charge against certain common school construction fund moneys. The common school building bond redemption fund of 1967 has been created in the state treasury which fund shall be exclusively devoted to the retirement of the bonds and interest authorized by RCW 28A.525.120 through 28A.525.134 and 28A.525.140 through 28A.525.154 and to the retirement of and payment of interest on any additional bonds which may be issued on a parity therewith. The state finance committee shall, on or before June thirtieth of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet reserve account payments, interest payments on and retirement of bonds payable out of such common school building bond redemption fund of 1967. On July first of each year the state treasurer shall transfer such amount to the common school building bond redemption fund of 1967 from moneys in the common school construction fund certified by the state finance committee to be interest on the permanent common school fund and such amount certified by the state finance committee to the state treasurer shall be a prior charge

against that portion of the common school construction fund derived from interest on the permanent common school fund.

The owner and holder of each of said bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed herein. [1990 c 33 § 450; 1971 ex.s. c 4 § 2; 1969 c 13 § 4. Formerly RCW 28A.47.795, 28.47.795.]

Severability—1969 c 13: See note following RCW 28A.525.140.

28A.525.148 1969 bond issue for construction, modernization of school plant facilities—Legislature may provide additional means of revenue. The legislature may provide additional means for raising funds for the payment of interest and principal of the bonds authorized by RCW 28A.525.140 through 28A.525.154 from any source or sources not prohibited by the state Constitution and RCW 28A.525.140 through 28A.525.154 shall not be deemed to provide an exclusive method of payment. [1990 c 33 § 451; 1974 ex.s. c 108 § 3; 1971 ex.s. c 4 § 3; 1969 c 13 § 5. Formerly RCW 28A.47.796, 28.47.796.]

Severability—1969 c 13: See note following RCW 28A.525.140.

28A.525.150 1969 bond issue for construction, modernization of school plant facilities—Bonds are negotiable, legal investment and security. The bonds herein authorized shall be fully negotiable instruments and shall be legal investment for all state funds or for funds under state control and all funds of municipal corporations, and shall be legal security for all state, county and municipal deposits. [1969 c 13 § 6. Formerly RCW 28A.47.797, 28.47.797.]

Severability—1969 c 13: See note following RCW 28A.525.140.

28A.525.152 1969 bond issue for construction, modernization of school plant facilities—Allotment of funds appropriated from common school building construction account—Local responsibility—Duties of state board of education. For the purpose of carrying out the provisions of RCW 28A.525.140 through 28A.525.154 funds appropriated to the state board of education from the common school building construction account of the general fund shall be allotted by the state board of education in accordance with the provisions of *RCW 28A.47.732 through 28A.47.748: PROVIDED, That no allotment shall be made to a school district for the purpose aforesaid until such district has provided funds for school building construction purposes through the issuance of bonds or through the authorization of excess tax levies or both in an amount equivalent to ten percent of its taxable valuation or such amount as may be required by the state board of education. The state board of education shall prescribe and make effective such rules and regulations as are necessary to equate insofar as possible the efforts made by school districts to provide capital funds by the means aforesaid. [1990 c 33 § 452; 1969 c 13 § 7. Formerly RCW 28A.47.798, 28.47.798.]

*Reviser's note: RCW 28A.47.732 through 28A.47.748 were repealed by 1983 c 189 § 1.

Severability—1969 c 13: See note following RCW 28A.525.140.

28A.525.154 1969 bond issue for construction, modernization of school plant facilities—Appropriations to state board of education—Allocation of, limitations. There is hereby appropriated to the state board of education the following sums or so much thereof as may be necessary for the purpose of carrying out the provisions of RCW 28A.525.140 through 28A.525.154: Twenty-six million four hundred thousand dollars from the common school building construction account of the general fund and five million seven hundred and fifty-five thousand four hundred and forty-six dollars from the common school construction fund.

In accordance with RCW 28A.525.152, the state board of education is authorized to allocate for the purposes of carrying out the provisions of RCW 28A.525.140 through 28A.525.154 the entire amount of such appropriation as hereinabove in this section provided which is not already allocated for that purpose: PROVIDED, That expenditures against such allocation shall not exceed the amount appropriated in this section. [1990 c 33 § 453; 1969 c 13 § 8. Formerly RCW 28A.47.799, 28.47.799.]

Severability—1969 c 13: See note following RCW 28A.525.140.

28A.525.156 Bonds authorized under RCW 28A.525.120 through 28A.525.154 may be refunded—Security. Any or all of the heretofore issued and outstanding bonds authorized by RCW 28A.525.120 through 28A.525.134 and 28A.525.140 through 28A.525.154 may be refunded by the issuance of general obligation bonds of the state of Washington pursuant to the provisions of chapter 39.53 RCW as heretofore or hereafter amended. Any such refunding general obligation bonds shall be additionally secured as to the payment thereof by a pledge of interest on the permanent common school fund. [1990 c 33 § 454; 1974 ex.s. c 108 § 4. Formerly RCW 28A.47.7991.]

28A.525.158 Rescinding authority to issue balance of bonds authorized under RCW 28A.525.140 through 28A.525.154. Authority to issue the balance of general obligation bonds authorized by chapter 13, Laws of 1969 and unissued in the amount of three million nine hundred thousand dollars is hereby rescinded. [1979 ex.s. c 241 § 13. Formerly RCW 28A.47.7992.]

Effective date—1979 ex.s. c 241: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [June 15, 1979]." [1979 ex.s. c 241 § 15.]

Severability—1979 ex.s. c 241: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 241 § 14.]

28A.525.160 1969 appropriation for construction, modernization of school plant facilities. For the purpose of furnishing funds for state assistance to school districts in providing common school plant facilities and modernization of existing common school plant facilities, there is hereby appropriated from the common school construction fund the sum of thirty-seven million, four thousand, four hundred twenty-seven dollars. [1969 ex.s. c 244 § 1. Formerly RCW 28A.47.800, 28.47.800.]

Severability—1969 ex.s. c 244: "If any section, paragraph, sentence, clause, phrase or word of this act should be held to be invalid or unconstitu-

tional, such act shall not affect nor impair the validity or constitutionality of any other section, paragraph, sentence, clause, phrase or word of this act. It is hereby declared that had any section, paragraph, sentence, clause, phrase or word as to which this act is declared invalid been eliminated from the act at the time the same was considered, the act would have nevertheless been enacted with such portions eliminated." [1969 ex.s. c 244 § 16.]

28A.525.162 Allotment of appropriations for school plant facilities by state board—Local school district participation—Computing state matching percentage—Rules. (1) Funds appropriated to the state board of education from the common school construction fund shall be allotted by the state board of education in accordance with student enrollment and the provisions of RCW 28A.525.200.

(2) No allotment shall be made to a school district until such district has provided matching funds equal to or greater than the difference between the total approved project cost and the amount of state assistance to the district for financing the project computed pursuant to RCW 28A.525.166, with the following exceptions:

(a) The state board may waive the matching requirement for districts which have provided funds for school building construction purposes through the authorization of bonds or through the authorization of excess tax levies or both in an amount equivalent to two and one-half percent of the value of its taxable property, as defined in RCW 39.36.015.

(b) No such matching funds shall be required as a condition to the allotment of funds for the purpose of making major or minor structural changes to existing school facilities in order to bring such facilities into compliance with the barrier free access requirements of section 504 of the federal rehabilitation act of 1973 (29 U.S.C. Sec. 706) and rules implementing the act.

(3) For the purpose of computing the state matching percentage under RCW 28A.525.166 when a school district is granted authority to enter into contracts, adjusted valuation per pupil shall be calculated using headcount student enrollments from the most recent October enrollment reports submitted by districts to the superintendent of public instruction, adjusted as follows:

(a) In the case of projects for which local bonds were approved after May 11, 1989:

(i) For districts which have been designated as serving high school districts under RCW 28A.540.110, students residing in the nonhigh district so designating shall be excluded from the enrollment count if the student is enrolled in any grade level not offered by the nonhigh district;

(ii) The enrollment of nonhigh school districts shall be increased by the number of students residing within the district who are enrolled in a serving high school district so designated by the nonhigh school district under RCW 28A.540.110, including only students who are enrolled in grade levels not offered by the nonhigh school district; and

(iii) The number of preschool students with disabilities included in the enrollment count shall be multiplied by one-half;

(b) In the case of construction or modernization of high school facilities in districts serving students from nonhigh school districts, the adjusted valuation per pupil shall be computed using the combined adjusted valuations and enrollments of each district, each weighted by the percentage of the district's resident high school students served by the high school district; and

(c) The number of kindergarten students included in the enrollment count shall be multiplied by one-half.

(4) The state board of education shall prescribe and make effective such rules as are necessary to equate insofar as possible the efforts made by school districts to provide capital funds by the means aforesaid.

(5) For the purposes of this section, "preschool students with disabilities" means developmentally disabled children of preschool age who are entitled to services under RCW 28A.155.010 through 28A.155.100 and are not included in the kindergarten enrollment count of the district. [1995 c 77 § 24; 1990 c 33 § 455; 1989 c 321 § 1; 1980 c 154 § 18; 1974 ex.s. c 56 § 1; 1970 ex.s. c 42 § 5; 1969 ex.s. c 244 § 2. Formerly RCW 28A.47.801, 28.47.801.]

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82.45 RCW digest.

Severability—1974 ex.s. c 56: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 56 § 9.]

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

Severability—1969 ex.s. c 244: See note following RCW 28A.525.160.

28A.525.164 Allotment of appropriations for school plant facilities—Duties of board. In allotting the state funds provided by RCW 28A.525.160 through 28A.525.182, the state board of education shall:

(1) Prescribe rules and regulations not inconsistent with RCW 28A.525.160 through 28A.525.182 governing the administration, control, terms, conditions, and disbursement of allotments to school districts to assist them in providing school plant facilities;

(2) Approve, whenever the board deems such action advisable, allotments to districts that apply for state assistance;

(3) Authorize the payment of approved allotments by warrant of the state treasurer; and

(4) In the event that the amount of state assistance applied for pursuant to the provisions hereof exceeds the funds available for such assistance during any biennium, make allotments on the basis of the urgency of need for school facilities in the districts that apply for assistance or prorate allotments among such districts in conformity with procedures and regulations applicable thereto which shall be established by the board. [1990 c 33 § 456; 1989 c 321 § 2; 1974 ex.s. c 56 § 2; 1969 ex.s. c 244 § 3. Formerly RCW 28A.47.802, 28.47.802.]

Severability—1974 ex.s. c 56: See note following RCW 28A.525.162.

Severability—1969 ex.s. c 244: See note following RCW 28A.525.160.

28A.525.166 Allotment of appropriations for school plant facilities—Basis of state aid for school plant. Allocations to school districts of state funds provided by RCW 28A.525.160 through 28A.525.182 shall be made by the state board of education and the amount of state assistance to a school district in financing a school plant project shall be determined in the following manner:

(1) The boards of directors of the districts shall determine the total cost of the proposed project, which cost may include the cost of acquiring and preparing the site, the cost of constructing the building or of acquiring a building and preparing the same for school use, the cost of necessary equipment, taxes chargeable to the project, necessary architects' fees, and a reasonable amount for contingencies and for other necessary incidental expenses: PROVIDED, That the total cost of the project shall be subject to review and approval by the state board of education.

(2) The state matching percentage for a school district shall be computed by the following formula:

The ratio of the school district's adjusted valuation per pupil divided by the ratio of the total state adjusted valuation per pupil shall be subtracted from three, and then the result of the foregoing shall be divided by three plus (the ratio of the school district's adjusted valuation per pupil divided by the ratio of the total state adjusted valuation per pupil).

$$\text{Computed State Ratio} = \frac{\text{District adjusted 3-valuation per pupil}}{\text{District adjusted 3+valuation per pupil}} \div \frac{\text{Total state adjusted valuation per pupil}}{\text{Total state adjusted valuation per pupil}} = \text{\% Assistance}$$

PROVIDED, That in the event the percentage of state assistance to any school district based on the above formula is less than twenty percent and such school district is otherwise eligible for state assistance under RCW 28A.525.160 through 28A.525.182, the state board of education may establish for such district a percentage of state assistance not in excess of twenty percent of the approved cost of the project, if the state board finds that such additional assistance is necessary to provide minimum facilities for housing the pupils of the district.

(3) In addition to the computed percent of state assistance developed in (2) above, a school district shall be entitled to additional percentage points determined by the average percentage of growth for the past three years. One percent shall be added to the computed percent of state assistance for each percent of growth, with a maximum of twenty percent.

(4) The approved cost of the project determined in the manner herein prescribed times the percentage of state assistance derived as provided for herein shall be the amount of state assistance to the district for the financing of the project: PROVIDED, That need therefor has been established to the satisfaction of the state board of education: PROVIDED, FURTHER, That additional state assistance may be allowed if it is found by the state board of education that such assistance is necessary in order to meet (a) a school housing emergency resulting from the destruction of a school building by fire, the condemnation of a school building by properly constituted authorities, a sudden excessive and clearly foreseeable future increase in school population, or other conditions similarly emergent in nature; or (b) a special school housing burden imposed by virtue of the admission of nonresident students into educational programs established, maintained and operated in conformity with the requirements of law; or (c) a deficiency in the capital funds of the district resulting from financing, subsequent to April 1, 1969, and without benefit of the state assis-

tance provided by prior state assistance programs, the construction of a needed school building project or projects approved in conformity with the requirements of such programs, after having first applied for and been denied state assistance because of the inadequacy of state funds available for the purpose, or (d) a condition created by the fact that an excessive number of students live in state owned housing, or (e) a need for the construction of a school building to provide for improved school district organization or racial balance, or (f) conditions similar to those defined under (a), (b), (c), (d) and (e) hereinabove, creating a like emergency. [1990 c 33 § 457; 1989 c 321 § 3; 1975 1st ex.s. c 98 § 1; 1974 ex.s. c 56 § 3; 1969 ex.s. c 244 § 4. Formerly RCW 28A.47.803, 28.47.803.]

Effective date—1975 1st ex.s. c 98: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 98 § 3.]

Severability—1974 ex.s. c 56: See note following RCW 28A.525.162.

Severability—1969 ex.s. c 244: See note following RCW 28A.525.160.

28A.525.168 Allotment of appropriations for school plant facilities—Taxable valuation and percentage of state assistance to be used in determining eligibility. Whenever the voters of a school district authorize the issuance of bonds and/or the levying of excess taxes in an amount sufficient to meet the requirements of RCW 28A.525.162 respecting eligibility for state assistance in providing school facilities, the taxable valuation of the district and the percentage of state assistance in providing school facilities prevailing at the time of such authorization shall be the valuation and the percentage used for the purpose of determining the eligibility of the district for an allotment of state funds and the amount or amounts of such allotments, respectively, for all projects for which the voters authorize capital funds as aforesaid, unless a higher percentage of state assistance prevails on the date that state funds for assistance in financing a project are allotted by the state board of education in which case the percentage prevailing on the date of allotment by the state board of funds for each project shall govern: PROVIDED, That if the state board of education determines at any time that there has been undue or unwarranted delay on the part of school district authorities in advancing a project to the point of readiness for an allotment of state funds, the taxable valuation of the school district and the percentage of state assistance prevailing on the date that the allotment is made shall be used for the purposes aforesaid: PROVIDED, FURTHER, That the date herein specified as applicable in determining the eligibility of an individual school district for state assistance and in determining the amount of such assistance shall be applicable also to cases where it is necessary in administering chapter 28A.540 RCW to determine eligibility for and the amount of state assistance for a group of school districts considered as a single school administrative unit. [1990 c 33 § 458; 1969 ex.s. c 244 § 5. Formerly RCW 28A.47.804, 28.47.804.]

Severability—1969 ex.s. c 244: See note following RCW 28A.525.160.

28A.525.170 Allotment of appropriations for school plant facilities—Additional allotment authorized—Effect of allotment on future disbursements to district. If a school district which has qualified for an allotment of state funds under the provisions of RCW 28A.525.160 through 28A.525.182 for school building construction is found by the state board of education to have a school housing emergency requiring an allotment of state funds in excess of the amount allocable under RCW 28A.525.166, an additional allotment may be made to such district: PROVIDED, That the total amount allotted shall not exceed ninety percent of the total cost of the approved project which may include the cost of the site and equipment. At any time thereafter when the state board of education finds that the financial position of such school district has improved through an increase in its taxable valuation or through retirement of bonded indebtedness or through a reduction in school housing requirements, or for any combination of these reasons, the amount of such additional allotment, or any part of such amount as the state board of education determines, shall be deducted, under terms and conditions prescribed by the board, from any state school building construction funds which might otherwise be provided to such district. [1990 c 33 § 459; 1974 ex.s. c 56 § 4; 1969 ex.s. c 244 § 6. Formerly RCW 28A.47.805, 28.47.805.]

Severability—1974 ex.s. c 56: See note following RCW 28A.525.162.

Severability—1969 ex.s. c 244: See note following RCW 28A.525.160.

28A.525.172 Allotment of appropriations for school plant facilities—Application by district for state assistance—Studies and surveys by state board. All applications by school districts for state assistance in providing school plant facilities shall be made to the superintendent of public instruction in conformity with rules and regulations which shall be prescribed by the state board of education. Studies and surveys shall be conducted by the state board for the purpose of securing information relating to (a) the kind and extent of the school plant facilities required and the urgency of need for such facilities in districts that seek state assistance, (b) the ability of such districts to provide capital funds by local effort, (c) the need for improvement of school administrative units and school attendance areas among or within such districts, and (d) any other pertinent matters. [1969 ex.s. c 244 § 7. Formerly RCW 28A.47.806, 28.47.806.]

Severability—1969 ex.s. c 244: See note following RCW 28A.525.162.

28A.525.174 Allotment of appropriations for school plant facilities—Manual, other materials to guide and provide information to district. It shall be the duty of the state board of education, in consultation with the Washington state department of social and health services, to prepare a manual and/or to specify other materials for the information and guidance of local school district authorities and others responsible for and concerned with the designing, planning, maintenance and operation of school plant facilities for the public schools. In so doing due consideration shall be given to the presentation of information regarding (a) the need for cooperative state-local district action in planning school plant

facilities arising out of the cooperative plan for financing said facilities provided for in RCW 28A.525.160 through 28A.525.182; (b) procedures in inaugurating and conducting a school plant planning program for a school district; (c) standards for use in determining the selection and development of school sites and in designing, planning, and constructing school buildings to the end that the health, safety, and educational well-being and development of school children will be served; (d) the planning of readily expandable and flexible school buildings to meet the requirements of an increasing school population and a constantly changing educational program; (e) an acceptable school building maintenance program and the necessity therefor; (f) the relationship of an efficient school building operations service to the health and educational progress of pupils; and (g) any other matters regarded by the state board as pertinent or related to the purposes and requirements of RCW 28A.525.160 through 28A.525.182. [1990 c 33 § 460; 1979 c 141 § 39; 1974 ex.s. c 56 § 5; 1969 ex.s. c 244 § 8. Formerly RCW 28A.47.807, 28.47.807.]

Severability—1974 ex.s. c 56: See note following RCW 28A.525.162.

Severability—1969 ex.s. c 244: See note following RCW 28A.525.160.

28A.525.176 Allotment of appropriations for school plant facilities—State board to provide district with consultatory, advisory service. The state board of education shall furnish to school districts seeking state assistance under the provisions of RCW 28A.525.160 through 28A.525.182 consultatory and advisory service in connection with the development of school building programs and the planning of school plant facilities. [1990 c 33 § 461; 1974 ex.s. c 56 § 6; 1969 ex.s. c 244 § 9. Formerly RCW 28A.47.808, 28.47.808.]

Severability—1974 ex.s. c 56: See note following RCW 28A.525.162.

Severability—1969 ex.s. c 244: See note following RCW 28A.525.160.

28A.525.178 Allotment of appropriations for school plant facilities—Modifiable basic or standard plans for school buildings. Whenever in the judgment of the state board of education economies may be effected without impairing the usefulness and adequacy of school buildings, said board may prescribe rules and regulations and establish procedures governing the preparation and use of modifiable basic or standard plans for school building construction projects for which state assistance funds provided by RCW 28A.525.160 through 28A.525.182 are allotted. [1990 c 33 § 462; 1974 ex.s. c 56 § 7; 1969 ex.s. c 244 § 10. Formerly RCW 28A.47.809, 28.47.809.]

Severability—1974 ex.s. c 56: See note following RCW 28A.525.162.

Severability—1969 ex.s. c 244: See note following RCW 28A.525.160.

28A.525.180 Allotment of appropriations for school plant facilities—Appropriation to be reduced by amount of federal funds made available for school construction except to federally affected areas. The total amount of funds appropriated under the provisions of RCW

28A.525.160 through 28A.525.182 shall be reduced by the amount of federal funds made available during each biennium for school construction purposes under any applicable federal law. The funds appropriated by RCW 28A.525.160 through 28A.525.182 and available for allotment by the state board of education shall be reduced by the amount of such federal funds made available. Notwithstanding the foregoing provisions of this section, the total amount of funds appropriated by RCW 28A.525.160 through 28A.525.182 shall not be reduced by reason of any grants to any school district of federal moneys paid under Public Law No. 815 or any other federal act authorizing school building construction assistance to federally affected areas. [1990 c 33 § 463; 1974 ex.s. c 56 § 8; 1969 ex.s. c 244 § 11. Formerly RCW 28A.47.810, 28.47.810.]

Severability—1974 ex.s. c 56: See note following RCW 28A.525.162.

Severability—1969 ex.s. c 244: See note following RCW 28A.525.160.

28A.525.182 Allotment of appropriations for school plant facilities—Permissible allocations. In accordance with RCW 28A.525.162, the state board of education is authorized to allocate for the purposes of carrying out the provisions of RCW 28A.525.160 through 28A.525.180 the sum of forty-three million, two hundred thousand dollars: PROVIDED, That expenditures against such allocation shall not exceed the amount appropriated in RCW 28A.525.160. [1990 c 33 § 464; 1969 ex.s. c 244 § 12. Formerly RCW 28A.47.811, 28.47.811.]

Severability—1969 ex.s. c 244: See note following RCW 28A.525.160.

28A.525.190 Board limited when prioritizes construction. The state board of education shall prioritize the construction of common school facilities only from funds appropriated and available in the common school construction fund. [1975 1st ex.s. c 98 § 2. Formerly RCW 28A.47.820.]

Effective date—1975 1st ex.s. c 98: See note following RCW 28A.525.166.

28A.525.200 Specific RCW sections enumerated governing allocation and distribution of funds for school plant facilities. Notwithstanding any other provision of RCW 28A.525.010 through 28A.525.222, the allocation and distribution of funds by the state board of education which are now or may hereafter be appropriated for the purposes of providing assistance in the construction of school plant facilities shall be governed by RCW 28A.525.010 through 28A.525.080 and 28A.525.162 through 28A.525.178. [1990 c 33 § 465; 1985 c 136 § 2; 1977 ex.s. c 227 § 1. Formerly RCW 28A.47.830.]

28A.525.210 1984 bond issue for construction, modernization of school plant facilities—Intent. It is the intent of the legislature to authorize general obligation bonds of the state of Washington for common school plant facilities which provides for the reimbursement of the state treasury for principal and interest payments and which therefore is

not subject to the limitations on indebtedness under RCW 39.42.060. [1984 c 266 § 1. Formerly RCW 28A.47.840.]

Severability—1984 c 266: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 266 § 8.]

28A.525.212 1984 bond issue for construction, modernization of school plant facilities—Authorized—Sale. For the purpose of furnishing funds for state assistance to school districts in providing common school plant facilities and modernization of existing common school plant facilities, and to provide for the state administrative cost of such projects, including costs of bond issuance and retirement, salaries and related costs of officials and employees of the state, costs of credit enhancement agreements, and other expenses incidental to the administration of capital projects, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of forty million one hundred seventy thousand dollars, or so much thereof as may be required, to finance these projects and all costs incidental thereto.

Bonds authorized in this section may be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. The state finance committee may obtain insurance or letters of credit and may authorize the execution and delivery of agreements, promissory notes, and other obligations for the purpose of insuring the payment or enhancing the marketability of bonds authorized in this section. Promissory notes or other obligations issued pursuant to this section shall not constitute a debt or the contracting of indebtedness under any constitutional or statutory indebtedness limitation if their payment is conditioned upon the failure of the state to pay the principal of or interest on the bonds with respect to which the same relate. [1985 ex.s. c 3 § 1; 1984 c 266 § 2. Formerly RCW 28A.47.841.]

Severability—1984 c 266: See note following RCW 28A.525.210.

28A.525.214 1984 bond issue for construction, modernization of school plant facilities—Proceeds deposited in common school construction fund—Use. The proceeds from the sale of the bonds authorized in RCW 28A.525.212 shall be deposited in the common school construction fund and shall be used exclusively for the purposes specified in RCW 28A.525.212 and section 887, chapter 57, Laws of 1983 1st ex. sess. and for the payment of expenses incurred in the issuance and sale of the bonds. [1990 c 33 § 466; 1984 c 266 § 3. Formerly RCW 28A.47.842.]

Severability—1984 c 266: See note following RCW 28A.525.210.

28A.525.216 1984 bond issue for construction, modernization of school plant facilities—Proceeds—Administered by state board of education. The proceeds from the sale of the bonds deposited under RCW 28A.525.214 in the common school construction fund shall be administered by the state board of education. [1990 c 33 § 467; 1984 c 266 § 4. Formerly RCW 28A.47.843.]

Severability—1984 c 266: See note following RCW 28A.525.210.

28A.525.218 1984 bond issue for construction, modernization of school plant facilities—State general obligation bond fund utilized for payment of principal and interest—Committee's and treasurer's duties—Form and condition of bonds. The state general obligation bond retirement fund shall be used for the payment of the principal of and interest on the bonds authorized in RCW 28A.525.212. The state finance committee may provide that a special account be created in such fund to facilitate payment of such principal and interest.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on such bonds in accordance with the provisions of the bond proceedings. The state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the general obligation bond retirement fund, or a special account in such fund, such amounts and at such times as are required by the bond proceedings. On each date on which any interest or principal and interest is due, the state treasurer shall cause an identical amount to be transferred to the general fund of the state treasury from that portion of the common school construction fund derived from the interest on the permanent common school fund. The transfers from the common school construction fund shall be subject to all pledges, liens, and encumbrances heretofore granted or created on the portion of the fund derived from interest on the permanent common school fund. Any deficiency in such transfer shall be made up as soon as moneys are available for transfer and shall constitute a continuing obligation of that portion of the common school construction fund derived from the interest on the permanent common school fund until all deficiencies are fully paid.

Bonds issued under RCW 28A.525.212 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [1990 c 33 § 468; 1985 ex.s. c 3 § 2; 1984 c 266 § 5. Formerly RCW 28A.47.844.]

Severability—1984 c 266: See note following RCW 28A.525.210.

28A.525.220 1984 bond issue for construction, modernization of school plant facilities—Legislature may provide additional means for payment. The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 28A.525.212 and 28A.525.218 shall not be deemed to provide an exclusive method for the payment. [1990 c 33 § 469; 1984 c 266 § 6. Formerly RCW 28A.47.845.]

Severability—1984 c 266: See note following RCW 28A.525.210.

28A.525.222 1984 bond issue for construction, modernization of school plant facilities—Bonds as legal investment for public funds. The bonds authorized in RCW 28A.525.212 shall be a legal investment for all state funds or funds under state control and for all funds of any other public body. [1990 c 33 § 470; 1984 c 266 § 7. Formerly RCW 28A.47.846.]

Severability—1984 c 266: See note following RCW 28A.525.210.

28A.525.230 Bonds authorized—Amount—As compensation for sale of timber—Sale, conditions. For the purpose of furnishing funds for state assistance to school districts in providing for the construction of common school plant facilities, the state finance committee is hereby authorized to issue general obligation bonds of the state of Washington in the sum of twenty-two million seven hundred thousand dollars or so much thereof as may be required to provide state assistance to local school districts for the construction of common school plant facilities and to compensate the common school construction fund for the sale of timber from common school, indemnity, and escheat trust lands sold to the parks and recreation commission prior to March 13, 1980, pursuant to RCW 43.51.270 and *43.51.280. The amount of bonds issued under RCW 28A.525.230 through 28A.525.300 shall not exceed the fair market value of the timber. No bonds authorized by RCW 28A.525.230 through 28A.525.300 shall be offered for sale without prior legislative appropriation and these bonds shall be paid and discharged in not more than thirty years of the date of issuance. [1990 c 33 § 471; 1985 ex.s. c 4 § 12; 1980 c 141 § 1. Formerly RCW 28A.47B.010.]

***Reviser's note:** RCW 43.51.280 was repealed by 1995 c 211 § 6, effective July 1, 1995.

Severability—1985 ex.s. c 4: See RCW 43.99G.900.

28A.525.240 Bond anticipation notes—Authorized—Payment. When the state finance committee has determined to issue the general obligation bonds or a portion thereof as authorized in RCW 28A.525.230 it may, pending the issuance thereof, issue in the name of the state temporary notes in anticipation of the issuance of the bonds, which notes shall be designated as "bond anticipation notes." Such portion of the proceeds of the sale of bonds as may be required for the payment of the principal of and redemption premium, if any, and interest on the notes shall be applied thereto when the bonds are issued. [1990 c 33 § 472; 1980 c 141 § 2. Formerly RCW 28A.47B.020.]

28A.525.250 Form, terms, conditions, sale and covenants of bonds and notes. The state finance committee is authorized to prescribe the form, terms, conditions, and covenants of the bonds and the bond anticipation notes authorized by this chapter, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance.

Each bond and bond anticipation note shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal thereof and interest thereon when due. [1980 c 141 § 3. Formerly RCW 28A.47B.030.]

28A.525.260 Disposition of proceeds from sale of bonds and notes—Use. Except for that portion of the proceeds required to pay bond anticipation notes, the proceeds from the sale of the bonds and bond anticipation notes authorized by RCW 28A.525.230 through 28A.525.300, and any interest earned on the proceeds, together with all grants, donations, transferred funds, and all other moneys which the state finance committee may direct the state treasurer to deposit therein, shall be deposited in the common school construction fund and shall be used exclusively for the purposes of carrying out RCW 28A.525.230 through 28A.525.300, and for payment of the expense incurred in the printing, issuance and sale of the bonds. [1990 c 33 § 473; 1980 c 141 § 4. Formerly RCW 28A.47B.040.]

28A.525.270 State general obligation bond retirement fund utilized for payment of bond principal and interest—Procedure. The state general obligation bond retirement fund shall be used for the payment of the principal of and interest on the bonds authorized by RCW 28A.525.230 through 28A.525.300.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amounts required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds and the dates on which the payments are due. The state treasurer, not less than thirty days prior to the date on which any interest or principal and interest payment is due, shall withdraw from any general state revenues or any other funds constitutionally available and received in the state treasury and deposit in the state general obligation bond retirement fund an amount equal to the amount certified by the state finance committee to be due on the payment date. [1990 c 33 § 474; 1980 c 141 § 5. Formerly RCW 28A.47B.050.]

28A.525.280 Bonds as legal investment for public funds. The bonds authorized by RCW 28A.525.230 through 28A.525.300 shall constitute a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1990 c 33 § 475; 1980 c 141 § 6. Formerly RCW 28A.47B.060.]

28A.525.290 Chapter provisions as limited by other statutes, covenants and proceedings. No provisions of RCW 28A.525.230 through 28A.525.300 shall be deemed to repeal, override, or limit any provision of RCW 28A.525.120 through 28A.525.182, nor any provision or covenant of the proceedings of the state finance committee acting for and on behalf of the state of Washington heretofore or hereafter taken in the issuance of its revenue or general obligation bonds secured by a pledge of the interest earnings of the permanent common school fund under these statutes. [1990 c 33 § 476; 1980 c 141 § 7. Formerly RCW 28A.47B.070.]

28A.525.300 Proceeds from sale of bonds as compensation for sale of timber from trust lands. The proceeds received from the sale of the bonds issued under RCW 28A.525.230 through 28A.525.300 which are deposited in the common school construction fund and available for common school construction purposes shall serve as total

compensation to the common school construction fund for the proceeds from the sale of timber from trust lands sold prior to March 13, 1980, to the state parks and recreation commission pursuant to RCW 43.51.270 and *43.51.280 which are required to be deposited in the common school construction fund. The superintendent of public instruction and the state board of education shall expend by June 30, 1981, the proceeds received from the bonds issued under RCW 28A.525.230 through 28A.525.300. [1990 c 33 § 477; 1980 c 141 § 8. Formerly RCW 28A.47B.080.]

*Reviser's note: RCW 43.51.280 was repealed by 1995 c 211 § 6, effective July 1, 1995.

Chapter 28A.530

DISTRICT BONDS FOR LAND, BUILDINGS, AND EQUIPMENT

Sections

28A.530.010	Directors may borrow money, issue bonds.
28A.530.020	Bond issuance—Election—Resolution to specify purposes.
28A.530.030	Disposition of bond proceeds—Capital projects fund.
28A.530.040	Refunding former issues without vote of the people.
28A.530.050	Holder to notify treasurer—Redemption.
28A.530.060	Expense of county treasurer.
28A.530.070	Exchange of warrants for bonds.
28A.530.080	Additional authority to contract indebtedness.

28A.530.010 Directors may borrow money, issue bonds. The board of directors of any school district may borrow money and issue negotiable bonds therefor for the purpose of:

(1) Funding outstanding indebtedness or bonds theretofore issued; or

(2) For the purchase of sites for all buildings, playgrounds, physical education and athletic facilities and structures authorized by law or necessary or proper to carry out the functions of a school district; or

(3) For erecting all buildings authorized by law, including but not limited to those mentioned in subsection (2) of this section immediately above or necessary or proper to carry out the functions of a school district, and providing the necessary furniture, apparatus, or equipment therefor; or

(4) For improving the energy efficiency of school district buildings and/or installing systems and components to utilize renewable and/or inexhaustible energy resources; or

(5) For major and minor structural changes and structural additions to buildings, structures, facilities and sites necessary or proper to carrying out the functions of the school district; or

(6) For any or all of these and other capital purposes.

Neither the amount of money borrowed nor bonds issued therefor shall exceed the limitation of indebtedness prescribed by chapter 39.36 RCW, as now or hereafter amended.

Except for bonds issued under RCW 28A.530.080, bonds may be issued only when authorized by the vote of the qualified electors of the district as provided by law.

The bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1991 c 114 § 3; 1984 c 186 § 10; 1983 c 167 § 21; 1980 c 170 § 1; 1970 ex.s. c 42 § 7; 1969

c 142 § 2; 1969 ex.s. c 223 § 28A.51.010. Prior: 1953 c 163 § 1; 1927 c 99 § 1; 1921 c 147 § 1; 1919 c 90 § 12; 1909 c 97 p 324 § 1; RRS § 4941; prior: 1907 c 240 § 7 1/2; 1907 c 101 § 1; 1903 c 153 § 1; 1897 c 118 § 117; 1890 p 45 § 1. Formerly RCW 28A.51.010, 28.51.010, 28.51.050, part.]

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

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

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

Validation—1969 c 142: See RCW 39.36.900.

School funds enumerated—Deposits—Uses—Energy audits: RCW 28A.320.330.

28A.530.020 Bond issuance—Election—Resolution to specify purposes. (1) The question whether the bonds shall be issued, as provided in RCW 28A.530.010, shall be determined at an election to be held pursuant to RCW 39.36.050. If a majority of the votes cast at such election favor the issuance of such bonds, the board of directors must issue such bonds: PROVIDED, That if the amount of bonds to be issued, together with any outstanding indebtedness of the district that only needs a simple majority voter approval, exceeds three-eighths of one percent of the value of the taxable property in said district, as the term "value of the taxable property" is defined in RCW 39.36.015, then three-fifths of the votes cast at such election must be in favor of the issuance of such bonds, before the board of directors is authorized to issue said bonds.

(2) The resolution adopted by the board of directors calling the election in subsection (1) of this section shall specify the purposes of the debt financing measure, including the specific buildings to be constructed or remodeled and any additional specific purposes as authorized by RCW 28A.530.010. If the debt financing measure anticipates the receipt of state financing assistance under chapter 28A.525 RCW, the board resolution also shall describe the specific anticipated purpose of the state assistance. If the school board subsequently determines that state or local circumstances should cause any alteration to the specific expenditures from the debt financing or of the state assistance, the board shall first conduct a public hearing to consider those circumstances and to receive public testimony. If the board then determines that any such alterations are in the best interests of the district, it may adopt a new resolution or amend the original resolution at a public meeting held subsequent to the meeting at which public testimony was received. [1996 c 48 § 1; 1990 c 33 § 478; 1984 c 186 § 11; 1970 ex.s. c 42 § 9; 1969 ex.s. c 223 § 28A.51.020. Prior: 1909 c 97 p 324 § 2; RRS § 4942; prior: 1897 c 118 § 118; 1890 p 46 § 2. Formerly RCW 28A.51.020, 28.51.020, 28.51.050, part.]

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

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

28A.530.030 Disposition of bond proceeds—Capital projects fund. When the bonds have been sold, the county treasurer shall place the money derived from such sale to the credit of the capital projects fund of the district, and such fund is hereby created. [1984 c 186 § 12; 1983 c 167 § 24;

1979 ex.s. c 257 § 1; 1969 ex.s. c 223 § 28A.51.070. Prior: 1911 c 88 § 1; 1909 c 97 p 326 § 4; RRS § 4944; prior: 1907 c 240 § 9; 1905 c 142 § 7; 1897 c 118 § 120; 1890 p 47 § 4. Formerly RCW 28A.51.070, 28.51.070, 28.51.080, 28.51.090, 28.51.100 and 28.51.110.]

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

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

Severability—1979 ex.s. c 257: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 257 § 3.]

28A.530.040 Refunding former issues without vote of the people. Whenever any bonds lawfully issued by any school district under the provisions of this chapter shall reach maturity and shall remain unpaid, or may be paid under any option provided in the bonds, the board of directors thereof shall have the power without any vote of the school district to fund the same by issuing bonds conformable to the requirements of this chapter and use the proceeds exclusively for the purpose of retiring and canceling such outstanding bonds as aforesaid, or the said directors in their discretion may exchange such refunding bonds par for par for such outstanding bonds. [1984 c 186 § 13; 1983 c 167 § 25; 1969 ex.s. c 223 § 28A.51.180. Prior: 1969 ex.s. c 232 § 66; 1945 c 32 § 1; 1909 c 97 p 329 § 12; Rem. Supp. 1945 § 4952; prior: 1897 c 118 § 124, part; 1890 p 48 § 8, part. Formerly RCW 28A.51.180, 28.51.180.]

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

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

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

28A.530.050 Holder to notify treasurer—Redemption. Every holder of any of the bonds so issued as a bearer bond as provided in this chapter, within ten days after the owner becomes the owner or holder thereof, shall notify the county treasurer of the county in which such bonds are issued of his or her ownership, together with his or her full name and post office address, and the county treasurer of said county shall deposit in the post office, properly stamped and addressed to each owner of any such bonds subject to redemption or payment, a notice in like form, stating the time and place of the redemption of such bonds and the number of the bonds to be redeemed, and in case any owners of bonds shall fail to notify the treasurer of their ownership as aforesaid, then a notice mailed to the last holder of such bonds shall be deemed sufficient, and any and all such notices so mailed as aforesaid shall be deemed to be personal notice to the holders of such bonds, and at the expiration of the time therein named shall have the force to suspend the interest upon any such bonds. [1990 c 33 § 479; 1983 c 167 § 26; 1969 ex.s. c 223 § 28A.51.190. Prior: 1909 c 97 p 330 § 13; RRS § 4953; prior: 1897 c 118 § 125; 1890 p 49 § 9. Formerly RCW 28A.51.190, 28.51.190.]

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

28A.530.060 Expense of county treasurer. At any time after the issuance of such bonds as in this chapter provided, and in the discharge of the duties imposed upon said county treasurer, should any incidental expense, costs or charges arise, the said county treasurer shall present his or her claim for the same to the board of directors of the school district issuing such bonds, and the same shall be audited and paid in the same manner as other services are paid under the provisions of law. [1990 c 33 § 480; 1969 ex.s. c 223 § 28A.51.200. Prior: 1909 c 97 p 330 § 14; RRS § 4954; prior: 1897 c 118 § 126; 1890 p 50 § 10. Formerly RCW 28A.51.200, 28.51.200.]

28A.530.070 Exchange of warrants for bonds. If bonds issued under this chapter are not sold as in this chapter provided, the owners of unpaid warrants drawn on the county treasurer by such district for an indebtedness existing at the date of the election may exchange said warrants at the face value thereof and accrued interest thereon for bonds issued under this chapter, at not less than par value and accrued interest of such bonds at the time of the exchange; such exchange to be made under such regulations as may be provided by the board of directors of such district. [1983 c 167 § 27; 1969 ex.s. c 223 § 28A.51.220. Prior: 1909 c 97 p 327 § 5; RRS § 4945. Formerly RCW 28A.51.220, 28.51.220.]

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

28A.530.080 Additional authority to contract indebtedness. In addition to the authority granted under RCW 28A.530.010, a school district may contract indebtedness for the purpose of purchasing any real or personal property, or property rights, in connection with the exercise of any powers or duties which it is now or hereafter authorized to exercise, and issue bonds, notes, or other evidences of indebtedness therefor without a vote of the qualified electors of the district, subject to the limitations on indebtedness set forth in RCW 39.36.020(3). Such bonds, notes, or other evidences of indebtedness shall be issued and sold in accordance with chapter 39.46 RCW, and the proceeds thereof shall be deposited in the capital projects fund, the transportation vehicle fund, or the general fund, as applicable. [1991 c 114 § 1.]

Chapter 28A.535

VALIDATING INDEBTEDNESS

Sections

28A.535.010	Authority to validate indebtedness.
28A.535.020	Resolution providing for election—Vote required to validate.
28A.535.030	Notice of election.
28A.535.040	Manner and result of election.
28A.535.050	Authority to borrow, issue bonds.
28A.535.060	Exchange of warrants for bonds.
28A.535.070	Notice to county treasurer of authority to issue bonds—Annual levy for payment of interest and principal on bonds—Penalty against officer for expenditures in excess of revenues.
28A.535.080	Validating indebtedness proceedings after merger.

28A.535.010 Authority to validate indebtedness.

Any school district may validate and ratify the indebtedness of such school district, incurred for strictly school purposes, when the same together with all then outstanding legal indebtedness does not exceed that amount permitted for school districts in RCW 39.36.020 (1) and (3). The value of taxable property in such school district shall be ascertained as provided in Article eight, section six, Amendment 27, of the Constitution of the state of Washington. [1969 ex.s. c 223 § 28A.52.010. Prior: 1909 c 97 p 331 § 1; RRS § 4956; prior: 1897 c 118 § 128; 1895 c 21 § 1. Formerly RCW 28A.52.010, 28.52.010.]

Reviser's note: The above reference to RCW 39.36.020 (1) and (3) was apparently based upon the 1967 version of that section [1967 c 107 § 4]; the contents and organization of that section have been altered by subsequent amendments.

28A.535.020 Resolution providing for election—

Vote required to validate. Whenever the board of directors of any school district shall deem it advisable to validate and ratify the indebtedness mentioned in RCW 28A.535.010, they shall provide therefor by resolution, which shall be entered on the records of such school district, which resolution shall provide for the holding of an election for the purpose of submitting the question of validating and ratifying the indebtedness so incurred to the voters of such school district for approval or disapproval, and if at such election three-fifths of the voters in such school district voting at such election shall vote in favor of the validation and ratification of such indebtedness, then such indebtedness so validated and ratified and every part thereof existing at the time of the adoption of said resolution shall thereby become and is hereby declared to be validated and ratified and a binding obligation upon such school district. [1996 c 48 § 2; 1995 c 111 § 1; 1990 c 33 § 481; 1969 ex.s. c 223 § 28A.52.020. Prior: 1909 c 97 p 331 § 2; RRS § 4957; prior: 1897 c 118 § 129; 1895 c 21 § 2. Formerly RCW 28A.52.020, 28.52.020.]

28A.535.030 Notice of election.

At the time of the adoption of the resolution provided for in RCW 28A.535.020, the board of directors shall direct the school district superintendent to give notice to the county auditor of the suggested time and purpose of such election, and specifying the amount and general character of the indebtedness proposed to be ratified. Such superintendent shall also cause written or printed notices to be posted in at least five places in such school district at least twenty days before such election. In addition to his or her other duties relating thereto, the county auditor shall give notice of such election as provided for in RCW 29.27.080. [1990 c 33 § 482; 1969 ex.s. c 223 § 28A.52.030. Prior: 1909 c 97 p 332 § 3; RRS § 4958; prior: 1897 c 118 § 131; 1895 c 21 § 4. Formerly RCW 28A.52.030, 28.52.030.]

28A.535.040 Manner and result of election.

Elections hereunder shall be by ballot, and conducted in the manner provided for conducting annual school elections. The ballot must contain the words, "Validating and ratifying indebtedness, yes," or the words, "Validating and ratifying indebtedness, no." Ballots containing the words, "Validating

and ratifying indebtedness, yes," shall be counted in favor of validating and ratifying such indebtedness, and ballots containing the words, "Validating and ratifying indebtedness, no," shall be counted against validating and ratifying such indebtedness. At their next meeting following ascertainment of the result of the election from the county auditor, the board of directors of any such district holding such an election shall cause to be entered a minute thereof on the records of such district. The qualifications of voters at such election shall be the same as prescribed for the election of school officials. [1969 ex.s. c 223 § 28A.52.040. Prior: 1909 c 97 p 332 § 4; RRS § 4959; prior: 1897 c 118 § 130; 1895 c 21 § 3. Formerly RCW 28A.52.040, 28.52.040.]

Conduct of elections, canvass: RCW 29.13.040.

28A.535.050 Authority to borrow, issue bonds.

If the indebtedness of such school district is validated and ratified, as provided in this chapter, by three-fifths of the voters voting at such election, the board of directors of such school district, without any further vote, may borrow money and issue and sell negotiable bonds therefor in accordance with chapter 39.46 RCW. [1984 c 186 § 14; 1983 c 167 § 28; 1975 c 43 § 2; 1969 ex.s. c 223 § 28A.52.050. Prior: 1909 c 97 p 333 § 5; RRS § 4960; prior: 1897 c 118 § 132; 1895 c 21 § 5. Formerly RCW 28A.52.050, 28.52.050.]

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

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

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

28A.535.060 Exchange of warrants for bonds.

If bonds issued under this chapter are not sold as herein provided, the owners of unpaid warrants drawn on the county treasurer by such district for an indebtedness existing at the time of the adoption of the resolution mentioned in RCW 28A.535.020, may exchange said warrants at the face value thereof and accrued interest thereon for bonds issued under this chapter, at not less than par value and accrued interest of such bonds at the time of the exchange; such exchange to be made under such regulations as may be provided by the board of directors of such district. [1990 c 33 § 483; 1983 c 167 § 30; 1969 ex.s. c 223 § 28A.52.060. Prior: 1909 c 97 p 334 § 7; RRS § 4962; prior: 1897 c 118 § 134; 1895 c 21 § 7. Formerly RCW 28A.52.060, 28.52.060.]

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

28A.535.070 Notice to county treasurer of authority to issue bonds—Annual levy for payment of interest and principal on bonds—Penalty against officer for expenditures in excess of revenues. When authorized to issue bonds, as provided in this chapter the board of directors shall immediately cause to be sent to the appropriate county treasurer, notice thereof. The county officials charged by law with the duty of levying taxes for the payment of said bonds and interest shall do so as provided in RCW 39.46.110.

The annual expense of such district shall not thereafter exceed the annual revenue thereof, and any officer of such

district who shall knowingly aid in increasing the annual expenditure in excess of the annual revenue of such district, in addition to any other penalties, whether civil or criminal, as provided by law, shall be deemed to be guilty of a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars. [1985 c 7 § 90; 1969 ex.s. c 223 § 28A.52.070. Prior: 1909 c 97 p 335 § 8; RRS § 4963; prior: 1897 c 118 § 135; 1895 c 21 § 8. Formerly RCW 28A.52.070, 28.52.070.]

28A.535.080 Validating indebtedness proceedings after merger. In case any school district has heretofore incurred, or shall hereafter incur, indebtedness for strictly school purposes and has heretofore, or shall hereafter, become merged with another district as provided in RCW 28A.315.010 through 28A.315.680 and 28A.315.900, the directors of the last named district may, after such merger, cause to be submitted to the voters within the limits of the district which incurred the obligations, the question of validating and ratifying such indebtedness. The vote shall be taken and the question determined in the manner prescribed in RCW 28A.535.020, 28A.535.030, and 28A.535.040. The directors of the district to which the district incurring the obligations was merged shall make provisions for payment of the indebtedness so validated by certifying the amount thereof in the manner prescribed in RCW 28A.535.070: PROVIDED, Such enlarged district may pay a part, or all, of such validating indebtedness from any funds available or by issuing bonds therefor when such enlarged district has taken over property of any district and in making such adjustment and apportionment as provided in RCW 28A.315.010 through 28A.315.680 and 28A.315.900, the value of the property received shall be found to exceed the total indebtedness of the district annexed to the extent of such value over the total indebtedness of the district annexed. [1990 c 33 § 484; 1969 ex.s. c 223 § 28A.52.080. Prior: 1913 c 136 § 1; RRS § 4964. Formerly RCW 28A.52.080, 28.52.080.]

Chapter 28A.540

CAPITAL FUND AID BY NONHIGH SCHOOL DISTRICTS

Sections

28A.540.010	High school facilities defined.
28A.540.020	Plan for nonhigh district to provide capital funds in aid of high school district.
28A.540.030	Factors to be considered in preparation of plan.
28A.540.040	Public hearing—Notice.
28A.540.050	Review by state board—Approval—Revised plan.
28A.540.060	Bond, excess levy, elections—Use of proceeds.
28A.540.070	Rejection by voters of nonhigh districts—Additional elections—Revised plan—Annexation proposal.
28A.540.080	Failure of nonhigh districts to submit proposal to vote within time limits—Annexation procedure.
28A.540.090	Nonhigh districts, time of levy and issuance of bonds.
28A.540.100	Validation of proceedings under 1955 act, when.
28A.540.110	Designation of high school district nonhigh district students shall attend—Effect when attendance otherwise.

28A.540.010 High school facilities defined. High school facilities shall mean buildings for occupancy by

grades nine through twelve and equipment and furniture for such buildings and shall include major alteration or major remodeling of buildings and the acquisition of new sites and of additions to existing sites, and improvement of sites but only when included as a part of a general plan for the construction, equipping and furnishing of a building or of an alteration or addition to a building. The term shall also (1) include that portion of any building, alteration, equipment, furniture, site and improvement of site allocated to grade nine when included in a plan for facilities to be occupied by grades seven through nine and (2) includes such facilities for grades seven and eight when included in a plan as aforesaid, if the regional committee on school district organization finds that students of these grades who reside in any nonhigh school districts involved are now attending school in the high school district involved under an arrangement which likely will be continued. [1985 c 385 § 31; 1969 ex.s. c 223 § 28A.56.005. Prior: 1959 c 262 § 2. Formerly RCW 28A.56.005, 28.56.005.]

Severability—1985 c 385: See note following RCW 28A.315.020.

28A.540.020 Plan for nonhigh district to provide capital funds in aid of high school district. Upon receipt of a written request from the board of directors of a high school district or a nonhigh school district that presents to the regional committee on school district organization satisfactory evidence of a need for high school facilities to be located therein and of ability to provide such facilities, the regional committee shall prepare a plan for participation by any nonhigh school district or districts in providing capital funds to pay the costs of such school facilities and equipment to be provided for the education of students residing in the school districts. Prior to submission of the aforesaid request the board of directors of the school district concerned therewith shall determine the nature and extent of the high school facilities proposed to be provided, the approximate amount of local capital funds required to pay the cost thereof, and the site or sites upon which the proposed facilities are to be located, and shall submit a report thereon to the regional committee along with the aforesaid request. [1985 c 385 § 32; 1969 ex.s. c 223 § 28A.56.010. Prior: 1959 c 262 § 1; 1955 c 344 § 1; 1953 c 229 § 1. Formerly RCW 28A.56.010, 28.56.010.]

Severability—1985 c 385: See note following RCW 28A.315.020.

28A.540.030 Factors to be considered in preparation of plan. The regional committee on school district organization shall give consideration to:

(1) The report submitted by the board of directors as stated above;

(2) The exclusion from the plan of nonhigh school districts because of remoteness or isolation or because they are so situated with respect to location, present and/or clearly foreseeable future population, and other pertinent factors as to warrant the establishment of a high school therein within a period of two years or the inclusion of their territory in some other nonhigh school district within which the establishment of a high school within a period of two years is warranted;

(3) The assessed valuation of the school districts involved;

(4) The cash balance, if any, in the capital projects fund of the district submitting the request which is designated for high school building construction purposes, together with the sources of such balance; and

(5) Any other factors found by the committee to have a bearing on the preparation of an equitable plan. [1985 c 385 § 33; 1985 c 7 § 91; 1969 ex.s. c 223 § 28A.56.020. Prior: 1959 c 262 § 3; 1955 c 344 § 2; 1953 c 229 § 2. Formerly RCW 28A.56.020, 28.56.020.]

Severability—1985 c 385: See note following RCW 28A.315.020.

28A.540.040 Public hearing—Notice. The regional committee on school district organization shall also hold a public hearing or hearings on any proposed plan: PROVIDED, That three members of the committee or two members of the committee and the educational service district superintendent, or his or her designee, may be designated by the committee to hold such public hearing or hearings and to submit a report thereof to the regional committee. The regional committee shall cause to be posted, at least ten days prior to the date appointed for any such hearing, a written or printed notice thereof in at least three prominent and public places in the school districts involved and at the place of hearing. [1985 c 385 § 34; 1975 1st ex.s. c 275 § 74; 1971 c 48 § 21; 1969 ex.s. c 223 § 28A.56.030. Prior: 1959 c 262 § 4; 1955 c 344 § 3; 1953 c 229 § 3. Formerly RCW 28A.56.030, 28.56.030.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.540.050 Review by state board—Approval—Revised plan. Subsequent to the holding of a hearing or hearings as provided in RCW 28A.540.040, the regional committee on school district organization shall determine the nonhigh school districts to be included in the plan and the amount of capital funds to be provided by every school district included therein, and shall submit the proposed plan to the state board of education together with such maps and other materials pertaining thereto as the state board may require. The state board shall review such plan, shall approve any plan which in its judgment makes adequate and satisfactory provision for participation by the nonhigh school districts in providing capital funds to be used for the purpose above stated, and shall notify the regional committee of such action. Upon receipt by the regional committee of such notification, the educational service district superintendent, or his or her designee, shall notify the board of directors of each school district included in the plan, supplying each board with complete details of the plan and shall state the total amount of funds to be provided and the amount to be provided by each district.

If any such plan submitted by a regional committee is not approved by the state board, the regional committee shall be so notified, which notification shall contain a statement of reasons therefor and suggestions for revision. Within sixty days thereafter the regional committee shall submit to the state board a revised plan which revision shall be subject to approval or disapproval by the state board and the procedural requirements and provisions of law applicable to an original plan submitted to said board. [1990 c 33 § 485; 1985 c 385

§ 35; 1975 1st ex.s. c 275 § 75; 1971 c 48 § 22; 1969 ex.s. c 223 § 28A.56.040. Prior: 1959 c 262 § 5; 1955 c 344 § 4; 1953 c 229 § 4. Formerly RCW 28A.56.040, 28.56.040.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.540.060 Bond, excess levy, elections—Use of proceeds. Within sixty days after receipt of the notice of approval from the educational service district superintendent, the board of directors of each school district included in the plan shall submit to the voters thereof a proposal or proposals for providing, through the issuance of bonds and/or the authorization of an excess tax levy, the amount of capital funds that the district is required to provide under the plan. The proceeds of any such bond issue and/or excess tax levy shall be credited to the capital projects fund of the school district in which the proposed high school facilities are to be located and shall be expended to pay the cost of high school facilities for the education of such students residing in the school districts as are included in the plan and not otherwise. [1985 c 7 § 92; 1975 1st ex.s. c 275 § 76; 1971 c 48 § 23; 1969 ex.s. c 223 § 28A.56.050. Prior: 1959 c 262 § 6; 1955 c 344 § 5; 1953 c 229 § 5. Formerly RCW 28A.56.050, 28.56.050.]

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.540.070 Rejection by voters of nonhigh districts—Additional elections—Revised plan—Annexation proposal. In the event that a proposal or proposals for providing capital funds as provided in RCW 28A.540.060 is not approved by the voters of a nonhigh school district a second election thereon shall be held within sixty days thereafter. If the vote of the electors of the nonhigh school district is again in the negative, the high school students residing therein shall not be entitled to admission to the high school under the provisions of RCW 28A.225.210, following the close of the school year during which the second election is held: PROVIDED, That in any such case the regional committee on school district organization shall determine within thirty days after the date of the aforesaid election the advisability of initiating a proposal for annexation of such nonhigh school district to the school district in which the proposed facilities are to be located or to some other district where its students can attend high school without undue inconvenience: PROVIDED FURTHER, That pending such determination by the regional committee and action thereon as required by law the board of directors of the high school district shall continue to admit high school students residing in the nonhigh school district. Any proposal for annexation of a nonhigh school district initiated by a regional committee shall be subject to the procedural requirements of this chapter respecting a public hearing and submission to and approval by the state board of education. Upon approval by the state board of any such proposal, the educational service district superintendent shall make an order, establishing the annexation. [1990 c 33 § 486; 1985 c 385 § 36; 1975 1st ex.s. c 275 § 77; 1971 c 48 § 24; 1969 ex.s. c 223 § 28A.56.060. Prior: 1959 c 262 § 7; 1955 c 344 § 6; 1953 c 229 § 6. Formerly RCW 28A.56.060, 28.56.060.]

Severability—1985 c 385: See note following RCW 28A.315.020.

Severability—1971 c 48: See note following RCW 28A.305.040.

28A.540.080 Failure of nonhigh districts to submit proposal to vote within time limits—Annexation procedure. In case of failure or refusal by a board of directors of a nonhigh school district to submit a proposal or proposals to a vote of the electors within the time limit specified in RCW 28A.540.060 and 28A.540.070, the regional committee on school district reorganization may initiate a proposal for annexation of such nonhigh school district as provided for in RCW 28A.540.070. [1990 c 33 § 487; 1985 c 385 § 37; 1969 ex.s. c 223 § 28A.56.070. Prior: 1959 c 262 § 8; 1955 c 344 § 7; 1953 c 229 § 7. Formerly RCW 28A.56.070, 28.56.070.]

Severability—1985 c 385: See note following RCW 28A.315.020.

28A.540.090 Nonhigh districts, time of levy and issuance of bonds. If the voters of a nonhigh school district approve an excess tax levy, the levy shall be made at the earliest time permitted by law. If the voters of a nonhigh school district approve the issuance of bonds, the board of directors of the nonhigh school district shall issue and sell said bonds within ninety days after receiving a copy of a resolution of the board of directors of the high school district that the high school district is ready to proceed with the construction of the high school facilities provided for in the plan and requesting the sale of the bonds. [1969 ex.s. c 223 § 28A.56.075. Prior: 1959 c 262 § 9. Formerly RCW 28A.56.075, 28.56.075.]

28A.540.100 Validation of proceedings under 1955 act, when. All proceedings had and taken under chapter 344, Laws of 1955, shall be valid and binding although not in compliance with that act if said proceedings comply with the requirements of this chapter. [1969 ex.s. c 223 § 28A.56.170. Prior: 1959 c 262 § 11. Formerly RCW 28A.56.170, 28.56.170.]

28A.540.110 Designation of high school district nonhigh district students shall attend—Effect when attendance otherwise. (1) In cases where high school students resident in a nonhigh school district are to be educated in a high school district, the board of directors of the nonhigh school district shall, by mutual agreement with the serving district(s), designate the serving high school district or districts which its high school students shall attend. A nonhigh school district shall designate a district as a serving high school district when more than thirty-three and one-third percent of the high school students residing within the boundaries of the nonhigh school district are enrolled in the serving district.

(2) Students residing in a nonhigh school district shall be allowed to attend a high school other than in the designated serving district referred to in subsection (1) of this section, however the nonhigh school board of directors shall not be required to contribute to building programs in any such high school district. Contribution shall be made only to those districts which are designated as serving high school districts at the time the county auditor is requested by the high school district to place a measure on the ballot regarding a proposal or proposals for the issuance of bonds or the authorization of an excess tax levy to provide capital funds for building programs. The nonhigh school district shall be

subject to the capital fund aid provisions contained in this chapter with respect to the designated high school serving district(s). [1989 c 321 § 4; 1981 c 239 § 1. Formerly RCW 28A.56.200.]

Chapter 28A.545

PAYMENT TO HIGH SCHOOL DISTRICTS

Sections

28A.545.010	School district divisions—High and nonhigh.
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28A.545.030	Purposes.
28A.545.040	"Student residing in a nonhigh school district" defined.
28A.545.050	Amounts due from nonhigh districts.
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28A.545.070	Superintendent's annual determination of estimated amount due—Process.
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28A.545.100	Amount due reflects cost of education and transportation of students.
28A.545.110	Rules to effect purposes and implement provisions.

Exemptions: State Constitution Art. 7 § 1 (Amendment 14).

28A.545.010 School district divisions—High and nonhigh. For the purposes of this chapter all school districts in the state of Washington shall be and the same are hereby divided into two divisions to be known and designated respectively as high school districts and nonhigh school districts. [1983 c 3 § 31; 1969 ex.s. c 223 § 28A.44.045. Prior: 1917 c 21 § 1; RRS § 4710. Formerly RCW 28A.44.045, 28.44.045, 28.01.040, part.]

28A.545.020 Reimbursement not a tuition charge. The reimbursement of a high school district for cost of educating high school pupils for a nonhigh school district, as provided for in this chapter, shall not be deemed a tuition charge as affecting the apportionment of current state school funds. [1983 c 3 § 32; 1969 ex.s. c 223 § 28A.44.095. Prior: 1917 c 21 § 11; RRS § 4720. Formerly RCW 28A.44.095, 28.44.095.]

28A.545.030 Purposes. The purposes of RCW 28A.545.030 through 28A.545.110 and 84.52.0531 are to:

(1) Simplify the annual process of determining and paying the amounts due by nonhigh school districts to high school districts for educating students residing in a nonhigh school district;

(2) Provide for a payment schedule that coincides to the extent practicable with the ability of nonhigh school districts to pay and the need of high school districts for payment; and

(3) Establish that the maximum amount due per annual average full-time equivalent student by a nonhigh school district for each school year is no greater than the maintenance and operation excess tax levy rate per annual average full-time equivalent student levied upon the taxpayers of the high school district. [1990 c 33 § 488; 1981 c 264 § 1. Formerly RCW 28A.44.150.]

Severability—1981 c 264: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 264 § 13.]

28A.545.040 "Student residing in a nonhigh school district" defined. The term "student residing in a nonhigh school district" and its equivalent as used in RCW 28A.545.030 through 28A.545.110 and 84.52.0531 shall mean any common school age person with or without disabilities who resides within the boundaries of a nonhigh school district that does not conduct the particular kindergarten through grade twelve grade which the person has not yet successfully completed and is eligible to enroll in. [1995 c 77 § 25; 1990 c 33 § 489; 1981 c 264 § 2. Formerly RCW 28A.44.160.]

Severability—1981 c 264: See note following RCW 28A.545.030.

28A.545.050 Amounts due from nonhigh districts. Each year at such time as the superintendent of public instruction determines and certifies such maximum allowable amounts of school district levies under RCW 84.52.0531 he or she shall also:

(1) Determine the extent to which the estimated amounts due by nonhigh school districts for the previous school year exceeded or fell short of the actual amounts due; and

(2) Determine the estimated amounts due by nonhigh school districts for the current school year and increase or decrease the same to the extent of overpayments or underpayments for the previous school year. [1985 c 341 § 11; 1981 c 264 § 3. Formerly RCW 28A.44.170.]

Severability—1981 c 264: See note following RCW 28A.545.030.

28A.545.060 Enrollment data for computation of amounts due. The student enrollment data necessary for the computation of the annual amounts due by nonhigh school districts pursuant to RCW 28A.545.030 through 28A.545.110 and 84.52.0531 shall be established as follows:

(1) On or before July tenth preceding the school year, or such other date as may be established by the superintendent of public instruction, each high school district superintendent shall certify to the superintendent of public instruction:

(a) The estimated number of students residing in a nonhigh school district that will be enrolled in the high school district during the school year which estimate has been mutually agreed upon by the high school district superintendent and the superintendent of each nonhigh school district in which one or more of such students resides;

(b) The total estimated number of kindergarten through twelfth grade annual average full-time equivalent students, inclusive of nonresident students, that will be enrolled in the high school district during the school year;

(c) The actual number of annual average full-time equivalent students provided for in subsections (1)(a) and (b) of this section that were enrolled in the high school district during the regular school term just completed; and

(d) The name, address, and the school district and county of residence of each student residing in a nonhigh school district reported pursuant to this subsection (1), to the extent the same can reasonably be established.

(2) In the event the superintendents of a high school district and a nonhigh school district are unable to reach agreement respecting the estimated number of annual average full-time equivalent students residing in the nonhigh school district that will be enrolled in the high school district

during the school year, the estimate shall be established by the superintendent of public instruction. [1990 c 33 § 490; 1981 c 264 § 4. Formerly RCW 28A.44.180.]

Severability—1981 c 264: See note following RCW 28A.545.030.

28A.545.070 Superintendent's annual determination of estimated amount due—Process. (1) The superintendent of public instruction shall annually determine the estimated amount due by a nonhigh school district to a high school district for the school year as follows:

(a) The total of the high school district's maintenance and operation excess tax levy that has been authorized and determined by the superintendent of public instruction to be allowable pursuant to RCW 84.52.0531, as now or hereafter amended, for collection during the next calendar year, shall first be divided by the total estimated number of annual average full-time equivalent students which the high school district superintendent or the superintendent of public instruction has certified pursuant to RCW 28A.545.060 will be enrolled in the high school district during the school year;

(b) The result of the calculation provided for in subsection (1)(a) of this section shall then be multiplied by the estimated number of annual average full-time equivalent students residing in the nonhigh school district that will be enrolled in the high school district during the school year which has been established pursuant to RCW 28A.545.060; and

(c) The result of the calculation provided for in subsection (1)(b) of this section shall be adjusted upward to the extent the estimated amount due by a nonhigh school district for the prior school year was less than the actual amount due based upon actual annual average full-time equivalent student enrollments during the previous school year and the actual per annual average full-time equivalent student maintenance and operation excess tax levy rate for the current tax collection year, of the high school district, or adjusted downward to the extent the estimated amount due was greater than such actual amount due or greater than such lesser amount as a high school district may have elected to assess pursuant to RCW 28A.545.090.

(2) The amount arrived at pursuant to subsection (1)(c) of this subsection shall constitute the estimated amount due by a nonhigh school district to a high school district for the school year. [1990 c 33 § 491; 1981 c 264 § 5. Formerly RCW 28A.44.190.]

Severability—1981 c 264: See note following RCW 28A.545.030.

28A.545.080 Estimated amount due paid in May and November installments. The estimated amounts due by nonhigh school districts as determined pursuant to RCW 28A.545.070 shall be paid in two installments. During the month of May of the school year for which the amount is due, each nonhigh school district shall pay to each high school district fifty percent of the total estimated amount due to the high school district for the school year as determined by the superintendent of public instruction pursuant to RCW 28A.545.070. The remaining fifty percent shall be paid by each nonhigh school district to each high school district during the following November. [1990 c 33 § 492; 1981 c 264 § 6. Formerly RCW 28A.44.200.]

Severability—1981 c 264: See note following RCW 28A.545.030.

28A.545.090 Assessing nonhigh school lesser amount—Notice of. Notwithstanding any provision of RCW 28A.545.050 through 28A.545.080 to the contrary, any high school district board of directors may elect to assess a nonhigh school district an amount which is less than that otherwise established by the superintendent of public instruction pursuant to RCW 28A.545.070 to be due. In the event a high school district elects to do so, it shall notify both the superintendent of public instruction and the nonhigh school district of its election and the lesser amount no later than September first following the school year for which the amount is due. In the absence of such notification, each nonhigh school district shall pay the amount otherwise established by the superintendent of public instruction pursuant to RCW 28A.545.070. [1990 c 33 § 493; 1981 c 264 § 7. Formerly RCW 28A.44.210.]

Severability—1981 c 264: See note following RCW 28A.545.030.

28A.545.100 Amount due reflects cost of education and transportation of students. Unless otherwise agreed to by the board of directors of a nonhigh school district, the amounts which are established as due by a nonhigh school district pursuant to RCW 28A.545.030 through 28A.545.110 and 84.52.0531, as now or hereafter amended, shall constitute the entire amount which is due by a nonhigh school district for the school year for the education of any and all students with or without disabilities residing in the nonhigh school district who attend a high school district pursuant to RCW 28A.225.210, and for the transportation of such students by a high school district. [1995 c 77 § 26; 1990 c 33 § 494; 1983 1st ex.s. c 61 § 7; 1981 c 264 § 8. Formerly RCW 28A.44.220.]

Severability—1983 1st ex.s. c 61: See note following RCW 28A.160.010.

Severability—1981 c 264: See note following RCW 28A.545.030.

28A.545.110 Rules to effect purposes and implementation provisions. The superintendent of public instruction is hereby empowered to adopt rules pursuant to chapter 34.05 RCW, as now or hereafter amended, deemed necessary or advisable by the superintendent to effect the purposes and implement the provisions of RCW 28A.545.030 through 28A.545.110 and 84.52.0531. [1990 c 33 § 495; 1981 c 264 § 9. Formerly RCW 28A.44.230.]

Severability—1981 c 264: See note following RCW 28A.545.030.

Chapter 28A.600 STUDENTS

Sections

28A.600.010	Government of schools, pupils, employees, rules and regulations for—Due process guarantees—Enforcement.
28A.600.020	Government of schools, pupils, employees, rules and regulations for—Aim—Exclusion of student by teacher—Written procedures developed for administering discipline, scope.
28A.600.030	Grading policies—Option to consider attendance.
28A.600.035	Policies on secondary school access and egress.
28A.600.040	Pupils to comply with rules and regulations.
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28A.600.070	State honors awards program—Rules.

28A.600.080	State honors awards program—Materials—Recognition by business and industry encouraged.
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28A.600.400	High school students' options—Existing agreements not affected.
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28A.600.415	Alternatives to suspension—Community service encouraged—Information provided to school districts.
28A.600.420	Firearms on school premises, transportation, or facilities—Penalty—Exemptions.
28A.600.475	Exchange of information with law enforcement and juvenile court officials—Notification of parents and students.

Uniform minor student capacity to borrow act: Chapter 26.30 RCW.

28A.600.010 Government of schools, pupils, employees, rules and regulations for—Due process guarantees—Enforcement. Every board of directors, unless otherwise specifically provided by law, shall:

(1) Enforce the rules and regulations prescribed by the superintendent of public instruction and the state board of education for the government of schools, pupils, and certificated employees.

(2) Adopt and make available to each pupil, teacher and parent in the district reasonable written rules and regulations regarding pupil conduct, discipline, and rights, including but not limited to short-term and long-term suspensions. Such rules and regulations shall not be inconsistent with law or the rules and regulations of the superintendent of public instruction or the state board of education and shall include such substantive and procedural due process guarantees as prescribed by the state board of education under RCW 28A.305.160. Commencing with the 1976-77 school year, when such rules and regulations are made available to each

pupil, teacher and parent, they shall be accompanied by a detailed description of rights, responsibilities and authority of teachers and principals with respect to the discipline of pupils as prescribed by state statutory law, superintendent of public instruction and state board of education rules and regulations and rules and regulations of the school district.

For the purposes of this subsection, computation of days included in "short-term" and "long-term" suspensions shall be determined on the basis of consecutive school days.

(3) Suspend, expel, or discipline pupils in accordance with RCW 28A.305.160. [1990 c 33 § 496; 1979 ex.s. c 173 § 2; 1975-'76 2nd ex.s. c 97 § 2; 1975 1st ex.s. c 254 § 1; 1971 ex.s. c 268 § 1; 1969 ex.s. c 223 § 28A.58.101. Prior: 1969 c 53 § 1, part; 1967 ex.s. c 29 § 1, part; 1967 c 12 § 1, part; 1965 ex.s. c 49 § 1, part; 1963 c 104 § 1, part; 1963 c 5 § 1, part; 1961 c 305 § 1, part; 1961 c 237 § 1, part; 1961 c 66 § 1, part; 1955 c 68 § 2, part. Formerly RCW 28A.58.101, 28.58.100(2), (6).]

Severability—1975 1st ex.s. c 254: See note following RCW 28A.410.120.

28A.600.020 Government of schools, pupils, employees, rules and regulations for—Aim—Exclusion of student by teacher—Written procedures developed for administering discipline, scope. (1) The rules adopted pursuant to RCW 28A.600.010 shall be interpreted to insure that the optimum learning atmosphere of the classroom is maintained, and that the highest consideration is given to the judgment of qualified certificated educators regarding conditions necessary to maintain the optimum learning atmosphere.

(2) Any student who creates a disruption of the educational process in violation of the building disciplinary standards while under a teacher's immediate supervision may be excluded by the teacher from his or her individual classroom and instructional or activity area for all or any portion of the balance of the school day or until the principal or designee and teacher have conferred, whichever occurs first: PROVIDED, That except in emergency circumstances, the teacher shall have first attempted one or more alternative forms of corrective action: PROVIDED FURTHER, That in no event without the consent of the teacher shall an excluded student be returned during the balance of that class or activity period.

(3) In order to preserve a beneficial learning environment for all students and to maintain good order and discipline in each classroom, every school district board of directors shall provide that written procedures are developed for administering discipline at each school within the district. Such procedures shall be developed with the participation of parents and the community, and shall provide that the teacher, principal or designee, and other authorities designated by the board of directors, make every reasonable attempt to involve the parent or guardian and the student in the resolution of student discipline problems. Such procedures shall provide that students may be excluded from their individual classes or activities for periods of time in excess of that provided in subsection (2) of this section if such students have repeatedly disrupted the learning of other students: PROVIDED, That the procedures are consistent with the regulations of the state board of education and provide for early involvement of parents in attempts to

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improve the student's behavior: PROVIDED FURTHER, That pursuant to RCW 28A.400.110, the procedures shall assure that all staff work cooperatively toward consistent enforcement of proper student behavior throughout each school as well as within each classroom. [1990 c 33 § 497; 1980 c 171 § 1; 1972 ex.s. c 142 § 5. Formerly RCW 28A.58.1011.]

28A.600.030 Grading policies—Option to consider attendance. Each school district board of directors may establish student grading policies which permit teachers to consider a student's attendance in determining the student's overall grade or deciding whether the student should be granted or denied credit. Such policies shall take into consideration the circumstances pertaining to the student's inability to attend school. However, no policy shall be adopted whereby a grade shall be reduced or credit shall be denied for disciplinary reasons only, rather than for academic reasons, unless due process of law is provided as set forth by the state board of education under RCW 28A.305.160. [1990 c 33 § 498; 1984 c 278 § 7. Formerly RCW 28A.58.195.]

Severability—1984 c 278: See note following RCW 28A.185.010.

28A.600.035 Policies on secondary school access and egress. School district boards of directors shall review school district policies regarding access and egress by students from secondary school grounds during school hours. Each school district board of directors shall adopt a policy specifying any restrictions on students leaving secondary school grounds during school hours. [1995 c 312 § 82.]

Effective date—1995 c 312 §§ 71, 82: See note following RCW 28A.225.095.

Short title—1995 c 312: See note following RCW 13.32A.010.

28A.600.040 Pupils to comply with rules and regulations. All pupils who attend the common schools shall comply with the rules and regulations established in pursuance of the law for the government of the schools, shall pursue the required course of studies, and shall submit to the authority of the teachers of such schools, subject to such disciplinary or other action as the local school officials shall determine. [1969 ex.s. c 223 § 28A.58.200. Prior: 1909 c 97 p 263 § 6; RRS § 4690; prior: 1897 c 118 § 69; 1890 p 372 § 48. Formerly RCW 28A.58.200, 28.58.200.]

28A.600.050 State honors awards program established—Purpose. The Washington state honors awards program is hereby established for the purpose of promoting academic achievement among high school students enrolled in public or approved private high schools by recognizing outstanding achievement of students in academic core subjects. This program shall be voluntary on the part of each school district and each student enrolled in high school. [1985 c 62 § 1. Formerly RCW 28A.03.440.]

State scholars' program: RCW 28A.600.100 through 28A.600.150.

28A.600.060 State honors awards program—Areas included. The recipients of the Washington state honors awards shall be selected based on student achievement in both verbal and quantitative areas, as measured by a test or

tests of general achievement selected by the superintendent of public instruction, and shall include student performance in the academic core areas of English, mathematics, science, social studies, and languages other than English, which may be American Indian languages. The performance level in such academic core subjects shall be determined by grade point averages, numbers of credits earned, and courses enrolled in during the beginning of the senior year. [1993 c 371 § 4; 1991 c 116 § 22; 1985 c 62 § 2. Formerly RCW 28A.03.442.]

28A.600.070 State honors awards program—Rules.

The superintendent of public instruction shall adopt rules for the establishment and administration of the Washington state honors awards program. The rules shall establish: (1) The test or tests of general achievement that are used to measure verbal and quantitative achievement, (2) academic subject performance levels, (3) timelines for participating school districts to notify students of the opportunity to participate, (4) procedures for the administration of the program, and (5) the procedures for providing the appropriate honors award designation. [1991 c 116 § 23; 1985 c 62 § 3. Formerly RCW 28A.03.444.]

28A.600.080 State honors awards program—Materials—Recognition by business and industry encouraged. The superintendent of public instruction shall provide participating high schools with the necessary materials for conferring honors. The superintendent of public instruction shall require participating high schools to encourage local representatives of business and industry to recognize students in their communities who receive an honors designation based on the Washington state honors awards program. [1985 c 62 § 4. Formerly RCW 28A.03.446.]

28A.600.100 State scholars' program—Purpose.

Each year high schools in the state of Washington graduate a significant number of students who have distinguished themselves through outstanding academic achievement. The purpose of RCW 28A.600.100 through 28A.600.150 is to establish a consistent and uniform program which will recognize and honor the accomplishments of these students; encourage and facilitate privately funded scholarship awards among them; stimulate the recruitment of outstanding students to Washington public and private colleges and universities; and allow educational and legislative leaders, as well as the governor, to reaffirm the importance of educational excellence to the future of this state. [1990 c 33 § 499; 1985 c 341 § 14; 1981 c 54 § 1. Formerly RCW 28A.58.820.]

Severability—1981 c 54: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 54 § 10.]

State honors awards program: RCW 28A.600.050 through 28A.600.080.

Waiver of tuition and fees for recipients of the Washington scholars award: RCW 28B.15.543.

28A.600.110 State scholars' program—Established—Scope. There is established by the legislature

of the state of Washington the Washington state scholars program. The purposes of this program annually are to:

(1) Provide for the selection of three seniors residing in each legislative district in the state graduating from high schools who have distinguished themselves academically among their peers.

(2) Maximize public awareness of the academic achievement, leadership ability, and community contribution of Washington state public and private high school seniors through appropriate recognition ceremonies and events at both the local and state level.

(3) Provide a listing of the Washington scholars to all Washington state public and private colleges and universities to facilitate communication regarding academic programs and scholarship availability.

(4) Make available a state level mechanism for utilization of private funds for scholarship awards to outstanding high school seniors.

(5) Provide, on written request and with student permission, a listing of the Washington scholars to private scholarship selection committees for notification of scholarship availability.

(6) Permit a waiver of tuition and services and activities fees as provided for in RCW 28B.15.543 and grants under RCW 28B.80.245. [1994 c 234 § 4; 1988 c 210 § 4; 1987 c 465 § 1; 1981 c 54 § 2. Formerly RCW 28A.58.822.]

Severability—1981 c 54: See note following RCW 28A.600.100.

28A.600.120 State scholars' program—Administration—Cooperation with other agencies. The higher education coordinating board shall have the responsibility for administration of the Washington scholars program. The program will be developed cooperatively with the Washington association of secondary school principals, a voluntary professional association of secondary school principals. The cooperation of other state agencies and private organizations having interest and responsibility in public and private education shall be sought for planning assistance. [1985 c 370 § 32; 1981 c 54 § 3. Formerly RCW 28A.58.824.]

Severability—Effective dates—1985 c 370: See RCW 28B.80.911 and 28B.80.912.

Severability—1981 c 54: See note following RCW 28A.600.100.

28A.600.130 State scholars' program—Planning committee—Composition—Duties. The higher education coordinating board shall establish a planning committee to develop criteria for screening and selection of the Washington scholars each year in accordance with RCW 28A.600.110(1). It is the intent that these criteria shall emphasize scholastic achievement but not exclude such criteria as leadership ability and community contribution in final selection procedures. The Washington scholars planning committee shall have members from selected state agencies and private organizations having an interest and responsibility in education, including but not limited to, the state board of education, the office of superintendent of public instruction, the council of presidents, the state board for community and technical colleges, and the Washington friends of higher education. [1995 1st sp.s. c 5 § 1; 1990 c

33 § 500; 1985 c 370 § 33; 1981 c 54 § 4. Formerly RCW 28A.58.826.]

Severability—1995 1st sp.s. c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 1st sp.s. c 5 § 5.]

Effective date—1995 1st sp.s. c 5: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 5 § 6.]

Severability—Effective dates—1985 c 370: See RCW 28B.80.911 and 28B.80.912.

Severability—1981 c 54: See note following RCW 28A.600.100.

28A.600.140 State scholars' program—Principal's association to submit names to board. Each year on or before March 1st, the Washington association of secondary school principals shall submit to the higher education coordinating board the names of graduating senior high school students who have been identified and recommended to be outstanding in academic achievement by their school principals based on criteria to be established under RCW 28A.600.130. [1990 c 33 § 501; 1985 c 370 § 34; 1981 c 54 § 5. Formerly RCW 28A.58.828.]

Severability—Effective dates—1985 c 370: See RCW 28B.80.911 and 28B.80.912.

Severability—1981 c 54: See note following RCW 28A.600.100.

28A.600.150 State scholars' program—Selection and notification process—Certificates—Awards ceremony. Washington scholars annually shall be selected from among the students so identified. The higher education coordinating board shall notify the students so designated, their high school principals, the legislators of their respective districts, and the governor when final selections have been made.

The board, in conjunction with the governor's office, shall prepare appropriate certificates to be presented to the Washington scholars recipients. An awards ceremony at an appropriate time and place shall be planned by the board in cooperation with the Washington association of secondary school principals, and with the approval of the governor. [1985 c 370 § 35; 1981 c 54 § 6. Formerly RCW 28A.58.830.]

Severability—Effective dates—1985 c 370: See RCW 28B.80.911 and 28B.80.912.

Severability—1981 c 54: See note following RCW 28A.600.100.

28A.600.200 Interscholastic athletic and other extracurricular activities for students, regulation of—Delegation, conditions. Each school district board of directors is hereby granted and shall exercise the authority to control, supervise and regulate the conduct of interschool athletic activities and other interschool extracurricular activities of an athletic, cultural, social or recreational nature for students of the district. A board of directors may delegate control, supervision and regulation of any such activity to the Washington Interscholastic Activities Association or any other voluntary nonprofit entity and compensate such entity for services provided, subject to the following conditions:

(1) The voluntary nonprofit entity shall submit an annual report to the state board of education of student appeal determinations, assets, and financial receipts and disbursements at such time and in such detail as the state board shall establish by rule;

(2) The voluntary nonprofit entity shall not discriminate in connection with employment or membership upon its governing board, or otherwise in connection with any function it performs, on the basis of race, creed, national origin, sex or marital status;

(3) Any rules and policies applied by the voluntary nonprofit entity which govern student participation in any interschool activity shall be written and subject to the annual review and approval of the state board of education at such time as it shall establish;

(4) All amendments and repeals of such rules and policies shall be subject to the review and approval of the state board; and

(5) Such rules and policies shall provide for notice of the reasons and a fair opportunity to contest such reasons prior to a final determination to reject a student's request to participate in or to continue in an interschool activity. Any such decision shall be considered a decision of the school district conducting the activity in which the student seeks to participate or was participating and may be appealed pursuant to RCW 28A.645.010 through 28A.645.030. [1990 c 33 § 502; 1975-'76 2nd ex.s. c 32 § 1. Formerly RCW 28A.58.125.]

School buses, transport of general public to interscholastic activities—Limitations: RCW 28A.160.100.

28A.600.210 School locker searches—Findings. The legislature finds that illegal drug activity and weapons in schools threaten the safety and welfare of school children and pose a severe threat to the state educational system. School officials need authority to maintain order and discipline in schools and to protect students from exposure to illegal drugs, weapons, and contraband. Searches of school-issued lockers and the contents of those lockers is a reasonable and necessary tool to protect the interests of the students of the state as a whole. [1989 c 271 § 244. Formerly RCW 28A.67.300.]

Severability—1989 c 271: See note following RCW 9.94A.310.

28A.600.220 School locker searches—No expectation of privacy. No right nor expectation of privacy exists for any student as to the use of any locker issued or assigned to a student by a school and the locker shall be subject to search for illegal drugs, weapons, and contraband as provided in RCW 28A.600.210 through 28A.600.240. [1990 c 33 § 503; 1989 c 271 § 245. Formerly RCW 28A.67.310.]

Severability—1989 c 271: See note following RCW 9.94A.310.

28A.600.230 School locker searches—Authorization—Limitations. (1) A school principal, vice principal, or principal's designee may search a student, the student's possessions, and the student's locker, if the principal, vice principal, or principal's designee has reasonable grounds to suspect that the search will yield evidence of the student's violation of the law or school rules.

(2) Except as provided in subsection (3) of this section, the scope of the search is proper if the search is conducted as follows:

(a) The methods used are reasonably related to the objectives of the search; and

(b) Is not excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction.

(3) A principal or vice principal or anyone acting under their direction may not subject a student to a strip search or body cavity search as those terms are defined in RCW 10.79.070. [1989 c 271 § 246. Formerly RCW 28A.67.320.]

Severability—1989 c 271: See note following RCW 9.94A.310.

28A.600.240 School locker searches—Notice and reasonable suspicion requirements. (1) In addition to the provisions in RCW 28A.600.230, the school principal, vice principal, or principal's designee may search all student lockers at any time without prior notice and without a reasonable suspicion that the search will yield evidence of any particular student's violation of the law or school rule.

(2) If the school principal, vice principal, or principal's designee, as a result of the search, develops a reasonable suspicion that a certain container or containers in any student locker contain evidence of a student's violation of the law or school rule, the principal, vice principal, or principal's designee may search the container or containers according to the provisions of RCW 28A.600.230(2). [1990 c 33 § 504; 1989 c 271 § 247. Formerly RCW 28A.67.330.]

Severability—1989 c 271: See note following RCW 9.94A.310.

28A.600.300 High school students' options—Definition. For the purposes of RCW 28A.600.310 through 28A.600.400, "participating institution of higher education" or "institution of higher education" means:

(1) A community or technical college as defined in RCW 28B.50.030; and

(2) Central Washington University, Eastern Washington University, and Washington State University, if the institution's governing board decides to participate in the program in RCW 28A.600.310 through 28A.600.400. [1994 c 205 § 1; 1990 1st ex.s. c 9 § 401.]

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.600.310 High school students' options—Enrollment in institutions of higher education—Transmittal of funds. (1) Eleventh and twelfth grade students or students who have not yet received a high school diploma or its equivalent and are eligible to be in the eleventh or twelfth grades may apply to a participating institution of higher education to enroll in courses or programs offered by the institution of higher education. However, students are eligible to enroll in courses or programs in participating universities only if the board of directors of the student's school district has decided to participate in the program. Participating institutions of higher education, in consultation with school districts, may establish admission standards for these students. If the institution of higher education accepts a secondary school pupil for enrollment under this section, the institution of

higher education shall send written notice to the pupil and the pupil's school district within ten days of acceptance. The notice shall indicate the course and hours of enrollment for that pupil.

(2) The pupil's school district shall transmit to the institution of higher education an amount per each full-time equivalent college student at state-wide uniform rates for vocational and nonvocational students. The superintendent of public instruction shall separately calculate and allocate moneys appropriated for basic education under RCW 28A.150.260 to school districts for purposes of making such payments and for granting school districts seven percent thereof to offset program related costs. The calculations and allocations shall be based upon the estimated state-wide annual average per full-time equivalent high school student allocations under RCW 28A.150.260, excluding small high school enhancements, and applicable rules adopted under chapter 34.05 RCW. The superintendent of public instruction, the higher education coordinating board, and the state board for community and technical colleges shall consult on the calculation and distribution of the funds. The institution of higher education shall not require the pupil to pay any other fees. The funds received by the institution of higher education from the school district shall not be deemed tuition or operating fees and may be retained by the institution of higher education. A student enrolled under this subsection shall not be counted for the purpose of determining any enrollment restrictions imposed by the state on the institution of higher education. [1994 c 205 § 2; 1993 c 222 § 1; 1990 1st ex.s. c 9 § 402.]

Effective date—1993 c 222: "This act shall take effect September 1, 1993." [1993 c 222 § 2.]

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.600.320 High school students' options—Information on enrollment. A school district shall provide general information about the program to all pupils in grades ten, eleven, and twelve and the parents and guardians of those pupils. To assist the district in planning, a pupil shall inform the district of the pupil's intent to enroll in courses at an institution of higher education for credit. Students are responsible for applying for admission to the institution of higher education. [1994 c 205 § 3; 1990 1st ex.s. c 9 § 403.]

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.600.330 High school students' options—Maximum terms of enrollment for high school credit. A pupil who enrolls in an institution of higher education in grade eleven may not enroll in postsecondary courses under RCW 28A.600.300 through 28A.600.390 for high school credit and postsecondary credit for more than the equivalent of the course work for two academic years. A pupil who first enrolls in an institution of higher education in grade twelve may not enroll in postsecondary courses under this section for high school credit and postsecondary credit for more than the equivalent of the course work for one academic year. [1994 c 205 § 4; 1990 1st ex.s. c 9 § 404.]

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.600.340 High school students' options—Enrolled students not displaced. Once a pupil has been enrolled in a postsecondary course or program under RCW 28A.600.300 through 28A.600.400, the pupil shall not be displaced by another student. [1994 c 205 § 5; 1990 1st ex.s. c 9 § 405.]

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.600.350 High school students' options—Enrollment for secondary and postsecondary credit. A pupil may enroll in a course under RCW 28A.600.300 through 28A.600.390 for both high school credit and postsecondary credit. [1994 c 205 § 6; 1990 1st ex.s. c 9 § 406.]

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.600.360 High school students' options—Enrollment in postsecondary institution—Determination of high school credits—Application toward graduation requirements. A school district shall grant academic credit to a pupil enrolled in a course for high school credit if the pupil successfully completes the course. If no comparable course is offered by the school district, the school district superintendent shall determine how many credits to award for the course. The determination shall be made in writing before the pupil enrolls in the course. The credits shall be applied toward graduation requirements and subject area requirements. Evidence of the successful completion of each course in an institution of higher education shall be included in the pupil's secondary school records and transcript. The transcript shall also note that the course was taken at an institution of higher education. [1994 c 205 § 7; 1990 1st ex.s. c 9 § 407.]

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.600.370 High school students' options—Postsecondary credit. Any state institution of higher education may award postsecondary credit for college level academic and vocational courses successfully completed by a student while in high school and taken at an institution of higher education. The state institution of higher education shall not charge a fee for the award of the credits. [1994 c 205 § 8; 1990 1st ex.s. c 9 § 408.]

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.600.380 High school students' options—School district not responsible for transportation. Transportation to and from the institution of higher education is not the responsibility of the school district. [1994 c 205 § 9; 1990 1st ex.s. c 9 § 409.]

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.600.390 High school students' options—Rules. The superintendent of public instruction, the state board for community and technical colleges, and the higher education coordinating board shall jointly develop and adopt rules

governing RCW 28A.600.300 through 28A.600.380, if rules are necessary. The rules shall be written to encourage the maximum use of the program and shall not narrow or limit the enrollment options under RCW 28A.600.300 through 28A.600.380. [1994 c 205 § 10; 1990 1st ex.s. c 9 § 410.]

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.600.400 High school students' options—Existing agreements not affected. RCW 28A.600.300 through 28A.600.390 are in addition to and not intended to adversely affect agreements between school districts and institutions of higher education in effect on April 11, 1990, and in the future. [1994 c 205 § 11; 1990 1st ex.s. c 9 § 412.]

Finding—Severability—1990 1st ex.s. c 9: See notes following RCW 28A.225.220.

28A.600.410 Alternatives to suspension—Encouraged. School districts are encouraged to find alternatives to suspension including reducing the length of a student's suspension conditioned by the commencement of counseling or other treatment services. Consistent with current law, the conditioning of a student's suspension does not obligate the school district to pay for the counseling or other treatment services except for those stipulated and agreed to by the district at the inception of the suspension. [1992 c 155 § 1.]

28A.600.415 Alternatives to suspension—Community service encouraged—Information provided to school districts. (1) The superintendent of public instruction shall encourage school districts to utilize community service as an alternative to student suspension. Community service shall include the provision of volunteer services by students in social and educational organizations including, but not limited to, hospitals, fire and police stations, nursing homes, food banks, day care organizations, and state and local government offices.

(2) At a minimum, by February 1, 1993, the superintendent shall prepare and distribute information to school districts regarding existing programs, the potential benefits and considerations of using community service as an alternative to suspension, and recommended guidelines for starting new programs. The superintendent also shall address, and attempt to clarify and resolve, any potential liability, supervision, and transportation issues associated with using community service as an alternative to suspension. [1992 c 155 § 2.]

28A.600.420 Firearms on school premises, transportation, or facilities—Penalty—Exemptions. (1) Any elementary or secondary school student who is determined to have carried a firearm onto, or to have possessed a firearm on, public elementary or secondary school premises, public school-provided transportation, or areas of facilities while being used exclusively by public schools, shall be expelled from school for not less than one year under RCW 28A.600.010. The superintendent of the school district, educational service district, state school for the deaf, or state

school for the blind may modify the expulsion of a student on a case-by-case basis.

(2) For purposes of this section, "firearm" means a firearm as defined in 18 U.S.C. Sec. 921, and a "firearm" as defined in RCW 9.41.010.

(3) This section shall be construed in a manner consistent with the individuals with disabilities education act, 20 U.S.C. Sec. 1401 et seq.

(4) Nothing in this section prevents a public school district, educational service district, the state school for the deaf, or the state school for the blind if it has expelled a student from such student's regular school setting from providing educational services to the student in an alternative setting.

(5) This section does not apply to:

(a) Any student while engaged in military education authorized by school authorities in which rifles are used but not other firearms; or

(b) Any student while involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by school authorities in which the rifles of collectors or instructors are handled or displayed but not other firearms; or

(c) Any student while participating in a rifle competition authorized by school authorities. [1995 c 335 § 304; 1995 c 87 § 2.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

28A.600.475 Exchange of information with law enforcement and juvenile court officials—Notification of parents and students. School districts may participate in the exchange of information with law enforcement and juvenile court officials to the extent permitted by the family educational and privacy rights act of 1974, 20 U.S.C. Sec. 1232g. When directed by court order or pursuant to any lawfully issued subpoena, a school district shall make student records and information available to law enforcement officials, probation officers, court personnel, and others legally entitled to the information. Parents and students shall be notified by the school district of all such orders or subpoenas in advance of compliance with them. [1992 c 205 § 120.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Chapter 28A.605 PARENT ACCESS

Sections

28A.605.010	Removing child from school grounds during school hours—Procedure.
28A.605.020	Parents' access to classroom or school sponsored activities—Limitation.

28A.605.010 Removing child from school grounds during school hours—Procedure. The board of directors of each school district by rule or regulation shall set forth proper procedure to ensure that each school within their district is carrying out district policy providing that no child will be removed from any school grounds or building

thereon during school hours except by a person so authorized by a parent or legal guardian having legal custody thereof: PROVIDED, That such rules and regulations need not be applicable to any child in grades nine through twelve. [1975 1st ex.s. c 248 § 1. Formerly RCW 28A.58.050.]

28A.605.020 Parents' access to classroom or school sponsored activities—Limitation. Every school district board of directors shall, after following established procedure, adopt a policy assuring parents access to their child's classroom and/or school sponsored activities for purposes of observing class procedure, teaching material, and class conduct: PROVIDED, That such observation shall not disrupt the classroom procedure or learning activity. [1979 ex.s. c 250 § 8. Formerly RCW 28A.58.053.]

Effective date—Severability—1979 ex.s. c 250: See notes following RCW 28A.150.220.

Chapter 28A.620

COMMUNITY EDUCATION PROGRAMS

Sections

28A.620.010	Purposes.
28A.620.020	Restrictions—Classes on parenting skills and child abuse prevention encouraged.

28A.620.010 Purposes. The purposes of this section and RCW 28A.620.020 are to:

(1) Provide educational, recreational, cultural, and other community services and programs through the establishment of the concept of community education with the community school serving as the center for such activity;

(2) Promote a more efficient and expanded use of existing school buildings and equipment;

(3) Help provide personnel to work with schools, citizens and with other agencies and groups;

(4) Provide a wide range of opportunities for all citizens including programs, if resources are available, to promote parenting skills and promote awareness of the problem of child abuse and methods to avoid child abuse;

(5) As used in this section, "parenting skills" shall include: The importance of consistency in parenting; the value of providing children with a balance of love and firm discipline; the instruction of children in honesty, morality, ethics, and respect for the law; and the necessity of preserving and nurturing the family unit; and

(6) Help develop a sense of community in which the citizens cooperate with the public schools and community agencies and groups to resolve their school and community concerns and to recognize that the schools are available for use by the community day and night, year-round or any time when the programming will not interfere with the preschool through grade twelve program. [1990 c 33 § 510. Prior: 1985 c 344 § 1; 1985 c 341 § 12; 1979 ex.s. c 120 § 1. Formerly RCW 28A.58.246.]

28A.620.020 Restrictions—Classes on parenting skills and child abuse prevention encouraged. Notwithstanding the provisions of RCW 28B.50.250, 28B.50.530 or any other law, rule, or regulation, any school district is authorized and encouraged to provide community education

programs in the form of instructional, recreational and/or service programs on a noncredit and nontuition basis, excluding fees for supplies, materials, or instructor costs, for the purpose of stimulating the full educational potential and meeting the needs of the district's residents of all ages, and making the fullest use of the district's school facilities: PROVIDED, That school districts are encouraged to provide programs for prospective parents, prospective foster parents, and prospective adoptive parents on parenting skills, violence prevention, and on the problems of child abuse and methods to avoid child abuse situations: PROVIDED FURTHER, That community education programs shall be consistent with rules and regulations promulgated by the state superintendent of public instruction governing cooperation between common schools, community college districts, and other civic and governmental organizations which shall have been developed in cooperation with the state board for community and technical colleges and shall be programs receiving the approval of said superintendent. [1994 sp.s. c 7 § 603; 1985 c 344 § 2; 1979 ex.s. c 120 § 2; 1973 c 138 § 1. Formerly RCW 28A.58.247.]

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

**Chapter 28A.623
MEAL PROGRAMS**

Sections

28A.623.010	Nonprofit program for elderly—Purpose.
28A.623.020	Nonprofit program for elderly—Authorized—Restrictions.
28A.623.030	Nonprofit program for certain children and students—Conditions and restrictions.

28A.623.010 Nonprofit program for elderly—Purpose. The legislature finds that many elderly persons suffer dietary deficiencies and malnutrition due to inadequate financial resources, immobility, lack of interest due to isolation and loneliness, and characteristics of the aging process, such as physiological, social, and psychological changes which result in a way of life too often leading to feelings of rejection, abandonment, and despair. There is a real need as a matter of public policy to provide the elderly citizens with adequate nutritionally sound meals, through which their isolation may be penetrated with the company and the social contacts of their own. It is the declared purpose of RCW 28A.235.120, 28A.623.010, and 28A.623.020 to raise the level of dignity of the aged population where their remaining years can be lived in a fulfillment equal to the benefits they have bestowed, the richness they have added, and the great part they have played in the life of our society and nation. [1990 c 33 § 511; 1973 c 107 § 1. Formerly RCW 28A.58.720.]

28A.623.020 Nonprofit program for elderly—Authorized—Restrictions. The board of directors of any school district may establish or allow for the establishment of a nonprofit meal program for feeding elderly persons residing within the area served by such school district using school facilities, and may authorize the extension of any

school food services for the purpose of feeding elderly persons, subject to the following conditions and restrictions:

(1) The charge to such persons for each meal shall not exceed the actual cost of such meal to the school.

(2) The program will utilize methods of administration which will assure that the maximum number of eligible individuals may have an opportunity to participate in such a program, and will coordinate, whenever possible, with the local area agency on aging.

(3) Any nonprofit meal program established pursuant to RCW 28A.235.120, 28A.623.010, and 28A.623.020 may not be operated so as to interfere with the normal educational process within the schools.

(4) No school district funds may be used for the operation of such a meal program.

(5) For purposes of RCW 28A.235.120, 28A.623.010, and 28A.623.020, "elderly persons" shall mean persons who are at least sixty years of age. [1990 c 33 § 512; 1973 c 107 § 3. Formerly RCW 28A.58.722.]

28A.623.030 Nonprofit program for certain children and students—Conditions and restrictions. The board of directors of any school district may establish or allow for the establishment of a nonprofit meal program using school facilities for feeding children who are participating in educational programs or activities conducted by private, nonprofit organizations and entities and students who are attending private elementary and secondary schools, and may authorize the extension of any school food services for the purpose of feeding such children and students, subject to the following conditions and restrictions:

(1) The charge to such persons, organizations, entities or schools for each meal shall be not less than the actual cost of such meal to the school, inclusive of a reasonable charge for overhead and the value of the use of the facilities.

(2) The meal program shall not be operated so as to interfere with the educational process within the school district.

(3) The meal program shall not be operated so as to impair or reduce the provision of food services to students of the school districts. [1979 c 58 § 2. Formerly RCW 28A.58.724.]

Severability—1979 c 58: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 58 § 3.]

**Chapter 28A.625
AWARDS**

Sections

	EXCELLENCE IN EDUCATION
28A.625.010	Short title.
28A.625.020	Recipients—Awards.
28A.625.030	Washington State Christa McAuliffe award for teachers.
28A.625.041	Certificates—Grants or stipends—Expiration of section.
28A.625.042	Certificates—Recognition awards.
28A.625.050	Rules.
28A.625.060	Grant in lieu of waiver of tuition and fees—Teachers, classified employees, principals or administrators.

- and superintendents may apply—Expiration of section.
- 28A.625.065 Completion of courses paid for by academic grant—Expiration of section.

EMPLOYEE SUGGESTION PROGRAM

- 28A.625.100 Board of directors of a school district may establish.
- 28A.625.110 Awards.

COMMENDABLE EMPLOYEE SERVICE AND RECOGNITION AWARD

- 28A.625.150 Award program.
- MATHEMATICS, ENGINEERING, AND SCIENCE ACHIEVEMENT
- 28A.625.200 Findings and intent.
- 28A.625.210 Mathematics, engineering, and science achievement program—Establishment and administration through University of Washington—Goals.
- 28A.625.220 Mathematics, engineering, and science achievement program—Coordinator—Staff.
- 28A.625.230 Coordinator to develop selection standards.
- 28A.625.240 Local program centers.

SCHOOL IMPROVEMENT AND RESEARCH PROJECTS

- 28A.625.350 Short title.
- 28A.625.360 Excellence in teacher preparation award established.
- 28A.625.370 Award for teacher educator.
- 28A.625.380 Rules.
- 28A.625.390 Educational grant—Eligibility—Award.
- 28A.625.900 Severability—1990 1st ex.s. c 10.

EXCELLENCE IN EDUCATION

28A.625.010 Short title. RCW 28A.625.020 through 28A.625.065 may be known and cited as the Washington award for excellence in education program act. [1995 c 335 § 107; 1990 c 33 § 513; 1986 c 147 § 1. Formerly RCW 28A.03.520.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Commendable employee service and recognition award program: RCW 28A.625.150.

28A.625.020 Recipients—Awards. The superintendent of public instruction shall establish an annual award program for excellence in education to recognize teachers, principals, administrators, classified staff, school district superintendents, and school boards for their leadership, contributions, and commitment to education. The program shall recognize annually:

(1) Five teachers from each congressional district of the state. One individual must be an elementary level teacher, one must be a junior high or middle school level teacher, and one must be a secondary level teacher. Teachers shall include educational staff associates;

(2) Five principals or administrators from the state;

(3) One school district superintendent from the state;

(4) One school district board of directors from the state; and

(5) Three classified staff from each congressional district of the state. [1991 c 255 § 1. Prior: 1990 c 77 § 1; 1990 c 33 § 514; 1989 c 75 § 1; 1988 c 251 § 1; 1987 1st ex.s. c 2 § 209; 1986 c 147 § 2. Formerly RCW 28A.03.523.]

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.32.0531.

28A.625.030 Washington State Christa McAuliffe award for teachers. The award for teachers under the Washington award for excellence in education program shall be named the "Washington State Christa McAuliffe Award, in honor and memory of Sharon Christa Corrigan McAuliffe." As the first teacher and private citizen selected nationally to voyage into space, Christa McAuliffe exemplified what is exciting and positive about the teaching profession. Her contributions within the scope of the nation's education system helped to show that education can and should be a vital and dynamic experience for all participants. Christa McAuliffe's chosen profession encompasses learning by discovery and her desire to make new discoveries was reflected by her participation in the nation's space program.

The selection of Christa McAuliffe as the first teacher in space was directly linked to Washington state in that then superintendent of public instruction Dr. Frank Brouillet both appointed and served as a member of the national panel which selected Christa McAuliffe.

The tragic loss of the life of Christa McAuliffe on the flight of the space shuttle Challenger on January 28, 1986, will be remembered through the legacy she gave to her family, friends, relatives, students, colleagues, the education profession, and the nation: A model example of striving toward excellence. [1991 c 255 § 2; 1986 c 147 § 3. Formerly RCW 28A.03.526.]

28A.625.041 Certificates—Grants or stipends—Expiration of section. (1) All recipients of the Washington award for excellence in education shall receive a certificate presented by the governor and the superintendent of public instruction, or their designated representatives, at a public ceremony or ceremonies in appropriate locations.

(2) In addition to certificates under subsection (1) of this section, awards for teachers, classified employees, and principals or administrators shall include one of the following:

(a) Except as provided under RCW 28B.80.255, an academic grant which shall be used to take courses at a state institution of higher education. The academic grant shall provide reimbursement to the recipient for actual costs incurred for tuition and fees for up to forty-five quarter credit hours or thirty semester credit hours at a rate of reimbursement per credit hour not to exceed the resident graduate, part-time cost per credit hour at the University of Washington in the year the recipient takes the credits. In addition, a stipend not to exceed one thousand dollars shall be provided for costs incurred in taking courses covered by the academic grant beginning with 1992 recipients, if funds are appropriated for the stipends in the omnibus appropriations act. This stipend shall be provided as reimbursement for actual costs incurred. The academic grant shall not be considered compensation for the purposes of RCW 28A.400.200; or

(b) A recognition stipend not to exceed one thousand dollars. The recognition stipend shall not be considered compensation for the purposes of RCW 28A.400.200; or

(c) An educational grant not to exceed one thousand dollars. The educational grant shall be awarded under RCW 28A.625.060 and shall not be considered compensation for the purposes of RCW 28A.400.200.

(3) In addition to certificates under subsection (1) of this section, the award for the superintendent shall include one of the following:

(a) A recognition stipend not to exceed one thousand dollars. The recognition stipend shall not be considered compensation for the purposes of RCW 28A.400.200; or

(b) An educational grant not to exceed one thousand dollars. The educational grant shall be awarded under RCW 28A.625.060 and shall not be considered compensation for the purposes of RCW 28A.400.200.

(4) In addition to certificates under subsection (1) of this section, the award for the school board shall include an educational grant not to exceed two thousand five hundred dollars. The educational grant shall be awarded under RCW 28A.625.060.

(5) Within one year of receiving the Washington award for excellence in education, teachers, classified employees, principals or administrators, and the school district superintendent shall notify the superintendent of public instruction in writing of their decision to apply for an academic grant, a recognition stipend, or an educational grant as provided under subsections (2) and (3) of this section. The superintendent shall notify the higher education coordinating board of those recipients who select the academic grant.

(6) This section applies to all individuals named by the office of the superintendent of public instruction as recipients of the Washington award for excellence in education before January 1, 1994.

(7) This section shall expire June 30, 1998. [1994 c 279 § 1. Prior: 1992 c 83 § 1; 1992 c 50 § 1; 1991 c 255 § 3.]

Severability—1994 c 279: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 279 § 7.]

Effective date—1992 c 83: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 30, 1992." [1992 c 83 § 6.]

Effective date—1992 c 50: "This act shall take effect June 30, 1993." [1992 c 50 § 4.]

28A.625.042 Certificates—Recognition awards. (1) All recipients of the Washington award for excellence in education shall receive a certificate presented by the governor and the superintendent of public instruction, or their designated representatives, at a public ceremony or ceremonies in appropriate locations.

(2) In addition to the certificate under subsection (1) of this section, the award for teachers, classified employees, superintendents employed by second class school districts, and principals or administrators shall include a recognition award of at least two thousand five hundred dollars. The amount of the recognition award for superintendents employed by first class school districts shall be at least one thousand dollars. The recognition award shall not be considered compensation for the purposes of RCW 28A.400.200.

(3) In addition to the certificate under subsection (1) of this section, the award for the school board shall include a recognition award not to exceed two thousand five hundred dollars. The school board must use its recognition award for an educational purpose. [1994 c 279 § 4.]

Effective date—1994 c 279 § 4: "Section 4 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1994." [1994 c 279 § 6.]

Severability—1994 c 279: See note following RCW 28A.625.041.

28A.625.050 Rules. The superintendent of public instruction shall adopt rules under chapter 34.05 RCW to carry out the purposes of RCW 28A.625.010 through 28A.625.065. These rules shall include establishing the selection criteria for the Washington award for excellence in education program. The superintendent is encouraged to consult with teachers, educational staff associates, principals, administrators, classified employees, superintendents, and school board members in developing the selection criteria. Notwithstanding the provisions of RCW 28A.625.020 (1) and (2), such rules may allow for the selection of individuals whose teaching or administrative duties, or both, may encompass multiple grade level or building assignments, or both. [1995 c 335 § 108; 1991 c 255 § 8; 1990 c 33 § 516; 1988 c 251 § 2; 1986 c 147 § 5. Formerly RCW 28A.03.532.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

28A.625.060 Grant in lieu of waiver of tuition and fees—Teachers, classified employees, principals or administrators, and superintendents may apply—Expiration of section. (1) Teachers, classified employees, principals or administrators, and superintendents who have received an award for excellence in education and choose to apply for an educational grant under RCW 28A.625.041 shall be awarded the grant by the superintendent of public instruction as long as a written grant application is submitted to the superintendent within one year after the award was received. The grant application shall identify the educational purpose toward which the grant shall be used.

(2) This section applies to all individuals named by the office of the superintendent of public instruction as recipients of the Washington award for excellence in education before January 1, 1994.

(3) This section shall expire June 30, 1998. [1994 c 279 § 2; 1992 c 50 § 3; 1991 c 255 § 9; 1990 c 33 § 517; 1988 c 251 § 3; 1986 c 147 § 7. Formerly RCW 28A.03.535.]

Severability—1994 c 279: See note following RCW 28A.625.041.

Effective date—1992 c 50: See note following RCW 28A.625.041.

28A.625.065 Completion of courses paid for by academic grant—Expiration of section. (1) Courses paid for in full by the academic grant under RCW 28A.625.041(2)(a) shall be completed within four years after the academic grant is received.

(2) This section applies to all individuals named by the office of the superintendent of public instruction as recipients of the Washington award for excellence in education before January 1, 1994.

(3) This section shall expire June 30, 1998. [1994 c 279 § 3; 1992 c 83 § 2; 1991 c 255 § 4.]

Severability—1994 c 279: See note following RCW 28A.625.041.

Effective date—1992 c 83: See note following RCW 28A.625.041.

EMPLOYEE SUGGESTION PROGRAM

28A.625.100 Board of directors of a school district may establish. The board of directors of any school district may establish and maintain an employee suggestion program to encourage and reward meritorious suggestions by certificated and classified school employees. The program shall be designed to promote efficiency or economy in the performance of any function of the school district. Each board establishing an employee suggestion program shall establish procedures for the proper administration of the program. [1986 c 143 § 1. Formerly RCW 28A.02.320.]

Effective date—1986 c 143: "This act shall take effect on August 1, 1986." [1986 c 143 § 4.]

28A.625.110 Awards. The board of directors of the school district shall make the final determination as to whether an employee suggestion award will be made and shall determine the nature and extent of the award. The award shall not be a regular or supplemental compensation program for all employees and the suggestion must, in fact, result in actual savings greater than the award amount. Any moneys which may be awarded to an employee as part of an employee suggestion program shall not be considered salary or compensation for the purposes of RCW 28A.400.200 or chapter 41.40 RCW. [1990 c 33 § 519; 1987 1st ex.s. c 2 § 207; 1986 c 143 § 2. Formerly RCW 28A.02.325.]

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Effective date—1986 c 143: See note following RCW 28A.625.100.

COMMENDABLE EMPLOYEE SERVICE AND RECOGNITION AWARD

28A.625.150 Award program. The board of directors of any school district may establish a commendable employee service and recognition award program for certificated and classified school employees. The program shall be designed to recognize exemplary service, special achievements, or outstanding contributions by an individual in the performance of his or her duties as an employee of the school district. The board of directors of the school district shall determine the extent and type of any nonmonetary award. The value of any nonmonetary award shall not be deemed salary or compensation for the purposes of RCW 28A.400.200 or chapter 41.32 RCW. [1990 c 33 § 520; 1987 1st ex.s. c 2 § 210; 1985 c 399 § 2. Formerly RCW 28A.58.842.]

Intent—Severability—Effective date—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Award for excellence in education program: RCW 28A.625.020 through 28A.625.065.

MATHEMATICS, ENGINEERING, AND SCIENCE ACHIEVEMENT

28A.625.200 Findings and intent. The legislature finds that high technology is important to the state's economy and the welfare of its citizens. The legislature finds that certain groups, as characterized by sex or ethnic background, are traditionally underrepresented in mathematics, engineer-

ing, and the science-related professions in this state. The legislature finds that women and minority students have been traditionally discouraged from entering the fields of science and mathematics including teaching in these fields. The legislature finds that attitudes and knowledges acquired during the kindergarten through eighth grade prepare students to succeed in high school science and mathematics programs and that special skills necessary for these fields need to be acquired during the ninth through twelfth grades. It is the intent of the legislature to promote a mathematics, engineering, and science achievement program to help increase the number of people in these fields and teaching in these fields from groups underrepresented in these fields. [1989 c 66 § 1; 1984 c 265 § 1. Formerly RCW 28A.03.430.]

Implementation—Funding required—1984 c 265: "Implementation of this act shall be subject to funds being appropriated or otherwise available for such purposes." [1984 c 265 § 6.]

28A.625.210 Mathematics, engineering, and science achievement program—Establishment and administration through University of Washington—Goals. A program to increase the number of people from groups underrepresented in the fields of mathematics, engineering, and the physical sciences in this state shall be established by the University of Washington. The program shall be administered through the University of Washington and designed to:

(1) Encourage students in the targeted groups in the common schools, with a particular emphasis on those students in middle and junior high schools and the sixth through twelfth grades, to acquire the academic skills needed to study mathematics, engineering, or related sciences at an institution of higher education;

(2) Promote the awareness of career opportunities including the career opportunities of teaching in the fields of science and mathematics and the skills necessary to achieve those opportunities among students sufficiently early in their educational careers to permit and encourage the students to acquire the skills;

(3) Promote cooperation among institutions of higher education, the superintendent of public instruction and local school districts in working towards the goals of the program; and

(4) Solicit contributions of time and resources from public and private institutions of higher education, high schools, middle and junior high schools, and private business and industry. [1990 c 286 § 1; 1989 c 66 § 2; 1984 c 265 § 2. Formerly RCW 28A.03.432.]

Implementation—Funding required—1984 c 265: See note following RCW 28A.625.200.

28A.625.220 Mathematics, engineering, and science achievement program—Coordinator—Staff. A coordinator shall be hired to administer the program. Additional staff as necessary may be hired. [1984 c 265 § 3. Formerly RCW 28A.03.434.]

Implementation—Funding required—1984 c 265: See note following RCW 28A.625.200.

28A.625.230 Coordinator to develop selection standards. The coordinator shall develop standards and criteria for selecting students who participate in the program

which may include predictive instruments to ascertain aptitude and probability of success. The standards shall include requirements that students take certain courses, maintain a certain grade point average, and participate in activities sponsored by the program. Women and students from minority groups, which are traditionally underrepresented in mathematics and science-related professions and which meet the requirements established by the coordinator shall be selected. [1984 c 265 § 4. Formerly RCW 28A.03.436.]

Implementation—Funding required—1984 c 265: See note following RCW 28A.625.200.

28A.625.240 Local program centers. The coordinator shall establish local program centers throughout the state to implement RCW 28A.625.210 through 28A.625.230. Each center shall be managed by a center director. Additional staff as necessary may be hired. [1990 c 33 § 521; 1984 c 265 § 5. Formerly RCW 28A.03.438.]

Implementation—Funding required—1984 c 265: See note following RCW 28A.625.200.

SCHOOL IMPROVEMENT AND RESEARCH PROJECTS

28A.625.350 Short title. RCW 28A.625.360 through 28A.625.390 may be known and cited as the Washington award for excellence in teacher preparation act. [1990 1st ex.s. c 10 § 1.]

Finding—1990 1st ex.s. c 10: "The legislature finds that excellence in teacher preparation requires increased cooperation and coordination between institutions of higher education and school districts as it relates to the preparation of students into the profession of teaching. The legislature further finds that an increase in the level of such cooperation and coordination in selecting, training, and supervising excellent "cooperating" teachers, and the development of new school and university partnerships, will be beneficial to the teaching profession, and will enhance the ability of all new teachers to perform at a more competent level during their initial teaching experience." [1990 1st ex.s. c 10 § 6.]

28A.625.360 Excellence in teacher preparation award established. (1) The state board of education shall establish an annual award program for excellence in teacher preparation to recognize higher education teacher educators for their leadership, contributions, and commitment to education.

(2) The program shall recognize annually one teacher preparation faculty member from one of the teacher preparation programs approved by the state board of education. [1990 1st ex.s. c 10 § 2.]

Finding—1990 1st ex.s. c 10: See note following RCW 28A.625.350.

28A.625.370 Award for teacher educator. The award for the teacher educator shall include:

(1) A certificate presented to the teacher educator by the governor, the president of the state board of education, and the superintendent of public instruction at a public ceremony; and

(2) A grant to the professional education advisory board of the institution from which the teacher educator is selected, which grant shall not exceed two thousand five hundred

dollars and which grant shall be awarded under RCW 28A.625.390. [1990 1st ex.s. c 10 § 3.]

Finding—1990 1st ex.s. c 10: See note following RCW 28A.625.350.

28A.625.380 Rules. The state board of education shall adopt rules under chapter 34.05 RCW to carry out the purposes of RCW 28A.625.360 through 28A.625.390. These rules shall include establishing the selection criteria for the Washington award for excellence in teacher preparation. The state board of education is encouraged to consult with teacher educators, deans, and professional education advisory board members in developing the selection criteria. The criteria shall include any role performed by nominees relative to implementing innovative developments by the nominee's teacher preparation program and efforts the nominee has made to assist in communicating with legislators, common school teachers and administrators and others about the nominee's teacher preparation program. [1990 1st ex.s. c 10 § 4.]

Finding—1990 1st ex.s. c 10: See note following RCW 28A.625.350.

28A.625.390 Educational grant—Eligibility—Award. The professional education advisory board for the institution from which the teacher educator has been selected to receive an award shall be eligible to apply for an educational grant as provided under RCW 28A.625.370. The state board of education shall award the grant after the state board has approved the grant application as long as the written grant application is submitted to the state board within one year after the award is received by the teacher educator. The grant application shall identify the educational purpose toward which the grant shall be used. [1990 1st ex.s. c 10 § 5.]

Finding—1990 1st ex.s. c 10: See note following RCW 28A.625.350.

28A.625.900 Severability—1990 1st ex.s. c 10. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 1st ex.s. c 10 § 10.]

Chapter 28A.630

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DEVELOPMENT OF EDUCATIONAL PARAPROFESSIONAL TRAINING PROGRAM

28A.630.400 Paraeducator associate of arts degree.

(1) The state board of education and the state board for community and technical colleges, in consultation with the superintendent of public instruction, the higher education coordinating board, the state apprenticeship training council, and community colleges, shall adopt rules as necessary under

chapter 34.05 RCW to implement the paraeducator associate of arts degree.

(2) As used in this section, a "paraeducator" is an individual who has completed an associate of arts degree for a paraeducator. The paraeducator may be hired by a school district to assist certificated instructional staff in the direct instruction of children in small and large groups, individualized instruction, testing of children, recordkeeping, and preparation of materials. The paraeducator shall work under the direction of instructional certificated staff.

(3) The training program for a paraeducator associate of arts degree shall include, but is not limited to, the general requirements for receipt of an associate of arts degree and training in the areas of introduction to childhood education, orientation to children with disabilities, fundamentals of childhood education, creative activities for children, instructional materials for children, fine art experiences for children, the psychology of learning, introduction to education, child health and safety, child development and guidance, first aid, and a practicum in a school setting.

(4) Consideration shall be given to transferability of credit earned in this program to teacher preparation programs at colleges and universities. [1995 c 335 § 202; 1995 c 77 § 27; 1991 c 285 § 2; 1989 c 370 § 1. Formerly RCW 28A.04.180.]

Reviser's note: This section was amended by 1995 c 77 § 27 and by 1995 c 335 § 202, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

AT-RISK STUDENTS

28A.630.810 Rules. The superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW to carry out the provisions of chapter 233, Laws of 1989. [1989 c 233 § 17. Formerly RCW 28A.120.800.]

SPECIAL SERVICES DEMONSTRATION PROJECTS

28A.630.820 Intent. (*Expires September 1, 2001*.) It is the intent of the legislature to (1) encourage school districts, individually and cooperatively, to develop innovative special services demonstration projects that use resources efficiently and increase student learning; (2) promote noncategorical approaches to special services program design, funding, and administration; (3) develop efficient and cost-effective means for identifying students as specific learning disabled, in order to increase the proportion of resources devoted to classroom instruction; (4) avoid unnecessary labeling of students while still providing state funding for needed services; and (5) provide a means to grant waivers from state rules. [1992 c 180 § 1; 1991 c 265 § 1.]

Expiration date of RCW 28A.630.820 through 28A.630.845: See RCW 28A.630.850.

28A.630.825 Special services demonstration projects—Duties of the superintendent of public instruc-

tion—Reports. (*Expires September 1, 2001.*) The superintendent of public instruction shall:

(1) Approve fifteen to twenty-five demonstration projects in individual school districts and cooperatives, including at least seven projects approved after the effective date of this section;

(2) Make awards for in-service training of teachers and other staff;

(3) Provide technical assistance;

(4) Grant waivers from state rules needed to implement the projects, or request such waivers to be granted by the appropriate agency;

(5) Perform or contract for an evaluation of the projects;

(6) Confer on the evaluation design with the selection advisory committee; and

(7) Submit to the legislature an interim report on the evaluation by December 31, 1993, and a final report by December 31, 1995. [1994 c 13 § 4; 1991 c 265 § 2.]

Expiration date of RCW 28A.630.820 through 28A.630.845: See RCW 28A.630.850.

28A.630.830 Selection advisory committee—Duties. (*Expires September 1, 2001.*) (1) The selection advisory committee is created. The committee shall be composed of up to three members from the house of representatives, up to three members from the senate, up to two members from the office of the superintendent of public instruction, and one member from each of the following: The office of financial management, Washington state special education coalition, transitional bilingual instruction educators, and Washington education association.

(2) The joint legislative audit and review committee and the superintendent of public instruction shall provide staff for the selection advisory committee.

(3) The selection advisory committee shall:

(a) Develop appropriate criteria for selecting demonstration projects;

(b) Issue requests for proposals in accordance with RCW 28A.630.820 through 28A.630.845 for demonstration projects;

(c) Review proposals and recommend demonstration projects for approval by the superintendent of public instruction; and

(d) Advise the superintendent of public instruction on the evaluation design. [1996 c 288 § 26; 1994 c 13 § 5; 1991 c 265 § 3.]

Expiration date of RCW 28A.630.820 through 28A.630.845: See RCW 28A.630.850.

28A.630.835 School districts' duties. (*Expires September 1, 2001.*) School districts with demonstration projects shall:

(1) Confer on a regular basis during project planning and implementation with teachers, support staff, parents of students with disabilities, and parents of other students served in the project;

(2) Administer annual achievement tests to all students served in the project if required in the project contract; and

(3) Cooperate in providing all information needed for the evaluation. [1995 c 77 § 28; 1991 c 265 § 4.]

Expiration date—1995 c 77 §§ 28-30: "Sections 28 through 30 of this act expire September 1, 2001." [1995 c 77 § 34.]

(1996 Ed.)

Expiration date of RCW 28A.630.820 through 28A.630.845: See RCW 28A.630.850.

28A.630.840 Special services demonstration project funding. (*Expires September 1, 2001.*) (1) Funding used in demonstration projects may include state, federal, and local funds, as determined by the district.

(2) State special education allocations shall be calculated for districts with demonstration projects according to the special education funding formula in use for other districts, except for the provisions of RCW 28A.630.845 and with the following changes:

(a) Funding for school districts that had pilot projects approved under section 13, chapter 233, Laws of 1989, and that were participating in projects under this section on January 31, 1992, shall be based for the duration of a project on four percent of the kindergarten through twelfth grade enrollment considered as specific learning disabled, without regard to the actual number of students so identified. The legislature recognizes the importance of continuing and developing the pilot projects.

(b) The funding percentages for districts with demonstration projects specified in (a) of this subsection and in RCW 28A.630.845 shall be used to adjust basic education allocations under RCW 28A.150.260 and learning assistance program allocations under RCW 28A.165.070.

(c) State special education allocations up to the level required by federal maintenance of effort rules shall be expended for special education services to students with disabilities. Allocations greater than the amount needed to comply with federal maintenance of effort rules may at the option of the district be designated as noncategorical project funds and may be expended on services to any student served in the project.

(3) Learning assistance program allocations shall be calculated for districts with demonstration projects according to the funding formula in use for other districts, except that any increases in the district allocation above the fiscal year 1991 amount shall be designated as noncategorical project funds and may be expended on services to any student served in the project.

(4) Transitional bilingual program allocations shall be calculated for districts with demonstration projects according to the funding formula in use for other districts, except that any increases in the district allocation above the fiscal year 1991 amount shall be designated as noncategorical project funds and may be expended on services to any student served in the project.

(5) Expenditures of noncategorical project funds under subsections (2)(c), (3), and (4) of this section shall be accounted for in new and discrete program or subprogram codes designated by the superintendent of public instruction. The codes shall take effect by September 1, 1991. [1995 c 77 § 29; 1994 c 13 § 6; 1992 c 180 § 2; 1991 c 265 § 5.]

Expiration date—1995 c 77 §§ 28-30: See note following RCW 28A.630.835.

Expiration date of RCW 28A.630.820 through 28A.630.845: See RCW 28A.630.850.

28A.630.845 Demonstration projects that reduce percentage of students labeled disabled—Funding. (*Expires September 1, 2001.*) (1) The legislature finds that

the state system of funding special education has fiscal incentives to label children as disabled and that unnecessary labeling can be detrimental to children. The legislature encourages demonstration projects that provide needed services without unnecessary labeling. To test this approach, the legislature intends to maintain the funding level for innovative special services programs that reduce the incidence of unnecessary labeling.

(2) School districts may propose demonstration projects under this subsection to provide needed services and achieve major reductions in the percentage of district students labeled as disabled in one or more specified categories. State special education funding for districts with such projects shall be based for the duration of the project on the average percentage of the kindergarten through twelfth grade enrollment in the specified categories during the school year before the start of the project.

(3) School districts with specific learning disabled enrollment at or above four percent of the district's kindergarten through twelfth grade enrollment may propose demonstration projects under this subsection to provide needed services and reduce unnecessary labeling to below the four percent level. When the specific learning disabled enrollment is below the four percent level, funding for the district shall be based on four percent of the kindergarten through twelfth grade enrollment considered as specific learning disabled, without regard to the actual number of students so identified.

(4) Funding under subsections (2) and (3) of this section is contingent on the following: (a) The funding is spent on children needing special services; and (b) the overall percentage of first through twelfth grade students in the district labeled as disabled declines each year of the project, excluding students with disabilities who transfer into the district. [1995 c 77 § 30; 1994 c 13 § 1; 1992 c 180 § 3.]

Expiration date—1995 c 77 §§ 28-30: See note following RCW 28A.630.835.

Expiration date of RCW 28A.630.820 through 28A.630.845: See RCW 28A.630.850.

28A.630.850 Expiration date of RCW 28A.630.820 through 28A.630.845. RCW 28A.630.820 through 28A.630.845 shall expire September 1, 2001. [1994 c 13 § 2; 1991 c 265 § 7.]

28A.630.853 Effective date—1994 c 13. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1994]. [1994 c 13 § 7.]

SCHOOL-TO-WORK TRANSITIONS PROGRAM

28A.630.861 School-to-work transitions program—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28A.630.862 through 28A.630.880.

(1) "Integration of vocational and academic instruction" means an educational program that combines vocational and academic concepts into a single curriculum to increase the relevancy of course work, to strengthen and increase

academic standards, and to enable students to apply knowledge and skills to career and educational objectives.

(2) "School-to-work transition" means a restructuring effort which provides multiple learning options and seamless integrated pathways to increase all students' opportunities to pursue their career and educational interests.

(3) "Work-based learning" means a competency-based educational experience that coordinates and integrates classroom instruction with structured, work site employment in which the student receives occupational training that advances student knowledge and skills in essential academic learning requirements. [1993 c 335 § 11.]

Findings—Effective date—1993 c 335: See notes following RCW 28A.630.862.

28A.630.862 School-to-work transitions program. (Expires June 30, 1999.) There is established in the office of the superintendent of public instruction a school-to-work transitions program which shall fund and coordinate projects to develop model secondary school programs. The projects shall combine academic and vocational education into a single instructional system that is responsive to the educational needs of all students in secondary schools and shall provide multiple educational pathway options for all secondary students. Goals of the projects within the program shall include at a minimum:

(1) Integration of vocational and academic instructional curriculum into a single curriculum;

(2) Providing each student with a choice of multiple, flexible educational pathways based on the student's career or interest area;

(3) Emphasis on increased vocational and academic guidance and counseling for students as an essential component of the student's high school experience;

(4) Development of student essential academic learning requirements, methods of accurately measuring student performance, and goals for improved student learning;

(5) Partnership with local employers and employees to incorporate work sites as part of work-based learning experiences;

(6) Active participation of educators in the planning, implementation, and operation of the project, including increased opportunities for professional development and in-service training; and

(7) Active participation by employers, private and public community service providers, parents, and community members in the development and operation of the project. [1993 c 335 § 2; 1992 c 137 § 2.]

Findings—1993 c 335: "(1) The legislature finds that demonstrated relevancy and practical application of school work is essential to improving student learning and to increasing the ability of students to transition successfully to the world of work. Employers have an increasing need for highly skilled people whether they are graduating from high school, a community college, a four-year university, or a technical college.

(2) The legislature further finds that the school experience must prepare students to make informed career direction decisions at appropriate intervals in their educational progress. The elimination of rigid tracking into educational programs will increase students' posthigh school options and will expose students to a broad range of interrelated career and educational opportunities.

(3) The legislature further finds that student motivation and performance can be greatly increased by the demonstration of practical application of course work content and its relevancy to potential career directions.

(4) The legislature further finds that secondary schools should provide students with multiple, flexible educational pathways. Each educational pathway should:

- (a) Prepare students to demonstrate both core competencies common for all students and competencies in a career or interest area;
- (b) Integrate academic and vocational education into a single curriculum; and
- (c) Provide both classroom and workplace experience.

(5) The purpose of RCW 28A.630.862 through 28A.630.880 and 28A.630.861 is to equip students with improved school-to-work transition opportunities through the establishment of school-to-work transition model projects throughout the state." [1993 c 335 § 1.]

Effective date—1993 c 335: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 335 § 14.]

Expiration date—1992 c 137: "Sections 1 through 12 of this act shall expire June 30, 1999." [1992 c 137 § 14.]

Severability—1992 c 137: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 137 § 15.]

Conflict with federal requirements—1992 c 137: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1992 c 137 § 16.]

28A.630.864 School-to-work transitions program—Selection of projects—Evaluation of program. (Expires June 30, 1999.) (1) The superintendent of public instruction shall develop a process for schools or school districts to apply to participate in the school-to-work transitions program. The office of the superintendent of public instruction shall review and select projects for grant awards, and monitor and evaluate the program.

(2) The superintendent of public instruction, in selecting projects for grant awards, shall give additional consideration to schools or school districts whose proposals include collaboration with middle schools or junior high schools to develop school-to-work transition objectives. Middle school or junior high school programs may include career awareness and exploration, preparation for school-to-school transition, and preparation for educational pathway decisions.

(3) The superintendent of public instruction, in selecting projects for grant awards, shall give additional consideration to schools or school districts whose proposals include a tech prep site selected under P.L. 101-392 or other articulation agreements with a community or technical college.

(4) The superintendent of public instruction, in selecting projects for grant awards, shall give additional consideration to schools or school districts whose proposals include the following elements: Paid student employment in an occupational area with growing labor market demand, instruction on the job from a mentor, demonstration of competency standards for program completion, and a contract to be signed by the participating student, the student's parent or legal guardian, the participating employer, and an education representative.

(5) The superintendent of public instruction and the state board of education may develop a process for teacher preparation programs to apply to participate in the school-to-

work transitions program. The office of the superintendent of public instruction and the state board of education may review and select projects for grant awards. Teacher preparation grants shall be used to improve teacher preparation in school-to-work transitions, including course work related to integrated curriculum, tech prep concepts, updating technical skills, improving school and private sector partnerships, and assessing students. [1993 c 335 § 3; 1992 c 137 § 3.]

Findings—Effective date—1993 c 335: See notes following RCW 28A.630.862.

Expiration date—Severability—Conflict with federal requirements—1992 c 137: See notes following RCW 28A.630.862.

28A.630.866 School-to-work transitions program—Task force. (Expires June 30, 1999.) The superintendent of public instruction shall appoint a ten-member task force on school-to-work transitions. The task force shall include at least one representative from the work force training and education coordinating board and the state board for community and technical colleges. The task force shall advise the superintendent of public instruction in the development of the process for applying to participate in the school-to-work transitions program, in the review and selection of projects under RCW 28A.630.864, and the monitoring and evaluation of the projects. [1993 c 335 § 4; 1992 c 137 § 4.]

Findings—Effective date—1993 c 335: See notes following RCW 28A.630.862.

Expiration date—Severability—Conflict with federal requirements—1992 c 137: See notes following RCW 28A.630.862.

28A.630.868 School-to-work transitions program—Administration—Duration of projects. (Expires June 30, 1999.) (1) The superintendent of public instruction shall administer RCW 28A.630.861 through 28A.630.880.

(2) The school-to-work transitions projects may be conducted for up to six years, if funds are provided. [1995 c 335 § 109; 1993 c 335 § 5; 1992 c 137 § 6.]

Expiration date—1995 c 335 §§ 109-112: "Sections 109 through 112 of this act shall expire June 30, 1999." [1995 c 335 § 802.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Findings—Effective date—1993 c 335: See notes following RCW 28A.630.862.

Expiration date—Severability—Conflict with federal requirements—1992 c 137: See notes following RCW 28A.630.862.

28A.630.870 School-to-work transitions program—Gifts, grants, and contributions—School-to-work transitions program account. (Expires June 30, 1999.) (1) The superintendent of public instruction may accept, receive, and administer for the purposes of RCW 28A.630.861 through 28A.630.880 such gifts, grants, and contributions as may be provided from public and private sources for the purposes of RCW 28A.630.861 through 28A.630.880.

(2) The school-to-work transitions program account is hereby established in the custody of the state treasurer. The superintendent of public instruction shall deposit in the account all moneys received under this section. Moneys in the account may be spent only for the purposes of RCW 28A.630.861 through 28A.630.880. Disbursements from this account shall be on the authorization of the superintendent

of public instruction or the superintendent's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements. [1995 c 335 § 110; 1993 c 335 § 6; 1992 c 137 § 7.]

Expiration date—1995 c 335 §§ 109-112: See note following RCW 28A.630.868.

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Findings—Effective date—1993 c 335: See notes following RCW 28A.630.862.

Expiration date—Severability—Conflict with federal requirements—1992 c 137: See notes following RCW 28A.630.862.

28A.630.872 School-to-work transitions program—Waivers. (Expires June 30, 1999.) (1) The state board of education, where appropriate, or the superintendent of public instruction, where appropriate, may grant waivers to pilot project districts consistent with law if necessary to implement a pilot project proposal.

(2) State rules dealing with public health, safety, and civil rights, including accessibility by the disabled, shall not be waived. A school district may request the state board of education or the superintendent of public instruction to ask the United States department of education or other federal agencies to waive certain federal regulations necessary to fully implement the proposed pilot project. [1995 c 77 § 31; 1992 c 137 § 8.]

Expiration date—1995 c 77 § 31: "Section 31 of this act expires June 30, 1999." [1995 c 77 § 35.]

Expiration date—Severability—Conflict with federal requirements—1992 c 137: See notes following RCW 28A.630.862.

28A.630.874 School-to-work transitions program—Technical assistance—Rules. (Expires June 30, 1999.) (1) The superintendent of public instruction, in coordination with the state board of education, the state board for community and technical colleges, the work force training and education coordinating board, and the higher education coordinating board, shall provide technical assistance to selected schools and shall develop a process that coordinates and facilitates linkages among participating school districts, secondary schools, junior high schools, middle schools, technical colleges, and colleges and universities.

(2) The superintendent of public instruction and the state board of education may adopt rules under chapter 34.05 RCW as necessary to implement its duties under RCW 28A.630.861 through 28A.630.880. [1995 c 335 § 111; 1993 c 335 § 7; 1992 c 137 § 9.]

Expiration date—1995 c 335 §§ 109-112: See note following RCW 28A.630.868.

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Findings—Effective date—1993 c 335: See notes following RCW 28A.630.862.

Expiration date—Severability—Conflict with federal requirements—1992 c 137: See notes following RCW 28A.630.862.

28A.630.876 School-to-work transitions program—Reporting requirements. (Expires June 30, 1999.) (1) The superintendent of public instruction shall report to the education committees of the legislature on the progress of

the schools for the school-to-work transitions program by December 15 of each odd-numbered year.

(2) Each school district selected to participate in the *academic and vocational integration development program shall submit an annual report to the superintendent of public instruction on the progress of the project as a condition of receipt of continued funding. [1993 c 335 § 8; 1992 c 137 § 10.]

***Reviser's note:** The "academic and vocational integration development program" has been changed to the "school-to-work transitions program" by 1993 c 335.

Findings—Effective date—1993 c 335: See notes following RCW 28A.630.862.

Expiration date—Severability—Conflict with federal requirements—1992 c 137: See notes following RCW 28A.630.862.

28A.630.878 School-to-work transitions program—Dissemination of information. (Expires June 30, 1999.) The superintendent of public instruction, through the center for the improvement of student learning, shall collect and disseminate to all school districts and other interested parties information about the school-to-work transitions projects. [1993 c 336 § 603; 1993 c 335 § 9; 1992 c 137 § 11.]

Reviser's note: This section was amended by 1993 c 335 § 9 and by 1993 c 336 § 603, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Expiration date—1993 c 336 § 603: "Section 603 of this act shall expire June 30, 1999." [1993 c 336 § 604.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

Findings—Effective date—1993 c 335: See notes following RCW 28A.630.862.

Expiration date—Severability—Conflict with federal requirements—1992 c 137: See notes following RCW 28A.630.862.

28A.630.879 School-to-work transitions program—Selection of programs for grant awards. The superintendent of public instruction, in selecting projects for grant awards under the school-to-work transitions program, shall give additional consideration to schools or school districts whose proposals are consistent with the state comprehensive plan for work force training and education prepared by the work force training and education coordinating board. [1993 c 336 § 602.]

Findings—1993 c 336: "(1) The legislature finds that preparing students to make successful transitions from school to work helps promote educational, career, and personal success for all students.

(2) A successful school experience should prepare students to make informed career direction decisions at critical points in their educational progress. Schools that demonstrate the relevancy and practical application of course work will expose students to a broad range of interrelated career and educational opportunities and will expand students' posthigh school options.

(3) The school-to-work transitions program, under chapter 335, Laws of 1993, is intended to help secondary schools develop model programs for school-to-work transitions. The purposes of the model programs are to provide incentives for selected schools to:

(a) Integrate vocational and academic instruction into a single curriculum;

(b) Provide each student with a choice of multiple, flexible educational pathways based on the student's career interest areas;

(c) Emphasize increased vocational and academic guidance and counseling for students;

(d) Foster partnerships with local employers and employees to incorporate work sites as part of work-based learning experiences;

(e) Encourage collaboration among middle or junior high schools and secondary schools in developing successful transition programs and to encourage articulation agreements between secondary schools and community and technical colleges.

(4) The legislature further finds that successful implementation of the school-to-work transitions program is an important part of achieving the purposes of chapter 336, Laws of 1993." [1993 c 336 § 601.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

28A.630.880 School-to-work transitions program—Short title—1993 c 335; 1992 c 137. (Expires June 30, 1999.) RCW 28A.630.861 through 28A.630.880 may be known and cited as the school-to-work transitions program. [1995 c 335 § 112; 1993 c 335 § 10; 1992 c 137 § 12.]

Expiration date—1995 c 335 §§ 109-112: See note following RCW 28A.630.868.

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Findings—Effective date—1993 c 335: See notes following RCW 28A.630.862.

Expiration date—Severability—Conflict with federal requirements—1992 c 137: See notes following RCW 28A.630.862.

COMMISSION ON STUDENT LEARNING

28A.630.883 Washington commission on student learning—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28A.630.885 and 28A.300.130.

(1) "Commission" means the commission on student learning created in RCW 28A.630.885.

(2) "Student learning goals" mean[s] the goals established in RCW 28A.150.210.

(3) "Essential academic learning requirements" means more specific academic and technical skills and knowledge, based on the student learning goals, as determined under RCW 28A.630.885(3)(a). Essential academic learning requirements shall not limit the instructional strategies used by schools or school districts or require the use of specific curriculum.

(4) "Performance standards" or "standards" means the criteria used to determine if a student has successfully learned the specific knowledge or skill being assessed as determined under RCW 28A.630.885(3)(b). The standards should be set at internationally competitive levels.

(5) "Assessment system" or "student assessment system" means a series of assessments used to determine if students have successfully learned the essential academic learning requirements. The assessment system shall be developed under RCW 28A.630.885(3)(b).

(6) "Performance-based education system" means an education system in which a significantly greater emphasis is placed on how well students are learning, and significantly less emphasis is placed on state-level laws and rules that dictate how instruction is to be provided. The performance-based education system does not require that schools use an outcome-based instructional model. Decisions regarding how instruction is provided are to be made, to the greatest extent possible, by schools and school districts, not by the state. [1993 c 336 § 201.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

28A.630.885 Washington commission on student learning—Advisory committees—Essential academic learning requirements—State-wide academic assessment system—Certificate of mastery—Accountability—Reports to the legislature (as amended by 1995 c 209). (Expires June 30, 1999.) (1) The Washington commission on student learning is hereby established. The primary purposes of the commission are to identify the knowledge and skills all public school students need to know and be able to do based on the student learning goals in RCW 28A.150.210, to develop student assessment and school accountability systems, and to take other steps necessary to develop a performance-based education system. The commission shall include three members of the state board of education, three members appointed by the governor before July 1, 1992, and five members appointed no later than June 1, 1993, by the governor elected in the November 1992 election. The governor shall appoint a chair from the commission members, and fill any vacancies in gubernatorial appointments that may occur. The state board of education shall fill any vacancies of state board of education appointments that may occur. In making the appointments, educators, business leaders, and parents shall be represented, and nominations from state-wide education, business, and parent organizations shall be requested. Efforts shall be made to ensure that the commission reflects the racial and ethnic diversity of the state's K-12 student population and that the major geographic regions in the state are represented. Appointees shall be qualified individuals who are supportive of educational restructuring, who have a positive record of service, and who will devote sufficient time to the responsibilities of the commission to ensure that the objectives of the commission are achieved.

(2) The commission shall establish advisory committees. Membership of the advisory committees shall include, but not necessarily be limited to, professionals from the office of the superintendent of public instruction and the state board of education, and other state and local educational practitioners and student assessment specialists.

(3) The commission, with the assistance of the advisory committees, shall:

(a) Develop essential academic learning requirements based on the student learning goals in RCW 28A.150.210. Essential academic learning requirements shall be developed, to the extent possible, for each of the student learning goals in RCW 28A.150.210. Goals one and two shall be considered primary. Essential academic learning requirements for RCW 28A.150.210(1), goal one, and the mathematics component of RCW 28A.150.210(2), goal two, shall be completed no later than March 1, 1995. Essential academic learning requirements that incorporate the remainder of RCW 28A.150.210 (2), (3), and (4), goals two, three, and four, shall be completed no later than March 1, 1996. To the maximum extent possible, the commission shall integrate goal four and the knowledge and skill areas in the other goals in the development of the essential academic learning requirements;

(b)(i) The commission shall present to the state board of education and superintendent of public instruction a state-wide academic assessment system for use in the elementary, middle, and high school years designed to determine if each student has mastered the essential academic learning requirements identified in (a) of this subsection. The academic assessment system shall include a variety of assessment methods, including performance-based measures that are criterion-referenced. Performance standards for determining if a student has successfully completed an assessment shall be initially determined by the commission in consultation with the advisory committees required in subsection (2) of this section.

(ii) The assessment system shall be designed so that the results under the assessment system are used by educators as tools to evaluate instructional practices, and to initiate appropriate educational support for students who have not mastered the essential academic learning requirements at the appropriate periods in the student's educational development.

(iii) Assessments measuring the essential academic learning requirements developed for RCW 28A.150.210(1), goal one, and the mathematics component of RCW 28A.150.210(2), goal two, shall be initially implemented by the state board of education and superintendent of public instruction no later than the 1996-97 school year, unless the legislature takes action to delay or prevent implementation of the assessment system and essential academic learning requirements. Assessments measuring the essential academic learning requirements developed for RCW 28A.150.210 (2), (3), and (4), goals two, three, and four, shall be initially implemented by the state board of education and superintendent of public instruction no later

than the ((1997-98)) 1998-99 school year, unless the legislature takes action to delay or prevent implementation of the assessment system and essential academic learning requirements. To the maximum extent possible, the commission shall integrate knowledge and skill areas in development of the assessments.

(iv) Before the 2000-2001 school year, participation by school districts in the assessment system shall be optional. School districts that desire to participate before the 2000-2001 school year shall notify the superintendent of public instruction in a manner determined by the superintendent. Beginning in the 2000-2001 school year, all school districts shall be required to participate in the assessment system.

(v) The state board of education and superintendent of public instruction may modify the essential academic learning requirements and academic assessment system, as needed, in subsequent school years.

(vi) The commission shall develop assessments that are directly related to the essential academic learning requirements, and are not biased toward persons with different learning styles, racial or ethnic backgrounds, or on the basis of gender;

(c) After a determination is made by the state board of education that the high school assessment system has been implemented and that it is sufficiently reliable and valid, successful completion of the high school assessment shall lead to a certificate of mastery. The certificate of mastery shall be obtained by most students at about the age of sixteen, and is evidence that the student has successfully mastered the essential academic learning requirements during his or her educational career. The certificate of mastery shall be required for graduation but shall not be the only requirement for graduation. The commission shall make recommendations to the state board of education regarding the relationship between the certificate of mastery and high school graduation requirements. Upon achieving the certificate of mastery, schools shall provide students with the opportunity to continue to pursue career and educational objectives through educational pathways that emphasize integration of academic and vocational education. Educational pathways may include, but are not limited to, programs such as work-based learning, school-to-work transition, tech prep, vocational-technical education, running start, and preparation for technical college, community college, or university education;

(d) Consider methods to address the unique needs of special education students when developing the assessments in (b) and (c) of this subsection;

(e) Consider methods to address the unique needs of highly capable students when developing the assessments in (b) and (c) of this subsection;

(f) Develop recommendations on the time, support, and resources, including technical assistance, needed by schools and school districts to help students achieve the essential academic learning requirements. These recommendations shall include an estimate for the legislature, superintendent of public instruction, and governor on the expected cost of implementing the academic assessment system;

(g) Develop recommendations for consideration by the higher education coordinating board for adopting college and university entrance requirements for public school students that are consistent with the essential academic learning requirements and the certificate of mastery;

(h) By ((December 1, 1998)) June 30, 1999, recommend to the legislature, governor, state board of education, and superintendent of public instruction:

(i) A state-wide accountability system to monitor and evaluate accurately and fairly the level of learning occurring in individual schools and school districts. The accountability system shall be designed to recognize the characteristics of the student population of schools and school districts such as gender, race, ethnicity, socioeconomic status, and other factors. The system shall include school-site, school district, and state-level accountability reports;

(ii) A school assistance program to help schools and school districts that are having difficulty helping students meet the essential academic learning requirements;

(iii) A system to intervene in schools and school districts in which significant numbers of students persistently fail to learn the essential academic learning requirements; and

(iv) An awards program to provide incentives to school staff to help their students learn the essential academic learning requirements, with each school being assessed individually against its own baseline. Incentives shall be based on the rate of percentage change of students achieving the essential academic learning requirements. School staff shall determine how the awards will be spent.

It is the intent of the legislature to begin implementation of programs in this subsection (3)(h) on September 1, 2000;

(i) Report annually by December 1st to the legislature, the governor, the superintendent of public instruction, and the state board of education on the progress, findings, and recommendations of the commission; and

(j) Make recommendations to the legislature and take other actions necessary or desirable to help students meet the student learning goals.

(4) The commission shall coordinate its activities with the state board of education and the office of the superintendent of public instruction.

(5) The commission shall seek advice broadly from the public and all interested educational organizations in the conduct of its work, including holding periodic regional public hearings.

(6) The commission shall select an entity to provide staff support and the office of the superintendent of public instruction shall provide administrative oversight and be the fiscal agent for the commission. The commission may direct the office of the superintendent of public instruction to enter into subcontracts, within the commission's resources, with school districts, teachers, higher education faculty, state agencies, business organizations, and other individuals and organizations to assist the commission in its deliberations.

(7) Members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [1995 c 209 § 1; 1994 c 245 § 13. Prior: 1993 c 336 § 202; 1993 c 334 § 1; 1992 c 141 § 202.]

Expiration date—1995 c 209 § 1: "Section 1 of this act shall expire June 30, 1999." [1995 c 209 § 3.]

Expiration date—1992 c 141 § 202: "Section 202 of this act shall expire June 30, 1999." [1995 c 209 § 2; 1992 c 141 § 203.]

28A.630.885 Washington commission on student learning—Advisory committees—Essential academic learning requirements—State-wide academic assessment system—Certificate of mastery—Accountability—Reports to the legislature (as amended by 1995 c 335). (Expires September 1, 1998.) (1) The Washington commission on student learning is hereby established. The primary purposes of the commission are to identify the knowledge and skills all public school students need to know and be able to do based on the student learning goals in RCW 28A.150.210, to develop student assessment and school accountability systems, to review current school district data reporting requirements and make recommendations on what data is necessary for the purposes of accountability and meeting state information needs, and to take other steps necessary to develop a performance-based education system. The commission shall include three members of the state board of education, three members appointed by the governor before July 1, 1992, and five members appointed no later than June 1, 1993, by the governor elected in the November 1992 election. The governor shall appoint a chair from the commission members, and fill any vacancies in gubernatorial appointments that may occur. The state board of education shall fill any vacancies of state board of education appointments that may occur. In making the appointments, educators, business leaders, and parents shall be represented, and nominations from state-wide education, business, and parent organizations shall be requested. Efforts shall be made to ensure that the commission reflects the racial and ethnic diversity of the state's K-12 student population and that the major geographic regions in the state are represented. Appointees shall be qualified individuals who are supportive of educational restructuring, who have a positive record of service, and who will devote sufficient time to the responsibilities of the commission to ensure that the objectives of the commission are achieved.

(2) The commission shall establish advisory committees. Membership of the advisory committees shall include, but not necessarily be limited to, professionals from the office of the superintendent of public instruction and the state board of education, and other state and local educational practitioners and student assessment specialists.

(3) The commission, with the assistance of the advisory committees, shall:

(a) Develop essential academic learning requirements based on the student learning goals in RCW 28A.150.210. Essential academic learning requirements shall be developed, to the extent possible, for each of the student learning goals in RCW 28A.150.210. Goals one and two shall be considered primary. Essential academic learning requirements for RCW 28A.150.210(1), goal one, and the mathematics component of RCW 28A.150.210(2), goal two, shall be completed no later than March 1, 1995. Essential academic learning requirements that incorporate the remainder of RCW 28A.150.210 (2), (3), and (4), goals two, three, and four, shall be completed no later than March 1, 1996. To the maximum extent possible, the commission shall integrate goal four and the knowledge and skill areas

in the other goals in the development of the essential academic learning requirements;

(b)(i) The commission shall present to the state board of education and superintendent of public instruction a state-wide academic assessment system for use in the elementary, middle, and high school years designed to determine if each student has mastered the essential academic learning requirements identified in (a) of this subsection. The academic assessment system shall include a variety of assessment methods, including performance-based measures that are criterion-referenced. Performance standards for determining if a student has successfully completed an assessment shall be initially determined by the commission in consultation with the advisory committees required in subsection (2) of this section.

(ii) The assessment system shall be designed so that the results under the assessment system are used by educators as tools to evaluate instructional practices, and to initiate appropriate educational support for students who have not mastered the essential academic learning requirements at the appropriate periods in the student's educational development.

(iii) Assessments measuring the essential academic learning requirements developed for RCW 28A.150.210(1), goal one, and the mathematics component of RCW 28A.150.210(2), goal two, shall be initially implemented by the state board of education and superintendent of public instruction no later than the 1996-97 school year, unless the legislature takes action to delay or prevent implementation of the assessment system and essential academic learning requirements. Assessments measuring the essential academic learning requirements developed for RCW 28A.150.210 (2), (3), and (4), goals two, three, and four, shall be initially implemented by the state board of education and superintendent of public instruction no later than the 1997-98 school year, unless the legislature takes action to delay or prevent implementation of the assessment system and essential academic learning requirements. To the maximum extent possible, the commission shall integrate knowledge and skill areas in development of the assessments.

(iv) Before the 2000-2001 school year, participation by school districts in the assessment system shall be optional. School districts that desire to participate before the 2000-2001 school year shall notify the superintendent of public instruction in a manner determined by the superintendent. Beginning in the 2000-2001 school year, all school districts shall be required to participate in the assessment system.

(v) The state board of education and superintendent of public instruction may modify the essential academic learning requirements and academic assessment system, as needed, in subsequent school years.

(vi) The commission shall develop assessments that are directly related to the essential academic learning requirements, and are not biased toward persons with different learning styles, racial or ethnic backgrounds, or on the basis of gender;

(c) After a determination is made by the state board of education that the high school assessment system has been implemented and that it is sufficiently reliable and valid, successful completion of the high school assessment shall lead to a certificate of mastery. The certificate of mastery shall be obtained by most students at about the age of sixteen, and is evidence that the student has successfully mastered the essential academic learning requirements during his or her educational career. The certificate of mastery shall be required for graduation but shall not be the only requirement for graduation. The commission shall make recommendations to the state board of education regarding the relationship between the certificate of mastery and high school graduation requirements. Upon achieving the certificate of mastery, schools shall provide students with the opportunity to continue to pursue career and educational objectives through educational pathways that emphasize integration of academic and vocational education. Educational pathways may include, but are not limited to, programs such as work-based learning, school-to-work transition, tech prep, vocational-technical education, running start, and preparation for technical college, community college, or university education;

(d) Consider methods to address the unique needs of special education students when developing the assessments in (b) and (c) of this subsection;

(e) Consider methods to address the unique needs of highly capable students when developing the assessments in (b) and (c) of this subsection;

(f) Develop recommendations on the time, support, and resources, including technical assistance, needed by schools and school districts to help students achieve the essential academic learning requirements. These recommendations shall include an estimate for the legislature, superintendent of public instruction, and governor on the expected cost of implementing the academic assessment system;

(g) Develop recommendations for consideration by the higher education coordinating board for adopting college and university entrance requirements for public school students that are consistent with the essential academic learning requirements and the certificate of mastery;

(h) Review current school district data reporting requirements for the purposes of accountability and meeting state information needs. The commission on student learning shall report recommendations to the joint select committee on education restructuring by September 15, 1996, on:

(i) What data is necessary to compare how school districts are performing before the essential academic learning requirements and the assessment system are implemented with how school districts are performing after the essential academic learning requirements and the assessment system are implemented; and

(ii) What data is necessary pertaining to school district reports under the accountability systems developed by the commission on student learning under this section;

(i) By December 1, 1998, recommend to the legislature, governor, state board of education, and superintendent of public instruction:

(i) A state-wide accountability system to monitor and evaluate accurately and fairly the level of learning occurring in individual schools and school districts. The accountability system shall be designed to recognize the characteristics of the student population of schools and school districts such as gender, race, ethnicity, socioeconomic status, and other factors. The system shall include school-site, school district, and state-level accountability reports;

(ii) A school assistance program to help schools and school districts that are having difficulty helping students meet the essential academic learning requirements;

(iii) A system to intervene in schools and school districts in which significant numbers of students persistently fail to learn the essential academic learning requirements; and

(iv) An awards program to provide incentives to school staff to help their students learn the essential academic learning requirements, with each school being assessed individually against its own baseline. Incentives shall be based on the rate of percentage change of students achieving the essential academic learning requirements. School staff shall determine how the awards will be spent.

It is the intent of the legislature to begin implementation of programs in this subsection (3)((+)) (i) on September 1, 2000;

((+)) (j) Report annually by December 1st to the legislature, the governor, the superintendent of public instruction, and the state board of education on the progress, findings, and recommendations of the commission; and

((+)) (k) Make recommendations to the legislature and take other actions necessary or desirable to help students meet the student learning goals.

(4) The commission shall coordinate its activities with the state board of education and the office of the superintendent of public instruction.

(5) The commission shall seek advice broadly from the public and all interested educational organizations in the conduct of its work, including holding periodic regional public hearings.

(6) The commission shall select an entity to provide staff support and the office of the superintendent of public instruction shall provide administrative oversight and be the fiscal agent for the commission. The commission may direct the office of the superintendent of public instruction to enter into subcontracts, within the commission's resources, with school districts, teachers, higher education faculty, state agencies, business organizations, and other individuals and organizations to assist the commission in its deliberations.

(7) Members of the commission shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [1995 c 335 § 505; 1994 c 245 § 13. Prior: 1993 c 336 § 202; 1993 c 334 § 1; 1992 c 141 § 202.]

Reviser's note: RCW 28A.630.885 was amended twice during the 1995 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Expiration date—1995 c 335 § 505: "Section 505 of this act shall expire September 1, 1998." [1995 c 335 § 803.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

Effective date—1993 c 334: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 334 § 2.]

Expiration date—1992 c 141 § 202: "Section 202 of this act shall expire June 30, 1999." [1995 c 209 § 2; 1992 c 141 § 203.]

Findings—Part headings—Severability—1992 c 141: See notes following RCW 28A.410.040.

28A.630.886 Academic assessments—Implementation dates—Use by educators. (1) The elementary grades assessment developed by the commission on student learning under RCW 28A.630.885(3)(b)(i) shall require that all public school students are assessed for reading literacy skills in the third grade no later than March 31st.

(2) The reading assessment in subsection (1) of this section shall be available for use by elementary schools no later than the 1996-97 school year. Elementary schools are encouraged to begin implementation of the assessment in the 1996-97 and 1997-98 school years.

(3) Notwithstanding the assessment implementation dates in RCW 28A.630.885, the reading assessment in subsection (1) of this section shall be implemented statewide to all public school third-grade students in the 1998-99 school year.

(4) The information provided by the reading assessment shall be used by educators as a tool to evaluate instructional practices and to initiate appropriate educational support for students who have not mastered the essential academic learning requirements for reading. The type of support to be provided to students shall be determined by school districts. School districts shall periodically reassess students who have not mastered the essential academic learning requirements for reading, and shall continue to provide appropriate reading support for students who have not mastered these essential academic learning requirements. The results of the reading assessment shall not be used for school or school district accountability purposes. [1995 c 303 § 2.]

Findings—Intent—1995 c 303: "The legislature finds that the ability to read with comprehension and skill is essential for success in school, and for success in future life. As we enter into the twenty-first century, the ability to read is critical to personal and family prosperity. It is the intent of the legislature to improve student learning by focusing on reading literacy in our public schools." [1995 c 303 § 1.]

JOINT SELECT COMMITTEE ON EDUCATION RESTRUCTURING

28A.630.945 Waivers for educational restructuring programs—Study by joint select committee on education restructuring—Report to legislature. (1) The state board of education, where appropriate, or the superintendent of public instruction, where appropriate, may grant waivers to districts from the provisions of statutes or rules relating to: The length of the school year; student-to-teacher ratios; and other administrative rules that in the opinion of the state board of education or the opinion of the superintendent of public instruction may need to be waived in order for a district to implement a plan for restructuring its educational program or the educational program of individual schools within the district.

(2) School districts may use the application process in RCW 28A.305.140 or 28A.300.138 to apply for the waivers under subsection (1) of this section.

(3) The joint select committee on education restructuring shall study which waivers of state laws or rules are necessary for school districts to implement education restructuring. The committee shall study whether the waivers are used to implement specific essential academic learning requirements and student learning goals. The committee shall study the availability of waivers under the schools for the twenty-first century program created by chapter 525, Laws of 1987, and the use of those waivers by schools participating in that program. The committee shall also study the use of waivers authorized under RCW 28A.305.140. The committee shall report its findings to the legislature by December 1, 1997. [1995 c 208 § 1.]

28A.630.950 Joint select committee on education restructuring. (Expires December 1, 2001.) (1) There is hereby created a joint select committee on education restructuring composed of twelve members as follows:

(a) Six members of the senate, three from each of the major caucuses, to be appointed by the president of the senate; and

(b) Six members of the house of representatives, three from each of the major caucuses, to be appointed by the speaker of the house of representatives.

(2) Staff support shall be provided by senate committee services and house of representatives office of program research as mutually agreed by the cochairs of the joint select committee. The cochairs shall be designated by the speaker of the house of representatives and the president of the senate.

(3) The expenses of the committee members shall be paid by the legislature under chapter 44.04 RCW.

(4) The committee shall seek advice from educators, business and labor leaders, parents, and others during its deliberations. [1993 c 336 § 1001.]

Expiration date—1993 c 336 §§ 1001-1005: "Sections 1001 through 1005 of this act shall expire December 1, 2001." [1993 c 336 § 1010.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

28A.630.951 Annual report. (Expires December 1, 2001.) The joint select committee on education restructuring shall monitor, review, and annually report to the full legislature upon the enactment and implementation of education restructuring in Washington both at the state and local level, including the following:

(1) The progress of the commission on student learning in the completion of its tasks as designated in RCW 28A.630.885 and in any subsequent legislation relating to education restructuring;

(2) The success of the center for [the] improvement of student learning established under RCW 28A.300.130;

(3) The number of school districts seeking waivers from basic education act requirements under RCW 28A.305.140 or other legislation, and the success of alternative programs pursued by those school districts;

(4) The progress and success of the commission on student learning, the superintendent of public instruction, the state board of education, the higher education coordinating board, and the state board for community and technical

colleges in carrying out RCW 28A.630.885(3)(g), and any subsequent legislation relating to education restructuring; and

(5) Such other areas as the committee may deem appropriate. [1993 c 336 § 1002.]

Expiration date—1993 c 336 §§ 1001-1005: See note following RCW 28A.630.950.

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

28A.630.952 Review of laws and reporting requirements—Report to the legislature. (Expires December 1, 2001.) (1) In addition to the duties in RCW 28A.630.951, the joint select committee on education restructuring shall review all laws pertaining to K-12 public education and to educator preparation and certification with the intent of identifying laws that inhibit the achievement of the new system of performance-based education. The select committee shall report to the legislature by November 15, 1994. The laws pertaining to home schooling and private schools shall not be reviewed in this study.

(2) The joint select committee on education restructuring shall review the school district data reporting requirements for the purposes of accountability and meeting state information needs reported by the commission on student learning under RCW 28A.630.885. The joint select committee shall report its recommendations to the legislature by January 1996. [1995 c 335 § 506; 1994 c 245 § 4; 1993 c 336 § 1003.]

Expiration date—1995 c 335 § 506: "Section 506 of this act shall expire December 1, 2001." [1995 c 335 § 804.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

Expiration date—1994 c 245 § 4: "Section 4 of this act shall expire December 1, 2001." [1994 c 245 § 16.]

Expiration date—1993 c 336 §§ 1001-1005: See note following RCW 28A.630.950.

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

28A.630.953 Commission on student learning, superintendent of public instruction, state board of education, higher education coordinating board, and state board for community and technical colleges—Annual reports to joint select committee. (Expires December 1, 2001.) By September 1, 1994, and each September 1st thereafter, the commission on student learning, the superintendent of public instruction, the state board of education, the higher education coordinating board, and the state board for community and technical colleges shall each report to the joint select committee on education restructuring regarding their progress in completing tasks as designated in chapter 336, Laws of 1993, and tasks in any subsequent legislation relating to education restructuring. [1993 c 336 § 1004.]

Expiration date—1993 c 336 §§ 1001-1005: See note following RCW 28A.630.950.

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

28A.630.954 Final report. (Expires December 1, 2001.) The joint select committee on education restructuring shall submit its final report to the legislature by December 31, 2001. [1993 c 336 § 1005.]

Expiration date—1993 c 336 §§ 1001-1005: See note following RCW 28A.630.950.

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.630.879.

Chapter 28A.635

OFFENSES RELATING TO SCHOOL PROPERTY AND PERSONNEL

Sections

28A.635.010	Abusing or insulting teachers, liability for—Penalty.
28A.635.020	Willfully disobeying school administrative personnel or refusing to leave public property, violations, when—Penalty.
28A.635.030	Disturbing school, school activities or meetings—Penalty.
28A.635.040	Examination questions—Disclosing—Penalty.
28A.635.050	Certain corrupt practices of school officials—Penalty.
28A.635.060	Defacing or injuring school property—Liability of pupil, parent, or guardian—Withholding grades, diploma, or transcripts—Voluntary work program as alternative—Rights protected.
28A.635.070	Property, failure of officials or employees to account for—Mutilation by—Penalties.
28A.635.080	Director's connivance to employ uncertified teachers—Liability.
28A.635.090	Interference by force or violence—Penalty.
28A.635.100	Intimidating any administrator, teacher, classified employee, or student by threat of force or violence unlawful.
28A.635.110	Violations under RCW 28A.635.090 and 28A.635.100—Disciplinary authority exception.
28A.635.120	Violations under RCW 28A.635.090 and 28A.635.100—Penalty.

Educational employment relations act: Chapter 41.59 RCW.

28A.635.010 Abusing or insulting teachers, liability for—Penalty. Any person who shall insult or abuse a teacher anywhere on the school premises while such teacher is carrying out his or her official duties, shall be guilty of a misdemeanor, the penalty for which shall be a fine of not less than ten dollars nor more than one hundred dollars. [1990 c 33 § 536; 1984 c 258 § 314; 1969 ex.s. c 199 § 55; 1969 ex.s. c 223 § 28A.87.010. Prior: 1909 c 97 p 360 § 11; RRS § 5054; prior: 1903 c 156 § 11; 1897 c 118 § 169; 1890 p 383 § 86. Formerly RCW 28A.87.010, 28.87.010.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

28A.635.020 Willfully disobeying school administrative personnel or refusing to leave public property, violations, when—Penalty. (1) It shall be unlawful for any person to willfully disobey the order of the chief administrative officer of a public school district, or of an authorized designee of any such administrator, to leave any motor vehicle, building, grounds or other property which is owned, operated or controlled by the school district if the person so ordered is under the influence of alcohol or drugs, or is committing, threatens to imminently commit or incites

another to imminently commit any act which would disturb or interfere with or obstruct any lawful task, function, process or procedure of the school district or any lawful task, function, process or procedure of any student, official, employee or invitee of the school district. The order of a school officer or designee acting pursuant to this subsection shall be valid if the officer or designee reasonably believes a person ordered to leave is under the influence of alcohol or drugs, is committing acts, or is creating a disturbance as provided in this subsection.

(2) It shall be unlawful for any person to refuse to leave public property immediately adjacent to a building, grounds or property which is owned, operated or controlled by a school district when ordered to do so by a law enforcement officer if such person is engaging in conduct which creates a substantial risk of causing injury to any person, or substantial harm to property, or such conduct amounts to disorderly conduct under RCW 9A.84.030.

(3) Nothing in this section shall be construed to prohibit or penalize activity consisting of the lawful exercise of freedom of speech, freedom of press and the right to peaceably assemble and petition the government for a redress of grievances: PROVIDED, That such activity neither does or threatens imminently to materially disturb or interfere with or obstruct any lawful task, function, process or procedure of the school district, or any lawful task, function, process or procedure of any student, official, employee or invitee of the school district: PROVIDED FURTHER, That such activity is not conducted in violation of a prohibition or limitation lawfully imposed by the school district upon entry or use of any motor vehicle, building, grounds or other property which is owned, operated or controlled by the school district.

(4) Any person guilty of violating this section shall be deemed guilty of a misdemeanor and, upon conviction therefor, shall be fined not more than five hundred dollars, or imprisoned in jail for not more than six months or both so fined and imprisoned. [1981 c 36 § 1; 1975-'76 2nd ex.s. c 100 § 1. Formerly RCW 28A.87.055.]

Severability—1975-'76 2nd ex.s. c 100: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 100 § 3.]

28A.635.030 Disturbing school, school activities or meetings—Penalty. Any person who shall willfully create a disturbance on school premises during school hours or at school activities or school meetings shall be guilty of a misdemeanor, the penalty for which shall be a fine in any sum not more than fifty dollars. [1984 c 258 § 315; 1969 ex.s. c 199 § 57; 1969 ex.s. c 223 § 28A.87.060. Prior: 1909 c 97 p 361 § 12; RRS § 5055; prior: 1903 c 156 § 12; 1897 c 118 § 170; 1890 p 383 § 87. Formerly RCW 28A.87.060, 28.87.060.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

28A.635.040 Examination questions—Disclosing—Penalty. Any person having access to any question or questions prepared for the examination of teachers or

common school pupils, who shall directly or indirectly disclose the same before the time appointed for the use of the questions in the examination of such teachers or pupils, or who shall directly or indirectly assist any person to answer any question submitted, shall be guilty of a misdemeanor, the penalty for which shall be a fine in any sum not less than one hundred nor more than five hundred dollars. [1984 c 258 § 316; 1969 ex.s. c 199 § 58; 1969 ex.s. c 223 § 28A.87.070. Prior: 1909 c 97 p 357 § 1; RRS § 5043; prior: 1903 c 156 § 1; 1897 c 118 § 159. Formerly RCW 28A.87.070, 28.87.070.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

28A.635.050 Certain corrupt practices of school officials—Penalty. Except as otherwise provided in chapter 42.23 RCW, it shall be unlawful for any member of the state board of education, the superintendent of public instruction or any employee of the superintendent's office, any educational service district superintendent, any school district superintendent or principal, or any director of any school district, to request or receive, directly or indirectly, anything of value for or on account of his or her influence with respect to any act or proceeding of the state board of education, the office of the superintendent of public instruction, any office of educational service district superintendent or any school district, or any of these, when such act or proceeding shall inure to the benefit of those offering or giving the thing of value.

Any willful violation of the provisions of this section shall be a misdemeanor and punished as such. [1990 c 33 § 537; 1975 1st ex.s. c 275 § 143; 1969 ex.s. c 176 § 150; 1969 ex.s. c 223 § 28A.87.090. Prior: 1917 c 126 § 1; RRS § 5050. Formerly RCW 28A.87.090, 28.87.090.]

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

28A.635.060 Defacing or injuring school property—Liability of pupil, parent, or guardian—Withholding grades, diploma, or transcripts—Voluntary work program as alternative—Rights protected. (1) Any pupil who shall deface or otherwise injure any school property, shall be liable to suspension and punishment. Any school district whose property has been lost or willfully cut, defaced, or injured, may withhold the grades, diploma, and transcripts of the pupil responsible for the damage or loss until the pupil or the pupil's parent or guardian has paid for the damages. When the pupil and parent or guardian are unable to pay for the damages, the school district shall provide a program of voluntary work for the pupil in lieu of the payment of monetary damages. Upon completion of voluntary work the grades, diploma, and transcripts of the pupil shall be released. The parent or guardian of such pupil shall be liable for damages as otherwise provided by law.

(2) Before any penalties are assessed under this section, a school district board of directors shall adopt procedures which insure that pupils' rights to due process are protected.

(3) If the department of social and health services or a child-placing agency licensed by the department has been granted custody of a child, that child's records, if requested

by the department or agency, are not to be withheld for nonpayment of school fees or any other reason. [1994 c 304 § 1; 1993 c 347 § 3; 1989 c 269 § 6; 1982 c 38 § 1; 1969 ex.s. c 223 § 28A.87.120. Prior: 1909 c 97 p 361 § 41; RRS § 5057; prior: 1903 c 156 § 14; 1897 c 118 § 172; 1890 p 372 § 48. Formerly RCW 28A.87.120, 28.87.120.]

Effective date—1994 c 304: "This act shall take effect July 1, 1994." [1994 c 304 § 4.]

Action against parent for willful injury to property by minor—Monetary limitation—Common law liability preserved: RCW 4.24.190.

28A.635.070 Property, failure of officials or employees to account for—Mutilation by—Penalties. Any school district official or employee who shall refuse or fail to deliver to his or her qualified successor all books, papers, and records pertaining to his or her position, or who shall willfully mutilate or destroy any such property, or any part thereof, shall be guilty of a misdemeanor, the penalty for which shall be a fine not to exceed one hundred dollars: **PROVIDED,** That for each day there is a refusal or failure to deliver to a successor books, papers and records, a separate offense shall be deemed to have occurred. [1990 c 33 § 538; 1984 c 258 § 317; 1969 ex.s. c 199 § 60; 1969 ex.s. c 223 § 28A.87.130. Prior: 1909 c 97 p 359 § 7, part; RRS § 5049, part; prior: 1907 c 240 § 16, part; 1903 c 156 § 7, part; 1897 c 118 § 165, part. Formerly RCW 28A.87.130, 28.87.130, part.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

28A.635.080 Director's connivance to employ uncertified teachers—Liability. Any school district director who shall aid in or give his or her consent to the employment of a teacher who is not the holder of a valid teacher's certificate issued under authority of chapter 28A.410 RCW authorizing him or her to teach in the school district by which employed shall be personally liable to his or her district for any loss which it may sustain by reason of the employment of such person. [1990 c 33 § 539; 1969 ex.s. c 223 § 28A.87.135. Prior: 1909 c 97 p 359 § 7, part; RRS § 5049, part; prior: 1907 c 240 § 16, part; 1903 c 156 § 7, part; 1897 c 118 § 165, part. Formerly RCW 28A.87.135, 28.87.130, part, 28.87.160.]

28A.635.090 Interference by force or violence—Penalty. It shall be unlawful for any person, singly or in concert with others, to interfere by force or violence with any administrator, teacher, classified employee, person under contract with the school or school district, or student of any common school who is in the peaceful discharge or conduct of his or her duties or studies. Any such interference by force or violence committed by a student shall be grounds for immediate suspension or expulsion of the student. [1996 c 321 § 3; 1990 c 33 § 540; 1988 c 2 § 1; 1971 c 45 § 3. Formerly RCW 28A.87.230.]

28A.635.100 Intimidating any administrator, teacher, classified employee, or student by threat of force or violence unlawful. It shall be unlawful for any person, singly or in concert with others, to intimidate by threat of

force or violence any administrator, teacher, classified employee, or student of any common school who is in the peaceful discharge or conduct of his or her duties or studies. [1990 c 33 § 541; 1988 c 2 § 2; 1971 c 45 § 4. Formerly RCW 28A.87.231.]

28A.635.110 Violations under RCW 28A.635.090 and 28A.635.100—Disciplinary authority exception. The crimes defined in RCW 28A.635.090 and 28A.635.100 shall not apply to school administrators, teachers, or classified employees who are engaged in the reasonable exercise of their disciplinary authority. [1990 c 33 § 542; 1988 c 2 § 3; 1971 c 45 § 5. Formerly RCW 28A.87.232.]

28A.635.120 Violations under RCW 28A.635.090 and 28A.635.100—Penalty. Any person guilty of violating RCW 28A.635.090 and 28A.635.100 shall be deemed guilty of a gross misdemeanor and, upon conviction thereon, shall be fined not more than five hundred dollars, or imprisoned in jail not more than six months or both such fine and imprisonment. [1990 c 33 § 543; 1971 c 45 § 6. Formerly RCW 28A.87.233.]

Severability—1971 c 45: See note following RCW 28B.10.570.

Chapter 28A.640 SEXUAL EQUALITY

Sections

28A.640.010	Purpose—Discrimination prohibited.
28A.640.020	Regulations, guidelines to eliminate discrimination— Scope—Sexual harassment policies.
28A.640.030	Administration.
28A.640.040	Civil relief for violations.
28A.640.050	Enforcement—Superintendent's orders, scope.
28A.640.900	Chapter supplementary.

Discrimination—Separation of sexes in dormitories, residence halls, etc.: RCW 49.60.222.

28A.640.010 Purpose—Discrimination prohibited. Inequality in the educational opportunities afforded women and girls at all levels of the public schools in Washington state is a breach of Article XXXI, section 1, Amendment 61, of the Washington state Constitution, requiring equal treatment of all citizens regardless of sex. This violation of rights has had a deleterious effect on the individuals affected and on society. Recognizing the benefit to our state and nation of equal educational opportunities for all students, discrimination on the basis of sex for any student in grades K-12 of the Washington public schools is prohibited. [1975 1st ex.s. c 226 § 1. Formerly RCW 28A.85.010.]

Severability—1975 1st ex.s. c 226: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 226 § 8.]

28A.640.020 Regulations, guidelines to eliminate discrimination—Scope—Sexual harassment policies. (1) The superintendent of public instruction shall develop regulations and guidelines to eliminate sex discrimination as it applies to public school employment, counseling and guidance services to students, recreational and athletic

activities for students, access to course offerings, and in textbooks and instructional materials used by students.

(a) Specifically with respect to public school employment, all schools shall be required to:

(i) Maintain credential requirements for all personnel without regard to sex;

(ii) Make no differentiation in pay scale on the basis of sex;

(iii) Assign school duties without regard to sex except where such assignment would involve duty in areas or situations, such as but not limited to a shower room, where persons might be disrobed;

(iv) Provide the same opportunities for advancement to males and females; and

(v) Make no difference in conditions of employment including, but not limited to, hiring practices, leaves of absence, hours of employment, and assignment of, or pay for, instructional and noninstructional duties, on the basis of sex.

(b) Specifically with respect to counseling and guidance services for students, they shall be made available to all students equally. All certificated personnel shall be required to stress access to all career and vocational opportunities to students without regard to sex.

(c) Specifically with respect to recreational and athletic activities, they shall be offered to all students without regard to sex. Schools may provide separate teams for each sex. Schools which provide the following shall do so with no disparities based on sex: Equipment and supplies; medical care; services and insurance; transportation and per diem allowances; opportunities to receive coaching and instruction; laundry services; assignment of game officials; opportunities for competition, publicity and awards; scheduling of games and practice times including use of courts, gyms, and pools: PROVIDED, That such scheduling of games and practice times shall be determined by local administrative authorities after consideration of the public and student interest in attending and participating in various recreational and athletic activities. Each school which provides showers, toilets, or training room facilities for athletic purposes shall provide comparable facilities for both sexes. Such facilities may be provided either as separate facilities or shall be scheduled and used separately by each sex.

The superintendent of public instruction shall also be required to develop a student survey to distribute every three years to each local school district in the state to determine student interest for male/female participation in specific sports.

(d) Specifically with respect to course offerings, all classes shall be required to be available to all students without regard to sex: PROVIDED, That separation is permitted within any class during sessions on sex education or gym classes.

(e) Specifically with respect to textbooks and instructional materials, which shall also include, but not be limited to, reference books and audio-visual materials, they shall be required to adhere to the guidelines developed by the superintendent of public instruction to implement the intent of this chapter: PROVIDED, That this subsection shall not be construed to prohibit the introduction of material deemed appropriate by the instructor for educational purposes.

(2)(a) By December 31, 1994, the superintendent of public instruction shall develop criteria for use by school districts in developing sexual harassment policies as required under (b) of this subsection. The criteria shall address the subjects of grievance procedures, remedies to victims of sexual harassment, disciplinary actions against violators of the policy, and other subjects at the discretion of the superintendent of public instruction. Disciplinary actions must conform with collective bargaining agreements and state and federal laws. The superintendent of public instruction also shall supply sample policies to school districts upon request.

(b) By June 30, 1995, every school district shall adopt and implement a written policy concerning sexual harassment. The policy shall apply to all school district employees, volunteers, parents, and students, including, but not limited to, conduct between students.

(c) School district policies on sexual harassment shall be reviewed by the superintendent of public instruction considering the criteria established under (a) of this subsection as part of the monitoring process established in RCW 28A.640.030.

(d) The school district's sexual harassment policy shall be conspicuously posted throughout each school building, and provided to each employee. A copy of the policy shall appear in any publication of the school or school district setting forth the rules, regulations, procedures, and standards of conduct for the school or school district.

(e) Each school shall develop a process for discussing the district's sexual harassment policy. The process shall ensure the discussion addresses the definition of sexual harassment and issues covered in the sexual harassment policy.

(f) "Sexual harassment" as used in this section means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature if:

(i) Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining an education or employment;

(ii) Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's education or employment; or

(iii) That conduct or communication has the purpose or effect of substantially interfering with an individual's educational or work performance, or of creating an intimidating, hostile, or offensive educational or work environment. [1994 c 213 § 1; 1975 1st ex.s. c 226 § 2. Formerly RCW 28A.85.020.]

Severability—1975 1st ex.s. c 226: See note following RCW 28A.640.010.

28A.640.030 Administration. The office of the superintendent of public instruction shall be required to monitor the compliance by local school districts with this chapter, shall establish a compliance timetable and regulations for enforcement of this chapter, and shall establish guidelines for affirmative action programs to be adopted by all school districts. [1975 1st ex.s. c 226 § 3. Formerly RCW 28A.85.030.]

Severability—1975 1st ex.s. c 226: See note following RCW 28A.640.010.

28A.640.040 Civil relief for violations. Any person aggrieved by a violation of this chapter, or aggrieved by the violation of any regulation or guideline adopted hereunder, shall have a right of action in superior court for civil damages and such equitable relief as the court shall determine. [1975 1st ex.s. c 226 § 4. Formerly RCW 28A.85.040.]

Severability—1975 1st ex.s. c 226: See note following RCW 28A.640.010.

28A.640.050 Enforcement—Superintendent's orders, scope. The superintendent of public instruction shall have the power to enforce and obtain compliance with the provisions of this chapter and the regulations and guidelines adopted pursuant thereto by appropriate order made pursuant to chapter 34.05 RCW, which order, by way of illustration, may include, the termination of all or part of state apportionment or categorical moneys to the offending school district, the termination of specified programs in which violations may be flagrant within the offending school district, the institution of a mandatory affirmative action program within the offending school district, and the placement of the offending school district on probation with appropriate sanctions until compliance is achieved. [1975 1st ex.s. c 226 § 5. Formerly RCW 28A.85.050.]

Severability—1975 1st ex.s. c 226: See note following RCW 28A.640.010.

28A.640.900 Chapter supplementary. This chapter shall be supplementary to, and shall not supersede, existing law and procedures and future amendments thereto relating to unlawful discrimination based on sex. [1975 1st ex.s. c 226 § 6. Formerly RCW 28A.85.900.]

Severability—1975 1st ex.s. c 226: See note following RCW 28A.640.010.

Chapter 28A.645

APPEALS FROM BOARD

Sections

28A.645.010	Appeals—Notice of—Scope—Time limitation.
28A.645.020	Transcript filed, certified.
28A.645.030	Appeal to be heard de novo and expeditiously.
28A.645.040	Certified copy of decision to county assessor when school district boundaries changed.

Educational employment relations act: Chapter 41.59 RCW.

28A.645.010 Appeals—Notice of—Scope—Time limitation. Any person, or persons, either severally or collectively, aggrieved by any decision or order of any school official or board, within thirty days after the rendition of such decision or order, or of the failure to act upon the same when properly presented, may appeal the same to the superior court of the county in which the school district or part thereof is situated, by filing with the secretary of the school board if the appeal is from board action or failure to act, otherwise with the proper school official, and filing with the clerk of the superior court, a notice of appeal which shall set forth in a clear and concise manner the errors complained of.

Appeals by teachers, principals, supervisors, superintendents, or other certificated employees from the actions of school boards with respect to discharge or other action adversely affecting their contract status, or failure to renew their contracts for the next ensuing term shall be governed by the appeal provisions of chapters 28A.400 and 28A.405 RCW therefor and in all other cases shall be governed by chapter 28A.645 RCW. [1990 c 33 § 544; 1971 ex.s. c 282 § 40; 1969 ex.s. c 34 § 17; 1969 ex.s. c 223 § 28A.88.010. Prior: 1961 c 241 § 9; 1909 c 97 p 362 § 1; RRS § 5064. Formerly RCW 28A.88.010, 28.88.010.] [SLC-RO-1.]

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

RCW 28A.645.010 not applicable to contract renewal of school superintendent: RCW 28A.400.010.

28A.645.020 Transcript filed, certified. Within twenty days of service of the notice of appeal, the school board, at its expense, or the school official, at such official's expense, shall file the complete transcript of the evidence and the papers and exhibits relating to the decision for which a complaint has been filed. Such filings shall be certified to be correct. [1971 ex.s. c 282 § 41. Formerly RCW 28A.88.013.]

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

28A.645.030 Appeal to be heard de novo and expeditiously. Any appeal to the superior court shall be heard de novo by the superior court. Such appeal shall be heard expeditiously. [1971 ex.s. c 282 § 42. Formerly RCW 28A.88.015.]

Severability—1971 ex.s. c 282: See note following RCW 28A.310.010.

28A.645.040 Certified copy of decision to county assessor when school district boundaries changed. In cases of appeal resulting in the change of any school district boundaries the decision shall within five days thereafter be also certified by the proper officer to the county assessor of the county, or to the county assessors of the counties, wherein the territory may lie. [1969 ex.s. c 223 § 28A.88.090. Prior: 1909 c 97 p 364 § 8; RRS § 5071. Formerly RCW 28A.88.090, 28.88.090.]

Chapter 28A.650

EDUCATION TECHNOLOGY

Sections

28A.650.005	Findings—Intent.
28A.650.010	Definitions.
28A.650.015	Education technology plan—Educational technology advisory committee.
28A.650.020	Regional educational technology support centers—Advisory councils.
28A.650.025	Distribution of funds for regional educational technology support centers.
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28A.650.035	Education technology account.
28A.650.040	Rules.
28A.650.900	Findings—Intent—Part headings not law—1993 c 336.
28A.650.901	Findings—1993 c 336.

28A.650.005 Findings—Intent. The legislature recognizes that up-to-date tools will help students learn. Workplace technology requirements will continue to change and students should be knowledgeable in the use of technologies.

Furthermore, the legislature finds that the Washington systemic initiative is a broad-based effort to promote widespread public literacy in mathematics, science, and technology. An important component of the systemic initiative is the universal electronic access to information by students. It is the intent of the legislature that components of RCW 28A.650.010 through 28A.650.025 will support the state-wide systemic reform effort in mathematics, science, and technology as envisioned by the Washington systemic initiative. [1993 c 336 § 701.]

28A.650.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Education technology" or "technology" means the effective use of electronic and optical tools, including telephones, and electronic and optical pathways in helping students learn.

(2) "Network" means integrated linking of education technology systems in schools for transmission of voice, data, video, or imaging, or a combination of these. [1993 c 336 § 702.]

28A.650.015 Education technology plan—Educational technology advisory committee. (1) The superintendent of public instruction, to the extent funds are appropriated, shall develop and implement a Washington state K-12 education technology plan. The technology plan shall be updated on at least a biennial basis, shall be developed to coordinate and expand the use of education technology in the common schools of the state. The plan shall be consistent with applicable provisions of chapter 43.105 RCW. The plan, at a minimum, shall address:

(a) The provision of technical assistance to schools and school districts for the planning, implementation, and training of staff in the use of technology in curricular and administrative functions;

(b) The continued development of a network to connect school districts, institutions of higher learning, and other sources of on-line information; and

(c) Methods to equitably increase the use of education technology by students and school personnel throughout the state.

(2) The superintendent of public instruction shall appoint an educational technology advisory committee to assist in the development and implementation of the technology plan in subsection (1) of this section. The committee shall include, but is not limited to, persons representing: The state board of education, the commission on student learning, the department of information services, educational service districts, school directors, school administrators, school principals, teachers, classified staff, higher education faculty, parents, students, business, labor, scientists and mathematicians, the higher education coordinating board, the work force training and education coordinating board, and the state

library. [1995 c 335 § 507; 1994 c 245 § 2; 1993 c 336 § 703.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

28A.650.020 Regional educational technology support centers—Advisory councils. Educational service districts shall establish, subject to available funding, regional educational technology support centers for the purpose of providing ongoing educator training, school district cost-benefit analysis, long-range planning, network planning, distance learning access support, and other technical and programmatic support. Each educational service district shall establish a representative advisory council to advise the educational service district in the expenditure of funds provided to the technology support centers. [1993 c 336 § 705.]

Reviser's note: 1993 c 336 directed that this section be added to chapter 28A.310 RCW. This section has been codified in chapter 28A.650 RCW, which relates more directly to educational technology.

28A.650.025 Distribution of funds for regional educational technology support centers. The superintendent of public instruction, to the extent funds are appropriated, shall distribute funds to educational service districts on a grant basis for the regional educational technology support centers established in RCW 28A.650.020. [1993 c 336 § 706.]

28A.650.030 Distribution of funds to expand the education state-wide network. The superintendent of public instruction, to the extent funds are appropriated, shall distribute funds to the Washington school information processing cooperative and to school districts on a grant basis, from moneys appropriated for the purposes of this section, for equipment, networking, and software to expand the current K-12 education state-wide network. [1993 c 336 § 707.]

28A.650.035 Education technology account. (1) The superintendent of public instruction may receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of educational technology and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

(2) The education technology account is hereby established in the custody of the state treasurer. The superintendent of public instruction shall deposit in the account all moneys received from gifts, grants, or endowments for education technology. Moneys in the account may be spent only for education technology. Disbursements from the account shall be on authorization of the superintendent of public instruction or the superintendent's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements. [1993 c 336 § 708.]

28A.650.040 Rules. The superintendent of public instruction shall adopt rules as necessary under chapter 34.05

RCW governing the operation and scope of this chapter.
[1993 c 336 § 709.]

28A.650.900 Findings—Intent—Part headings not law—1993 c 336. See notes following RCW 28A.150.210.

28A.650.901 Findings—1993 c 336. See note following RCW 28A.630.879.

Chapter 28A.690

AGREEMENT ON QUALIFICATIONS OF PERSONNEL

Sections

28A.690.010	Compact entered into—Terms.
28A.690.020	Superintendent as "designated state official", compact administrator—Board to approve text of contracts.
28A.690.030	True copies of contracts filed in office of superintendent—Publication.

28A.690.010 Compact entered into—Terms. The Interstate Agreement on Qualifications of Educational Personnel is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I

1. The states party to this Agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this Agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it, and to authorize specific interstate educational personnel contracts to achieve that end.

2. The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators is lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states or origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower.

Article II

As used in this Agreement and contracts made pursuant to it, unless the context clearly requires otherwise:

1. "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

2. "Designated state official" means the education official of a state selected by that state to negotiate and enter into, on behalf of his or her state, contracts pursuant to this Agreement.

3. "Accept," or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

4. "State" means a state, territory, or possession of the United States; the District of Columbia; or the Commonwealth of Puerto Rico.

5. "Originating State" means a state (and the subdivision thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

6. "Receiving State" means a state (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

Article III

1. The designated state official of a party state may make one or more contracts on behalf of his or her state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this Agreement. A designated state official may enter into a contract pursuant to this Article only with states in which he or she finds that there are programs of education, certification standards or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable, even though not identical to that prevailing in his or her own state.

2. Any such contract shall provide for:

(a) Its duration.

(b) The criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state.

(c) Such waivers, substitutions, and conditional acceptances as shall aid the practical effectuation of the contract without sacrifice of basic educational standards.

(d) Any other necessary matters.

3. No contract made pursuant to this Agreement shall be for a term longer than five years but any such contract may be renewed for like or lesser periods.

4. Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this Agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

5. The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

6. A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report no less frequently than once a year to the heads of the appropriate education agencies of the contracting states.

Article IV

1. Nothing in this Agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

2. To the extent that contracts made pursuant to this Agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

Article V

The party states agree that:

1. They will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this Agreement.

2. They will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

Article VI

The designated state officials of any party state may meet from time to time as a group to evaluate progress under the Agreement, and to formulate recommendations for changes.

Article VII

Nothing in this Agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

Article VIII

1. This Agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this Agreement.

2. Any party state may withdraw from this Agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

3. No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

Article IX

This Agreement shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Agreement shall be severable and if any phrase, clause, sentence, or provision of this Agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this Agreement shall be held contrary to the constitution of any state participating therein, the Agreement shall remain in full force and effect as to the state affected as to all severable matters. [1990 c 33 § 545; 1969 ex.s. c 283 § 4. Formerly RCW 28A.93.010, 28.93.010.]

Severability—1969 ex.s. c 283: See note following RCW 28A.150.050.

28A.690.020 Superintendent as "designated state official", compact administrator—Board to approve text of contracts. The "designated state official" for this state under Article II of RCW 28A.690.010 shall be the superintendent of public instruction, who shall be the compact administrator and who shall have power to promulgate rules to carry out the terms of this compact. The superintendent of public instruction shall enter into contracts pursuant to Article III of the Agreement only with the approval of the specific text thereof by the state board of education. [1990 c 33 § 546; 1969 ex.s. c 283 § 5. Formerly RCW 28A.93.020, 28.93.020.]

Severability—1969 ex.s. c 283: See note following RCW 28A.150.050.

28A.690.030 True copies of contracts filed in office of superintendent—Publication. True copies of all contracts made on behalf of this state pursuant to the Agreement as provided in RCW 28A.690.010 shall be kept on file in the office of the superintendent of public instruction. The superintendent of public instruction shall publish all such contracts in convenient form. [1990 c 33 § 547; 1969 ex.s. c 283 § 6. Formerly RCW 28A.93.030, 28.93.030.]

Severability—1969 ex.s. c 283: See note following RCW 28A.150.050.

**Chapter 28A.900
CONSTRUCTION**

Sections

- 28A.900.010
- 28A.900.030
- 28A.900.040
- 28A.900.050
- 28A.900.060
- 28A.900.070
- 28A.900.080

- Repeals and savings.
- Continuation of existing law.
- Provisions to be construed in pari materia.
- Title, chapter, section headings not part of law.
- Invalidity of part of title not to affect remainder.
- "This code" defined.
- Effective date—1969 ex.s. c 223.

28A.900.100	Purpose—1990 c 33.
28A.900.101	Statutory references—1990 c 33.
28A.900.102	Severability—1990 c 33.
28A.900.103	Subheadings not law—1990 c 33.
28A.900.105	Effect of repeal—1995 c 335.

28A.900.010 Repeals and savings. See 1969 ex.s. c 223 § 28A.98.010. Formerly RCW 28A.98.010.

28A.900.030 Continuation of existing law. The provisions of this title, Title 28A RCW, insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. Nothing in this 1969 code revision of Title 28 RCW shall be construed as authorizing any new bond issues or new or additional appropriations of moneys but the bond issue authorizations herein contained shall be construed only as continuations of bond issues authorized by prior laws herein repealed and reenacted, and the appropriations of moneys herein contained are continued herein for historical purposes only and this 1969 act shall not be construed as a reappropriation thereof and no appropriation contained herein shall be deemed to be extended or revived hereby and such appropriation shall lapse or shall have lapsed in accordance with the original enactment: PROVIDED, That this 1969 act shall not operate to terminate, extend or otherwise affect any appropriation for the biennium commencing July 1, 1967, and ending June 30, 1969. [1969 ex.s. c 223 § 28A.98.030. Formerly RCW 28A.98.030.]

28A.900.040 Provisions to be construed in pari materia. The provisions of this title, Title 28A RCW, shall be construed in pari materia even though as a matter of prior legislative history they were not originally enacted in the same statute. The provisions of this title shall also be construed in pari materia with the provisions of Title 28B RCW, and with other laws relating to education. This section shall not operate retroactively. [1969 ex.s. c 223 § 28A.98.040. Formerly RCW 28A.98.040.]

28A.900.050 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title, Title 28A RCW, do not constitute any part of the law. [1969 ex.s. c 223 § 28A.98.050. Formerly RCW 28A.98.050.]

28A.900.060 Invalidity of part of title not to affect remainder. If any provision of this title, Title 28A RCW, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 223 § 28A.98.060. Formerly RCW 28A.98.060.]

28A.900.070 "This code" defined. As used in this title, Title 28A RCW, "this code" means Titles 28A and 28B RCW. [1969 ex.s. c 223 § 28A.98.070. Formerly RCW 28A.98.070.]

28A.900.080 Effective date—1969 ex.s. c 223. Title 28A RCW shall be effective July 1, 1970. [1969 ex.s. c 223 § 28A.98.080. Formerly RCW 28A.98.080.]

28A.900.100 Purpose—1990 c 33. (1) The purpose of *this act is to reorganize Title 28A RCW. There are three goals to this reorganization: (a) To place related sections in chapters organized by subject matter; (b) to make all terms gender neutral; and (c) to clarify existing language. *This act is technical in nature and is not intended to make substantive changes in the meaning, interpretation, court construction, or constitutionality of any provision of Title 28A RCW or other statutory provisions included in *this act and rules adopted under those provisions.

(2) *This act shall not have the effect of terminating or in any way modifying any proceedings or liability, civil or criminal, which exists on June 7, 1990. [1990 c 33 § 1.]

*Reviser's note: For codification of "this act" [1990 c 33], see Codification Tables, Volume 0.

28A.900.101 Statutory references—1990 c 33. (1) The code reviser shall correct all statutory references to code sections recodified by *section 4 of this act.

(2)(a) References to "RCW 28A.47.732 through 28A.47.748" in Title 28A RCW have intentionally not been changed since those code sections were repealed by chapter 189, Laws of 1983. These references are not being eliminated because it is not the purpose of this act to correct obsolete references.

(b) References to "RCW 28A.58.095" in Title 28A RCW have intentionally not been changed since that code section was repealed by chapter 2, Laws of 1987 1st ex. sess. These references are not being eliminated because it is not the purpose of this act to correct obsolete references. [1990 c 33 § 2.]

*Reviser's note: Section 4 of this act is an uncodified section that recodifies sections in Title 28A RCW.

28A.900.102 Severability—1990 c 33. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 33 § 603.]

28A.900.103 Subheadings not law—1990 c 33. Subheadings as used in this act do not constitute any part of the law. [1990 c 33 § 3.]

28A.900.105 Effect of repeal—1995 c 335. The repeal of any programs that are not funded as of July 23, 1995, is not intended to comment on the value of the services provided by the programs. The repeal of statutes in chapter 335, Laws of 1995 does not affect the general authority of school districts to provide services to accomplish the purposes of these programs. The deletion or repeal of language that permitted school districts to carry out specific activities that would be within their general authority is not intended to affect the general authority of school districts to continue to carry out those activities. [1995 c 335 § 801.]

Part headings, table of contents not law—1995 c 335: See note following RCW 28A.150.360.

